

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 25047 OF 2018

ASSOCIATION FOR PROTECTION OF DEMOCRATIC
RIGHTS & ANR. PETITIONER(S)
VERSUS
THE STATE OF WEST BENGAL & ORS. RESPONDENT(S)

O R D E R

The issue before us in SLP (C) 25047/2018 is whether we should allow the Government of West Bengal to fell the trees, in order to construct Road Over Bridges (ROBs) and widen the Roads. We are told that ROBs are necessitated to prevent accidents, which are several, over the past few years. This is the human/development concern that has been expressed by the State of West Bengal.

It is, however, undisputed that the ROBs can only be constructed after felling of several trees, ages of which are said to be up to 150 years. As per the Report of the Expert Committee submitted before us, primarily, about 50 trees have already been felled and potentially another 306 trees are to be felled. As per the Report, many of the trees can be called 'historical trees', which have 'irreplaceable value' and compensatory afforestation cannot replace trees of this value. It is common ground that the trees cannot be transplanted at some other location.

The right to clean and healthy environment has been recognized as the fundamental right under Article 21 of the

Constitution of India. Article 48-A imposes duty upon the State to endeavour to protect and improve the environment and safeguard the forests and wildlife of the Country. In addition to this, India is also a party to international treaties, agreements and conferences and has committed itself to sustainable development and growth. This legal framework indicates that sustainable development must remain at the heart of any development policy implemented by the state. It is essential to strike the right balance between environmental conservation and protection on one hand, and the right to development on the other, while articulating the doctrine of sustainable development. We may add that in our opinion conservation and development need not be viewed as binaries, but as complementary strategies that weave into one another. In other words, conservation of nature must be viewed as part of development and not as a factor stultifying development.

One of the moot questions often involved wherever there is need to fell trees to develop a project is how just and fair compensation can be calculated for felling of trees by any authority or organisation which proposes such felling. We have no doubt that such compensation should be calculated and paid as a part of the project cost of the project which necessitates the felling of trees and such compensation must be utilized in an expert manner to create a better environment and, most importantly, increase afforestation. It is, therefore, imperative to make a realistic assessment of the economic value of a tree, which may be permitted to fell, with reference to

its value to environment and its longevity, with regard to factors such as production of oxygen and carbon sequestration, soil conservation, protection of flora/fauna, its role in habitat and ecosystem integrity and any other ecologically relevant factor, distinct from timber/wood.

We note that the issue assumes significance from the perspective of climate change as a growing national and international concern. The pivotal policy document in India on climate change is the National Action Plan on Climate Change (NAPCC) formulated by Union Government in 2008, which recognizes that the country is committed to increasing tree cover from 23% to 33%. Under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030.

In view of the aforesaid concept, based upon the suggestions of the parties before us, we constitute an expert committee of the following:

- (a) Dr. MK Ranjitsinh Jhala, wildlife expert and former Chairman of the Wildlife Trust of India - Chairman of the Committee;
- (b) Sri. Jigmet Takpa, Joint Secretary, Ministry of Environment, Forests and Climate Change- Member Secretary of the Committee;

- (c) Sri. Arun Singh Rawat, DG, Indian Council for Forestry Research-Member;
- (d) Prof. Sandeep Tambe, (Indian Forest Service), currently working as Professor of Forestry at the Indian Institute of Forest Management, Bhopal- Member;
- (e) Sri. Gopal Singh Rawat, former Dean and Director, Wildlife Institute of India- Member;
- (f) Dr. Nilanjan Ghosh, Director, Observer Research Foundation, Kolkata, an expert in ecological economics- Member and
- (g) Sri. Pradeep Krishen, Environmentalist- Member.

The Committee shall discuss and recommend on the following mandate:

- (a) Develop a set of scientific and policy guidelines that shall govern decision making with respect to cutting of trees for developmental projects.
- (b) These guidelines may specify the species of trees in categories based upon their environmental values considering the age and girth of the trees etc.
- (c) The guidelines may provide special treatment for geographical area or eco-sensitive area, they may identify areas which need to be regulated and even identify a minimum threshold beyond which the guidelines will apply.
- (d) The guidelines shall prescribe a mechanism for assessment of both intrinsic and instrumental value of

the trees, based not only on the value of timber, but also the ecosystem services rendered by the trees and its special relevance, if any, to the habitat of other living organisms, soil, flowing and underground water.

(e) The guidelines shall also mandate rules regarding alternate routes/sites for roads/projects, and possibilities for using alternate modes of transport like railways or water-ways.

(f) The guidelines shall also prescribe the mode of compensation financial and otherwise, the stage of depositing such compensation and the process that governs the computation and recovery. In this regard, the committee may consider the existing regulatory framework regarding calculation of Net Present Value (NPV) and may suggest necessary modification.

(g) In addition, the guidelines shall also specify the manner and mechanism of compensatory afforestation to be carried out using the deposited compensation, consistent with the native ecosystem, habitat and species.

(h) The Committee may consider the need for any permanent expert body and its proposed structural form.

(i) Any other issue incidental to the aforesaid objectives.

We direct the Committee to file its recommendations within four weeks from the date of its first meeting.

The Union of India, through the Member Secretary of the Committee, is directed to ensure that all administrative facilities are provided to the Committee including functioning office space, appropriate secretarial assistance and other infrastructure. He shall also ensure that all information/statistics necessary for the deliberations of the Committee are made available. Further, he shall ensure that the necessary arrangements are made for the travel and boarding/lodging of the Committee members.

We appoint Sri. K Parameshwar, Advocate as *amicus curiae* to assist the Court on all the issues raised in the present batch of petitions. The Registry is directed to send a copy of the paperbooks and records to Sri. K Parameshwar. The amicus shall also assist the committee constituted above, on the legal aspects involved in framing and institutionalising the guidelines it proposes.

List the matter after four weeks.

.....CJI
[S.A. BOBDE]

.....J.
[A.S. BOPANNA]

NEW DELHI
25TH MARCH, 2021

.....J.
[V. RAMASUBRAMANIAN]