

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

APPEAL No. 10 of 2012

Janajagrithi Samiti (Regd.)
Through its Secretary
Shri Jayanth Kumar
Nandikur-574138,
Udupi District,
Karnataka.

Appellant

Versus

1. Union of India, Through the Secretary,
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110003.
2. Government of Karnataka
Through the Secretary
Department of Energy
Vilkas Saudha, Karnataka Government Secretariat
Dr. Ambedkar Veedhi
Bangalore-560001, Karnataka.
3. Karnataka Power Transmission Corporation Ltd.
Through the Managing Director
Kaveri Bhavan, K.G. Road,
Bangalore-560001, Karnataka.

Counsel for Appellant:

Shri Raj Panjwani, Senior Advocate along with
Shri Rahul Choudhary, Advocate.

Counsel for Respondents:

Ms. Neelam Rathore, Advocate for R-1

Shri Nikhil Nayar, Advocate alongwith
Ms. Pritha Srikumar, Advocate for R-2
Shri Raju Ramachandran, Senior Advocate alongwith
Shri S. Sriranga, Advocate for R-3

JUDGEMENT

PRESENT:

Justice A.S. Naidu (Acting Chairperson)

Dr. G.K. Pandey (Expert Member)

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Dated 7th March, 2012
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JUDGMENT BY THE BENCH:

Diversion of forest land measuring 172.53 ha for construction of 400KV Double Circuit Transmission Lines from the generation station of Udupi Power Corporation Limited at Yellur Village of Udupi District, to the receiving stations situated at Shantigram (Hassan), in favour of the Karnataka Power Transmission Corporation Ltd. Respondent No.3 herein, by the MoEF in exercise of power conferred under Section 2 of the Forest (Conversion) Act, 1980 vide order dated 17th January, 2012, is assailed in this Appeal, on the grounds enumerated in the Memorandum of Appeal.

2. The scenario of facts reveal that Udupi Power Corporation Limited was permitted to set up a Thermal Power Plant with a total installed capacity of 1,200 MW at Nandikur (Udupi). The distribution utilities in the State entered into power purchase agreement with the said

company to purchase power and distribute the same in the State of Karnataka. The third Respondent has signed the bulk Power Transmission Agreement with the distribution utilities for constructing transmission lines for evacuating the power produced and supplying it to utilities. The total length of the line to connect the generating stations to the sub-station is 180.09 km. The said line passes through private lands and also through stretch of forest land. The total length of the line passing through forest, including reserve forest and deemed forest comes to 33.66 km. In other words out of the total extent of 828 ha of land, the forest land involved comes to 172.53 ha. Out of the said area the land involved in reserve forest is 88.643 ha through which the line will pass to a total length of 33.67 km.

3. Stage-1 permission for diversion of the entire forest land was granted on 17th February, 2011. Admittedly the order granting Stage-1 permission under the Forest Conservation Act, 1980 was not assailed and has attained finality. In this Appeal, the appellant seeks to assail the order dated 17th January, 2012 granting Stage-2 permission subject to fulfilment of conditions laid down in the said order, a copy of which is filed as **Annexure A/1**.

4. Environment Clearance (EC) for establishing the Power Plant was granted by the MoEF way back in the year 1997. Of course, it appears that some modification, addition and alternations, were made by the MoEF in September, 2011. The order granting EC was assailed

before the then National Environment Appellant Authority (NEAA) by filing an Appeal. The Appeal was dismissed by the Authority and the said order has been assailed before Hon'ble Karnataka High Court in WPC No.21439 of 2005. Thus, this Appeal is confined only to the Forest Clearance (FC).

5. In Course of hearing Learned Counsel for the appellant raised several allegations with regard to inaction as well as over action committed by the authorities with regard to granting EC and Forest Clearance (FC) to the project in question. It was, however, fairly submitted that the Appellant is not against the installation of the project but then is aggrieved by the decision granting FC, thereby permitting diversion of 172.53 ha of forest land and felling of 18,652 trees. Relying upon the decision of the Supreme Court in the case of T.N. Godavarman Vs Union of India WP (c) 202/1995, Mr. Panjwani submitted that it should be always borne in mind that it is important for the country to protect and preserve natural forest and leave it untouched.

6. According to Mr. Panjwani the Western Ghats are internationally recognised for its rich biodiversity and is considered to be one of the two biodiversity hot spot in the country. The Western Ghats are prominent land mark of Peninsular India, running parallel to the West Coast. The same is the home of animals like tiger, leopard, bear etc., apart from some rare relic species

discovered in the Western Ghats. Therefore, before granting Stage-2 permission, the MoEF should have considered the irreversible adverse impact on ecology which is going to be caused by felling of trees.

7. A detailed counter reply has been filed by Respondent No.3. In course of hearing of the petition filed for granting interim protection, Learned Senior Counsel for both the parties in view of the urgency agreed for the final disposal of the Appeal.

8. Mr. Ramchandran, Learned Senior Counsel, appeared for Respondent No.3 repudiated the submissions made by the Appellant and submitted that the project being of national importance, the MoEF on the request of the State of Karnataka examined all the pros and cons and on being satisfied that diversion of the forest land would not considerably affect the environment, on the other hand would be very much necessary for functioning of the Power Plant, and granted FC. Mr. Ramchandran further submitted that the Appellant having not assailed the Stage-1 permission, are estopped from assailing the Stage-2 FC as the latter one is confined only to laying down conditions/restriction for the use of the forest land non-forest activities whereas the earlier one is the decision on principle.

9. Heard Learned Counsel for the parties at length, perused the pleadings as well as the documents attached meticulously and considered the submissions raised

before us diligently. The only question which needs to be considered in this Appeal is to determine the potential impact of de-reservation of forest land for the purpose of the project and the impact thereof on wild life and biodiversity in the perspective of the Forest (Conservation) Act, 1980.

10. No doubt the Power Project is of national importance. EC was granted to the said project way back in year 1997. The doctrine of sustainable development has been accepted as an answer to balance on one hand the various developmental activities aimed at ensuring better living, and improving social and economic conditions of human beings. On the other hand ensuring that the consequence of development do not exceed the carrying capacity of the ecosystem but are compatible with the need to protect and improve the environment is also equally important. In the case of **Tirupur Dying Factory Owners Association vs. Noyyal River Ayacutdars Protection Association (2009) SCC 737** the Supreme court observed as follows:

“26. The concept of ‘sustainable development’ has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the

risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) Vs Union of India and M.C. Mehta Vs Union of India".

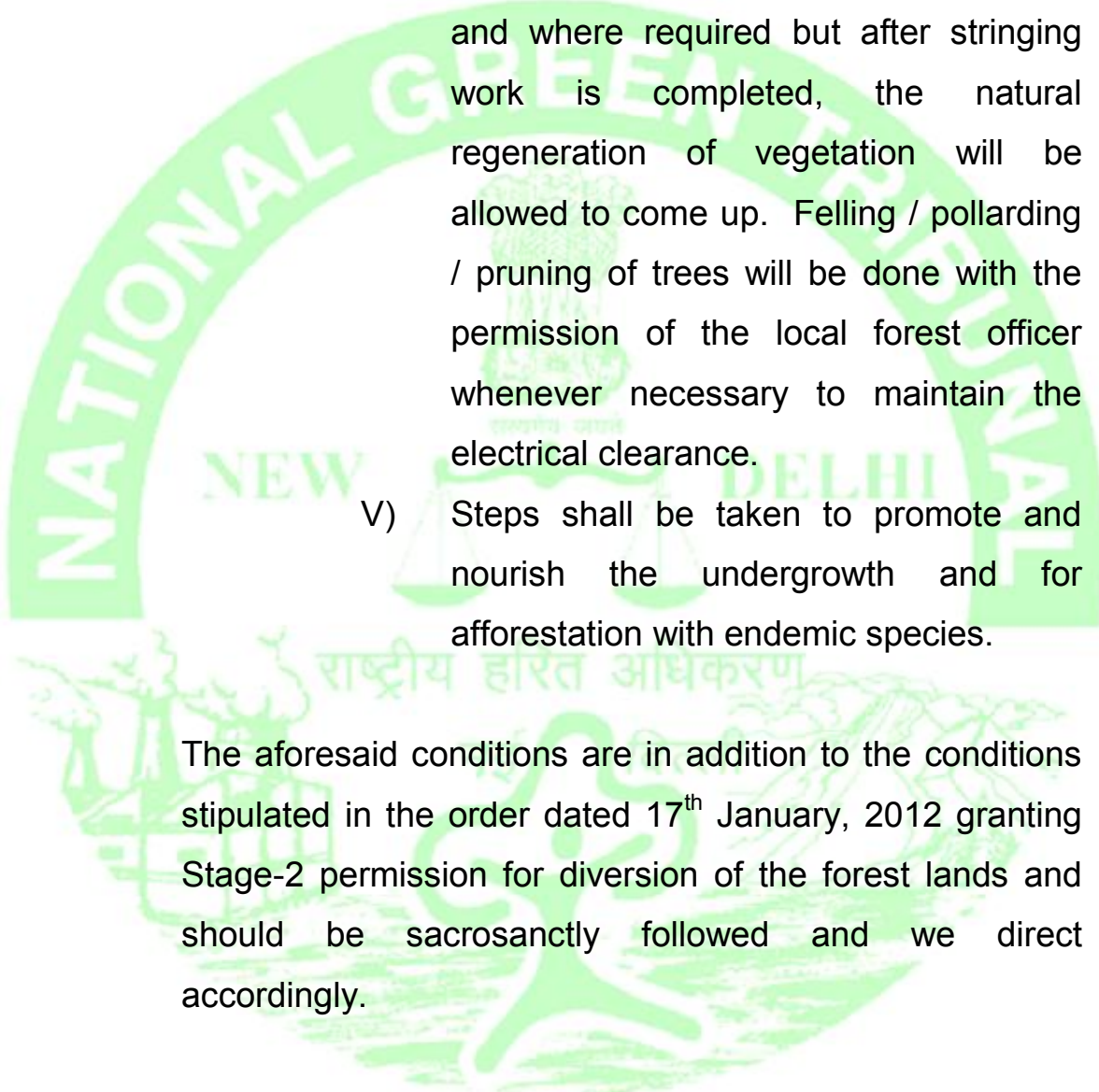
Analysis of the submissions, in the touch stone of the principles laid down in the case of Tirupur Dying Factory (Supra) we find, that, out of the major portion of the power line passes through waste land and land of relatively low biodiversity value whereas, certain sections of the line crosses through areas of rich wild life and biodiversity and are of greater ecological value. Out of the said lands, a portion measuring about 8.3 km. long, as would be evident from the map produced before us, between the proposed tower locations AP 100 to AP 107 passes through Vallur Reserve forest. The said section of line crosses through high biodiversity ever green forests and shola – grass lands, which harbours a variety of endangered wild life. Drawing overhead lines of the proposed 400 KVA transmission line over the said section

may cause significant adverse impacts not only on wild life and biodiversity but also would cause restrictions in habitat connectivity and corridor values of the forest.

Being confronted by the aforesaid facts, Mr. Ramchandran Learned Senior Counsel, as per the instruction of his clients, fairly undertook not to cut any trees nor destroy the forest in the aforesaid 8.3 km stretch i.e tower line between AP 100 to AP 107, situated in the Reserve Forest.

11. We are conscious of the fact that the project in question has great economic importance not only for the State of Karnataka but also for the entire country, and that there is a sense of urgency in view of the shortage of power. Considering all these facts, and in order to meet the ends of justice, applying the principles of sustainable development, we dispose of this appeal with the following directions:

- I) That Respondent No.3 shall not fell any trees nor destroy the biodiversity in the stretch of Reserve Forest land measuring 8.3 km. i.e. AP 100 to AP 107 (**Annexure-R1**).
- II) It shall fell minimum number of trees in rest of the forest lands for which clearance has been granted and shall adopt the procedure of trimming the branches than uprooting the trees, as and when possible.

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- III) It shall ensure, maximum height of the towers in the forest area which should be 70 mts or above, following the contour of the terrain.
- IV) Below the conductor, width clearance of 3 mts would be permitted for taking the tension stringing equipment. The trees on such strips would have to be felled as and where required but after stringing work is completed, the natural regeneration of vegetation will be allowed to come up. Felling / pollarding / pruning of trees will be done with the permission of the local forest officer whenever necessary to maintain the electrical clearance.
- V) Steps shall be taken to promote and nourish the undergrowth and for afforestation with endemic species.

The aforesaid conditions are in addition to the conditions stipulated in the order dated 17th January, 2012 granting Stage-2 permission for diversion of the forest lands and should be sacrosanctly followed and we direct accordingly.

12. In course of hearing it was brought to our notice that the guidelines for laying transmission lines through forest areas were formed by the MoEF long back. The conditions stipulated therein had become obsolete by

afflux of time. It appears that a fresh guidelines for laying transmission line, though formulated has not been notified as yet, consequently no effective conditions can be imposed by the authorities while granting clearance for forest lands. To avoid such difficulties we call upon the MoEF to take steps and notify the detailed fresh guidelines for laying transmission line through forest area, incorporating necessary changes to mitigate the difficulties which arise during granting forest clearance, as expeditiously as possible preferably within a period of two months from the date of communication of this order.

13. With the aforesaid direction and observations the appeal stands disposed of.

Parties would bear their own costs.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson

Durga Malhotra
7th March, 2012

