

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos. 4035-4037 of 2020

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA

.... Appellant(s)

Versus

PANDARINATHAN GOVINDARAJULU & ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

- 1.** The dispute in these appeals pertains to the environmental clearance for expansion of National Highway 45-A between Villuppuram to Nagapattinam. The High Court held that it is necessary. The Appellant disagrees. Hence, these appeals.
- 2.** The project of widening and improvement of the existing 4-laning carriage way in the State of Tamil Nadu

and the Union Territory of Puducherry, from Villuppuram to Nagapattinam was bifurcated into four packages, which are as follows:

- i. Villuppuram to Puducherry (29.000 kms)—Package I.
- ii. Puducherry to Poondiankuppam (38.00 kms)—Package II.
- iii. Poondiankuppam to Sattanathapuram (56.800 kms)—Package III.
- iv. Sattanathapuram to Nagapattinam (55.755 kms)—Package IV.

3. Approval was granted by the Competent Authority, *i.e.* Special District Revenue Officer (Land Acquisition), National Highways No. 45-A in March, 2018 and agreements were entered into between the Appellant and the concessionaires. Process was initiated for acquisition of lands required for the project. Writ Petitions were filed in the High Court of Madras by certain aggrieved farmers and public interest litigants questioning the commencement of the project without obtaining environmental clearance. The High Court

allowed the Writ Petitions and issued the following directions:

- a. *"The present project of expansion of NH-45A covering a stretch of 179.555 k.m. shall be put on hold, and the present status quo is directed to be maintained.*
- b. *That the project proponent (NHAI) shall undertake an EIA study and obtain environmental clearance.*
- c. *The NHAI is also directed to obtain approval from CRZMA for CRZ clearance for two locations that it has indicated in its counter in W.P.15217/2019.*
- d. *Once the necessary clearances are obtained as mentioned in (b) and (c) above, the project can proceed. If the EIA study to be undertaken provides any contra-indicators to the NHAI's plan of development of NH-45A, it will be at liberty to make necessary alterations and modifications to make the project environmental viable.*
- e. *If after ensuring the environmental viability of the project, its implementation resumes, the project proponent, and subject to the terms of the contract, the concessionaire, should first identify the places for planting the saplings of the same variety, preferably native-trees, for every tree felled, and it must be grown first. Possibility of forming a Miyawaki forest has to be explored as well.*
- f. *This Court proposes to form a committee to monitor the compliance of the direction given in (e) above, and hence, before resumption of the project, NHAI is required to approach this Court".*

4. Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take all such measures for the purpose of protecting and improving the quality of the environment and preventing,

controlling and abating environmental pollution. One of the measures provided in Section 3 (2) (v) is restriction of areas in which any industries, operations or processes or class of industries shall not be carried out or shall be carried out subject to certain safeguards. The Environment (Protection) Rules, 1986 were made in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986. According to Rule 5, the Central Government may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas.

5. In exercise of the power conferred on the Central Government by Sub-Clause (i) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (b) of Sub rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Ministry of Environment and Forests, Government of India issued a Notification on 14.09.2006 directing construction of new projects or activities or the expansion or modernisation of existing projects or activities listed under the Schedule to the Notification shall be undertaken only

after prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority. Clause 2 of the said Notification provides that new projects or expansion and modernisation of existing projects listed under the Schedule to the Notification require prior environmental clearance from the concerned regulatory authority. The Schedule to the Notification includes Highways at Item No.7 (f). New National Highways and expansion of National Highways greater than 30 kms involving additional right of way greater than 20 meters or land acquisition and passing through more than one State, require prior environmental clearance. A high-level Committee headed by Member (Environment and Forests, Science and Technology), Planning Commission was constituted by the Ministry of Environment and Forests to review the provisions of the Environmental Impact Assessment Notification dated 14.09.2006 pertaining to environmental clearance for roads, buildings and Special Economic Zone projects. One of the terms of the reference for the Committee was to

review the requirement of environmental clearance for Highways expansion projects with a right of way up to 60 meters and length of 200 km. The Committee submitted its report recommending that expansion of National Highways projects up to 100 km involving additional right of way or land acquisition up to 40 meters on existing alignments and 60 meters on realignments or by passes may be exempted from the purview of the Notification. The report of the Committee was accepted and Item 7 (f) in column (3) to the Notification dated 14.09.2006 was substituted as follows: “expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes”.

6. The project under consideration in this case pertains to the expansion of NH-45A between Villuppuram to Nagapattinam for a distance of 179.555 kms as a part of the_Bharatmala Pariyojana project. Admittedly, no environmental impact assessment was undertaken. The Appellant stated in the counter

affidavit filed before the High Court that environmental clearance is not required as the additional right of way or land acquisition was not greater than the limits specified in the Notification even if the expansion of the National Highways is beyond 100 km. Environmental clearance under the Notifications dated 14.09.2006 and 22.08.2013 is required only if the additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments or bypasses. The pivot of the controversy relates to the applicability of Notifications dated 14.09.2006 and 22.08.2013 to the project in question. Therefore, we deem it necessary to adjudicate on the interpretation of the said Notifications though the High Court did not consider the said point.

7. A plain reading of Item 7 (f) to the Notification dated 22.08.2013 would make it clear that expansion of a National Highway project needs prior environmental clearance in case (a) expansion of the National Highway project is greater than 100 km. and (b) it involves additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or bypasses. There is no ambiguity in the

above provision as it gives no scope for any doubt. The distance of 100 km is important as expansion of National Highways below 100 km needs no prior environmental clearance. If the project involves expansion of a National Highway greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes.

8. A statutory rule or Notification is to be treated as a part of the statute¹. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation². The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory Notifications³. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those

1 State of Tamil Nadu v. Hind Stone, (1982) 2 SCC 205

2 The State of Uttar Pradesh and Ors v. Babu Ram Upadhyaya 1961 SCR (2) 679

3 Bansal Wire Industries Ltd. v. State of U.P., (2011) 6 SCC 545

words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver⁴.

9. It has been repeatedly held by this Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning⁵.

10. In the current case, there is no ambiguity or scope for two interpretations. On a plain reading of Item 7 (f) of the Notification dated 22.08.2013, we adopt the golden rule of interpretation to hold that there is no requirement of prior environmental clearance for expansion of a National Highway project merely because the distance is greater than 100 km. The project proponent is obligated to obtain prior environmental clearance only the additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments or by passes

4 (1843-60) All ER Rep 55, Sussex Peerage case

5 Dental Council of India v. Hari Prakash, (2001) 8 SCC 61 and Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722

for a National Highway project which is greater than 100 km.

11. It is a cardinal principle of interpretation that full effect has to be given to every word of the Notification⁶. Interpreting the Notification dated 22.08.2013 to mean that every expansion of National Highway which is greater than 100 km requires prior environmental clearance would be making the other words in Item 7 (f) redundant and otiose.

12. The learned Attorney General of India relied upon a judgment of this Court in ***CIT v. Surat Art Silk Cloth Manufacturers' Association***⁷ to highlight the importance of the word “involving” in Item 7 (f) of the

Notification in which it was held as follows:

“15. We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit. The word “involve” according to the Shorter Oxford Dictionary means “to enwrap in anything, to enfold or

⁶ South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies. (1998) 2 SCC 580 And Bansal Wire Industries Ltd. v. State of U.P., (2011) 6 SCC 545
⁷ (1980) 2 SCC 31

envelop; to contain or imply". The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose.

...

33. ... The word "involving" in the restrictive clause is not without significance. An activity is involved in the advancement of an object when it is enwrapped or enveloped in the activity of advancement. In another case, it may be interwoven into the activity of advancement, so that the resulting activity has a dual nature or is twin faceted. ..."

13. We find force in the submissions made by the learned Attorney General that the word "involving" is of significance because in the absence of the requirement of an additional right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes, the expansion of National Highways which are greater than 100 km per se does not require prior environmental clearance.

14. It is submitted on behalf of the Ministry of Environment, Forest and Climate Change, Government of India that environmental clearance is necessary only if the expansion project pertains to a National Highway which is greater than 100 km and involves additional

right of way or land acquisition greater than 40 meters on existing alignments and 60 meters on realignments or by passes. In case of a doubt, the interpretation of the author of the Notification has to be accepted⁸. Ergo, the opinion of the author of the notification i.e. the Ministry of Environment, Forest and Climate Change deserves to be accepted.

15. A conspectus of the above discussion leads to the unerring conclusion that there is no ambiguity in Item 7 (f) of the Schedule to the Notification that prior environmental clearance is required for expansion of a National Highway project only if:

- (a) The National Highway is greater than 100 kms.
- (b) The additional right of way or land acquisition is greater than 40 meters on existing alignments and 60 meters on realignments and by passes.

16. In view of the bifurcation of the National Highway 45-A into four packages and each package being less than 100 km, the Appellant contended before the High Court that the Notifications dated 14.09.2006 and 22.08.2013 are not applicable. Seeking support from a judgment of the United States District Court for the

⁸ Silppi Construction Contractors v. Union of India, 2019 SCC OnLine SC 1133

Southern District of Indiana in ***Old Town Neighborhood Association v. Kauffman***,⁹ and a judgment of the European Court of Justice in ***Commission of the European Communities v. Kingdom of Spain***¹⁰, the High Court held that segmentation of a project as a strategy to avoid environmental clearance is impermissible. The High Court also relied upon a judgment of this Court in ***Deepak Kumar v. State of Haryana***¹¹ and a judgment of the National Green Tribunal in ***Citizens for Green Doon v. Union of India***¹² to reject the contention of the Appellants that the division of the project into four packages is for administrative expediencies. According to the High Court, if segmentation of National Highway projects is permitted, the Notifications dated 14.09.2006 and 22.08.2013 would become a dead letter as every National Highway beyond 100 km can be divided into packages to avoid environmental clearance.

17. It was submitted by the learned Attorney General that the division of the project was done by the

9 (S.D. Ind. 2002), Case No. 1:02-cv-1505-DFH.

10 Case C-227/01.

11 (2012) 4 SCC 629

12 2018 SCC OnLine NGT 1777

Government of India and the National Highways Authority is only an executing agency. He stated that the proposed project is of great importance to the movement of public goods and services for which reason, speedy execution was required. It would be difficult to get one concessionaire with necessary finances to mobilise required machineries, construction material and human resources for the entire length of 179.555 km. He laid stress on the point that the project was divided into four packages in public interest.

18. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment¹³. The traditional concept

¹³ Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281]

that development and ecology are opposed to each other is no longer acceptable¹⁴.

19. Apart from providing smooth flow of public goods and services which contribute to the economic growth, highways also benefit regional development in the country. In the normal course, impediments should not be created in the matter of National Highways which provide the much-needed transportation infrastructure. At the same time, protection of environment is important. The Notification dated 22.08.2013 exempts a National Highway, the distance of which is less than 100 km from obtaining environmental clearance. If the project proponent is permitted to divide projects having a distance beyond 100 km into packages which are less than 100 km, the Notifications dated 14.09.2006 and 22.08.2013 will be rendered redundant. In that event, administrative exigencies and speedy completion will be a ground taken for justifying the segmentation of every project. Therefore, we are in agreement with the High Court that segmentation as a strategy is not permissible

14 Vellore Citizens' Welfare Forum v. Union of India [(1996) 5 SCC 647]

for evading environmental clearance as per Notifications dated 14.09.2006 and 22.08.2013.

20. Having held that adoption of segmentation of a project cannot be adopted as a strategy to avoid environmental clearance impact assessment, the question that arises is whether segmentation of a National Highway beyond 100 kms is impermissible under any circumstance. As we lack the expertise of deciding upon this issue, we are of the considered view that an expert committee should examine the permissibility of segregation. After the issuance of a Notification dated 14.09.2006 requiring environmental clearance for new projects and expansion of the existing projects, a High-Level Committee was constituted by the Government of India to review the environmental clearances for Highway expansion projects. As per the Notification dated 14.09.2006, environmental clearance was required for new National Highway and expansion of National Highways greater than 30 kms involving additional right of way greater than 20 meters and passing through more than one State. One of the terms

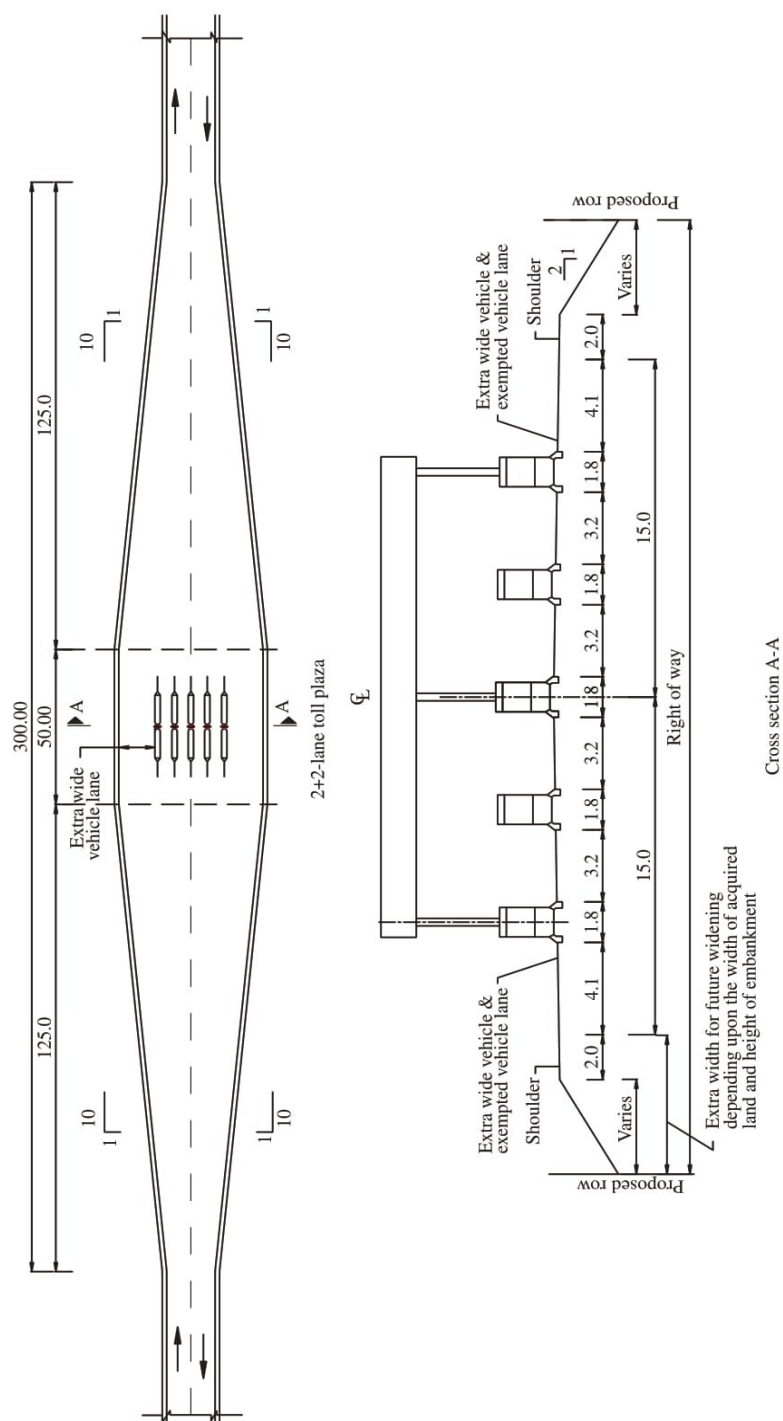
of the reference to the High-Level Committee was to review the requirement of environmental clearance for Highway expansion projects beyond a distance of 200 kms up to the right of way of 60 meters. The High-Level Committee recommended that environmental clearance would be required for expansion of National Highway projects beyond a distance of 100 kms and if the additional right of way or land acquisition is more than 40 meters on existing alignments and 60 meters on realignments or by passes. The said recommendation was accepted by the Government of India and the Notification dated 22.08.2013 was issued, amending the Notification dated 14.09.2006. As the question of permissibility of the segmentation of a National Highway beyond a distance of 100 kms is a matter to be considered by experts, it would be necessary for a committee to be constituted by the Government of India to decide whether segmentation of a National Highway project beyond a distance of 100 kms is permissible. If it is permissible, the circumstances under which

segmentation can be done also requires to be examined by the expert committee.

21. Mr. A. Yogeshwaran, learned counsel appearing for the first Respondent submitted that the toll plazas proposed to be erected on the National Highways should be within the permissible limits specified in the Notification dated 22.08.2013. In the note of submissions made by the learned Attorney General, reference has been made to the definition of “Right of way” placing reliance on Para 2.3 of the Manual of Specifications and Standards for Two-Laning of Highways through Public Private Partnership issued by the Planning Commission of India. Right of way as per the said Manual is the total land width required for the project Highway to accommodate road way (carriage way and shoulders) side drains, service roads, tree plantation, utilities etc. In the written submissions filed on behalf of the Appellant, it has been stated that the right of way not being greater than 40 meters on existing alignments and 60 meters on realignments or by passes, applies only to construction of road and is not applicable for other road amenities or facilities such as toll plazas.

However, the Appellant has also stated in the Written submissions that if this Court is not agreeable to the above proposition, it is willing to limit the construction of toll plazas and rest areas within the permissible limits.

22. Section 10 of the Manual of Specifications & Standards for Two Laning of Highways through Public Private Partnership, issued by the Planning Commission of India deals with toll plazas. Figure 10.1 which shows the general lay out of a 2+2 lane toll plazas is as follows:



Note:

Note:
All dimensions are in metres.

Fig. 10.1 : General layout 2+2-lane toll plaza

23. A bare perusal of the above figure shows that toll plazas are included in the “right of way”. The aforementioned Manual issued by the Planning Commission of India has been relied upon by the Appellant to highlight the definition of the expression “right of way”. However, it was contended on behalf of the Appellant that amenities such as toll plazas and rest houses cannot be part of the right of way. In other words, the Appellant contended that toll plazas and rest houses can be set up beyond the limit specified in the Notification dated 22.08.2013. We do not agree. As Para 2.3 of the aforementioned Manual makes it clear that right of way is the total land width required for the project Highway to accommodate right of way, side drains, service roads, tree plantations, utilities etc., toll plazas and rest houses should be included in the “right of way”.

24. For the sake of clarity, we hold that the “right of way” includes the existing National Highway and the additional right of way. To illustrate further, if the

existing National Highway is 20 meters then the right of way will be that 20 meters and the land acquired for the additional right of way.

25. The consternation of the High Court that the Appellant had been remiss in not fulfilling the requirement of reafforestation in spite of giving undertakings for the projects taken up earlier is to be noted. There is an obligation on the part of the Appellant to plant ten trees for each felled tree. The High Court commented upon Coastal Regulation Zones (CRZ) clearances to be taken at certain points. The learned Attorney General submitted that the Appellant has already obtained CRZ clearances, wherever it is required. We have not dealt with the issues relating to acquisition of land being in contravention of the National Highways Act, 1956 as no such submission was made either before the High Court or this Court.

26. On the basis of the above discussion, we set aside the judgment of the High Court and issue the following directions:

1. There is no requirement for obtaining environmental clearances for NH 45-A Villuppuram -

Nagapattinam Highway as land acquisition is not more than 40 meters on existing alignments and 60 meters on realignments or by passes.

2. The Appellant is directed to strictly conform to the Notification dated 14.09.2006 as amended by the Notification dated 22.08.2013 in the matter of acquisition of land being restricted to 40 meters on the existing alignments and 60 meters on realignments.
3. The Ministry of Environment, Forest and Climate Change, Government of India shall constitute an Expert Committee to examine whether segmentation is permissible for National Highway projects beyond a distance of 100 kms and, if permissible, under what circumstances.
4. The Appellant is directed to fulfil the requirement of reafforestation in accordance with the existing legal regime.

27. The Appeals are allowed accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

.....J.
[AJAY RASTOGI]

**New Delhi,
January 19, 2021.**