

2023 LiveLaw (SC) 102

IN THE SUPREME COURT OF INDIA
B.R. GAVAI; J., VIKRAM NATH; J.
SLP(C) No.25047/2018; 08-02-2023

Environmental Law - The contest between development and environmental concerns is ever ongoing. While there is no doubt that ecology and environment need to be protected for the future generations, at the same time, development projects cannot be stalled, which are necessary not only for the economic development of the country, but at times for the safety of the citizens as well. No doubt that the protection of environment and ecology are important. However, at the same time, it cannot be denied that human life is also equally important.

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1. This petition challenges the judgment and order dated 31.8.2018, passed by the Division Bench of the Calcutta High Court, thereby holding that felling of 356 trees was necessary for implementing the important public project of constructing the five Railway Over Bridges (ROBs). The Division Bench further held that the respondent/State of West Bengal was entitled to fell only 356 trees and no other tree.

2. The Division Bench further directed that the respondent/State shall carry out compensatory plantation of at least five trees for every tree felled in the same plot or in a plot as near to the plot as possible where the trees will be felled.

3. By an interim order dated 20.09.2018, this Court had stayed the operation of the impugned judgment and order passed by the High Court.

4. Subsequently, this Court, vide order dated 09.01.2020 had appointed a Committee of Experts comprising of five members to take a decision about the best course to be adopted in the present case and to make a Report to this Court, within a stipulated period.

5. A Report was submitted by the said Committee to this Court on 18.02.2020. The Committee recommended thus:-

“that bridge will have to be constructed to resolve the congestion at the railway crossing in any event. But this issue may be solved by constructing local overbridges, at the lower cost, and possibly save some of the 306 trees from the chopping block, adding to both economic and environmental value.”

6. At the end of the Report, the Committee concluded thus:-

“Conclusion: To conclude, the committee to make this report has not only been traveling on roads, but has been on a journey of discovery.

We learnt that if we factor environmental costs and do a cost/benefit analysis, into the total cost of the project it can make a difference to the strategy choices that we make. As in the

intention to “Go East”. We learnt to assess whether synergies of other transport modes like rail and waterways can be part of the strategy to make our decisions. We learnt that an environment impact analysis should be rigorously done before a project to protect the human communities living there and their environment. We learnt that natural capital can be saved by acquiring a tree relocation technology and transferring it into the country. This will result in enormous economic benefits also. We learnt that plantation strategies should be formulated and implemented continuously to achieve the leaf area index (LAI) which has been lost as fast as is possible. And we learnt that signage communications about the project and environment indices in the local language will educate the people affected, and create harmony and understanding between the project teams and the local populace.

The issues in this study have implications far beyond this particular stretch of 60 km. Road. The learnings and axioms from this study can apply to other locations where such issues may surface. In this sense this report can become a template for solutions on a much larger scale.

On a more personal note, if one may be allowed, and it is relevant. One of the members of the team went on this very road 50 years ago to liberate Bangladesh with the magnificent Indian Army. Massive army columns with very heavy war technology and armaments traversed these roads smoothly and without incident. Perhaps even then they could “see the wood from the trees”.

7. We have heard Mr. Prashant Bhushan, learned counsel appearing on behalf of the petitioners and Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the respondent/State extensively.

8. Mr. Bhushan submits that pursuant to the directions issued by this Court dated 25.03.2021, the seven Members Expert Committee has submitted a report, which also emphasizes the need for permanent expert regulatory body.

9. He submits that in the past, various projects have been permitted by the Government without paying due care or attention to the environmental concerns. He, therefore, submits that unless a study is made regarding viability of an alternative proposal, such a project, which requires felling of heritage trees should not be permitted. He further submits that as a matter of fact, the project at hand envisages felling of thousands of trees.

10. Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the State of West Bengal, on the contrary, submits that on account of the interim orders passed by this Court, the entire project is stalled. He submits that on account of congestion, more than 600 people have lost their lives in accidents.

11. He further submits that out of 356 trees, which were initially required to be felled, some trees have naturally fell on account of cyclone and others on account of some other reasons. As of now only 306 trees are surviving. He submits that the State is willing to plant five trees as against one tree to be felled.

12. No doubt that the Committee appointed by this Court vide order dated 9.1.2020 has rendered yeoman services by giving various recommendations, which will be useful for the policy makers to protect the environment and strike a balance between development and environmental concerns.

13. The perusal of the recommendation would reveal that the Committee itself found that bridges will have to be constructed to resolve the congestion at the railway crossing. However, the Committee recommends that the issue may be solved by constructing local overbridge at a lower cost and possibly save some of the 306 trees from chopping.

14. It is thus clear that the Committee itself is not sure, as to whether by constructing local overbridges, any of the 306 trees could be saved or not.

15. The contest between development and environmental concerns is ever ongoing. While there is no doubt that ecology and environment need to be protected for the future generations, at the same time, development projects cannot be stalled, which are necessary not only for the economic development of the country, but at times for the safety of the citizens as well. No doubt that the protection of environment and ecology are important. However, at the same time, it cannot be denied that human life is also equally important. On account of non-construction of ROBs, a number of accidents have taken place at Railway Crossings resulting in death of hundreds of human beings. The Report of the Committee itself would show that there is a congestion, on account of which, the construction of the project is necessary. They have given an alternative that instead of ROBs local over bridges can be constructed.

16. On account of the interim orders passed by this Court, the project has been stalled for a period of almost five years, it cannot be forgotten that every day's delay in execution of projects escalates their costs. At times, on account of delay in execution of such projects, their cost is multiplied.

17. On one hand, there is a necessity to protect the trees and in the event it is not possible to protect, to direct compensatory afforestation, and on the other hand, there is a need to have ROBs, which are part of Setu Bharatam Project.

18. In that view of the matter, we do not find that any error has been committed by the High Court. The High Court has considered all the relevant aspects of the matter. The High Court has restricted the number of trees to be felled to only 356 and further put the State Government on terms for compensatory afforestation.

19. The special leave petition is, therefore, dismissed.

20. However, we are keeping the petition alive only for the consideration of the report of the Experts on the subject of compensatory conservation in India, submitted pursuant to this Court's directions in order dated 25.3.2021.

21. For the said purpose Mrs. Aishwaya Bhati, learned Additional Solicitor General of India, submits that the report is under active consideration of the Central Government. She submits that various stake holders including the various States will have to be consulted before accepting the Report. She, therefore, prays for a period of twelve weeks for consideration of the Report and placing the views of the Central Government before this Court.

22. We would appreciate, if the Central Government holds joint meeting with all the stake holders including the representatives of all the State Governments/Union Territories and come out with a unified proposal for consideration of this Court.