

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO.3350 OF 2019 (GM - FOR)

BETWEEN:

1. SURESH HEBLIKAR,
AGED 69,
SON OF SRI.BALAKRISHNA,
403, 18TH CORSS, 3RD BLOCK,
JAYANAGAR,
BENGALURU – 560 011.
2. JOSEPH HOOVER,
AGED 58 YEARS,
SON OF JAMES HOOVER,
S/O #116, GOD'S GIFT,
2ND CROSS, 4TH MAIN,
GIRIDHAMA LAYOUT,
RAJARAJESWARI NAGAR,
BENGALURU – 560 098.
3. J.MANJUNATH,
AGED 60 YEARS,
SON OF B.V.JANAKIRAM NAIDU,
566, 21ST MAIN, 36TH CROSS,
4 T BLOCK, JAYANAGAR,
BENGALURU – 560 041.

... PETITIONERS

(BY SHRI.PRINCE ISAC, ADVOCATE FOR P1 AND P2)

AND:

1. UNION OF INDIA
BY ITS DEPUTY INSPECTOR GENERAL
OF FOREST (WL)
MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE,
6TH FLOOR, VAYU WING,
INDIRA PARYAVARAN BHAVAN,
JOR BAG ROAD, ALIGANJ,
NEW DELHI – 110 003.
2. PRINCIPAL CHIEF CONSERVATOR
OF FORESTS,
ARANYA BHAVAN,
BENGALURU – 560 003.
3. NATIONAL HIGHWAYS AUTHORITY
OF INDIA,
BY ITS ASSISTANT COMMISSIONER,
BELAGAVI AND CALA, NH4-A,
BELAGAVI.

... RESPONDENTS

(BY SHRI M.B.NARGUND, SENIOR COUNSEL FOR
SHRI B.M.KUSHALAPPA, ADVOCATE FOR R1;
SHRI VIJAYAKUMAR A PATIL, ADDITIONAL GOVERNMENT
ADVOCATE FOR R2,
SHRI.UDAY HOLLA, SENIOR COUNSEL FOR
SMT.SHILPA SHAH, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE AN
APPROPRIATE, WRIT ORDER OR DIRECTION, TO STOP ILLEGAL
ROAD WIDENING UNDER THE FOREST CONSERVATION ACT
1980 AND WILDLIFE PROTECTION ACT 1972 UNDERTAKEN BY
THE R-3 IN THE DISTRICTS OF BELAGAVI AND SURROUNDING
DISTRICTS AND ETC.

THIS PETITION COMING ON FOR HEARING THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

As per the direction of the Apex Court under the order dated 25th January 2021, we have taken up this petition for out of turn hearing.

FACTUAL ASPECTS

2. The controversy in this petition filed in the nature of a public interest litigation is as regards the project of expansion/improvement undertaken by the third respondent – the National Highway Authority of India of National Highway 4A (in short 'NH 4A'). The said work is of four laning of Belgavi-Khanapur Session from km 0.00 to km 30.800 on hybrid annuity mode, two laning with paved shoulder from km 30.800 to km 70.800 and two laning without paved shoulder from km 70.800 to km 84.120. The petitioners who on the basis of averments made in Paragraph 1 of the petition are claiming to be environment activists have challenged the said Project undertaken by the third respondent on various grounds.

3. The first challenge in this petition is on the ground that as per the notification dated 14th September 2016 (EIA notification) as modified by the notification dated 22nd August 2020 issued in exercise of powers under Section 3 of the Environment Protection Act, 1986 (for short 'the said Act of 1986'), environmental clearance was required as the subject Project relates not only to the stretch of NH-4A in Karnataka State, but also the stretch of NH-4A in the State of Goa. The contention is that as the total length of the project is more than 100 kms, it will require environmental clearance. The second challenge is based on the failure to obtain permission as required by the notification dated 13th November 2013 which contains the directions issued under Section 5 of the said Act of 1986. The third challenge is that only on the basis of Stage-1 clearance under Section 2 of the Forest Conservation Act, 1980 (in short 'the said Act of 1980'), the execution of the project cannot commence and in any event, the said clearance has come to an end on 31st December 2020. The next ground is of the violation of the provisions of the

Wild Life Protection Act, 1972 (for short 'the said Act of 1972'). There is also a violation alleged of the provisions of the Biological Diversity Act, 2002 (for short 'the said Act of 2002'). The last ground of challenge is failure to obtain consent of respective Gram Sabhas as required by the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006. The last ground, as can be gathered from the submissions made across the Bar, was not seriously pressed.

4. There are three separate statements of objections filed by the third respondent. There are statements of objection filed by the first respondent-Union of India as well as by the State Government. We are dealing with the factual aspects pleaded in the affidavits/objections on record while dealing with the submissions made across the bar.

SUBMISSIONS

5. The learned counsel appearing for the petitioners has taken us through the pleadings and documents on record. He invited our attention to the memo filed on record by the

petitioners for establishing their case that the extent of the project undertaken by the third respondent - National Highway Authority is not confined only to the portion of the NH-4A in the State of Karnataka, but it extends to NH-4A in the State of Goa. He submitted that though initially the National Highway Authority of India denied that the project has been undertaken even in the State of Goa, the documents placed on record along with a memo will indicate that the work is being undertaken even in the State of Goa which is at the stage of preparation of DPR. He submitted that the material on record shows that the expansion of NH 4A is in respect of a stretch which is longer than 100 km and involves the additional right of way or land acquisition greater than 40 meters on existing alignments and therefore, even going by the amended EIA notification, the environmental clearance was necessary to be obtained.

6. He invited our attention to the direction issued by the Government of India in exercise of the powers under Section 5 of the said Act of 1956 which is of 13th November 2013. He submitted that there is a prohibition on work sought to be carried

out by the third respondent in the Ecologically Sensitive Area. He pointed out Annexure-E which gives a list of villages forming a part of Ecologically Sensitive Area (in short 'ESA'). He submitted that NH-4A passes through number of villages mentioned in Annexure-E where the work of expansion will be undertaken by the third respondent. He would, therefore, submit that even the environmental clearance granted in the year 2007 to the National Highway Authority will not help inasmuch as the validity of the said Environmental Clearance was for five years as provided in Clause 9 of EIA notification dated 14th September 2006. He would, therefore, submit that work falling in ESA cannot be carried out.

7. As far as the consent of the Government under Section 2 of the said Act of 1980 is concerned, he submitted that the Stage-1 clearance has come to an end on 31st December 2020 and therefore, now the work cannot proceed. He also invited our attention to the provisions of the said Act of 2002 and in particular, sub-section (4) of Section 36 thereof. He urged that the work subject matter of the petition will have an adverse effect

on Biological Diversity as defined under the said Act of 2002 and therefore, it would be necessary for the Central Government to undertake measures as provided under sub-section (4) of Section 36 of the said Act of 2002.

8. He also relied upon precautionary principle and pointed out that it was the duty of the respondents to prevent damage to the environment while carrying on the work of expansion of NH-4A. He submitted that in the absence of Environmental Clearance under EIA notification as well as Stage-1 clearance under the said Act of 1980, now the work cannot proceed.

9. The learned Additional Solicitor General of India concentrated on the issue of requirement of environmental clearance. He relied upon recent decision of the Apex Court in the case of THE NATIONAL HIGHWAYS AUTHORITY OF INDIA vs. PANDARINATHAN GOVINDARAJULU AND ANOTHER¹ (Civil Appeal Nos.4035-4037/2020 decided on 19th January 2021). He relied upon the interpretation put by the

¹ Civil Appeal Nos. 4035-4037 of 2020 decided on 19th January 2021

Apex Court to amendment carried out to Clause 7(f) of the EIA notification of the year 2006 by the notification dated 22nd August 2013. He submitted that the issue will be governed by the said decision of the Apex Court. He also invited our attention to the statement of objection filed by the Union of India. He also pressed into service I.A filed by the Union of India seeking permission to withdraw the affidavit filed on 17th December 2020 of Sri.E.Thirunavakkarsu, Scientist 'E' in Regional Office of the Ministry of Environment and Forest Clearance. He pointed out Paragraph 3 thereof which according to him contains an obvious mistake.

10. The learned senior counsel appearing for third respondent at the outset stated that Stage-1 in-principle approval granted under Section 2 of the said Act of 1980 has expired. He tendered across the bar a memo on behalf of the third respondent placing on record the letters dated 21st July 2020 and 29th December 2020 addressed by the third respondent seeking extension of in- principle approval for a period of one year. He accepted that unless validity of in-principle Stage-I

approval is extended, the work cannot be carried out by the third respondent.

11. As regards the notification dated 13th November 2013 (Annexure A1) to the petition, he submitted that Paragraph 9 thereof cannot apply in the present case as the environmental clearance was granted in the year 2007.

12. As regards the requirement of the environmental clearance, he relied upon the aforesaid decision of the Apex Court in the case of National Highway Authority of India (supra). He submitted that the provision of sub-section (4) of Section 36 of the said Act of 2002 do not *per se* impose any restrictions. It only provides for Central Government undertaking measures as provided in Clause-(i) of sub-section (4) of Section 36 of the said Act of 2002.

13. He submitted that the petitioners have approached this Court nearly four years after the project started and that the petitioners were fully aware of the commencement of project. He

would, therefore, submit that even on the ground of delay, the petition must fail.

14. The learned Additional Government Advocate appearing for the State Government opposed the petition and supported the submissions made by the first and third respondents. We have also heard the learned counsel for the petitioners by way of reply to the submissions canvassed by the learned senior counsel appearing for third respondent.

CONSIDERATION OF THE SUBMISSIONS

15. We have carefully considered the submissions. We have perused the pleadings and the documents on record.

16. The first question which needs consideration is about the requirement of obtaining environmental clearance as provided in EIA notification dated 14th September 2006 as amended by the notification dated 22nd August 2013. At this stage, we may make a reference to the EIA notification of the year 2006. What is relevant is Clause 7(f) of the schedule to the said notification. The Schedule contains the list of

projects/activities requiring prior environment clearance. Clause 7(f) as it originally stood before the amendment made on 22nd August 2013 provided that the projects of New National Highways and the projects of expansion of National Highways greater than 30 km involving additional right of way greater than 20 meters involving land acquisition and passing through more states than one state require environmental clearance. The said EIA notification of the year 2006 underwent a modification by the notification dated 22nd August 2013. The modification made to the notification is placed on record along with statement of objections. The amendment made to Clause 7(f) by the notification dated 22nd August 2013 came up for consideration in the aforesaid decision of the Apex Court in the case of NATIONAL HIGHWAY AUTHORITY OF INDIA (supra). The relevant part of the modification made to Clause (f) of Item 7 in the schedule reads thus:

“B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests:

(b) in the Schedule, against sub-item (f) or item 7, in column (3), for the entry (ii), the following entry shall be substituted, namely:-

(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.”

(underline supplied)

17. Before we deal with the factual aspects, we must consider the interpretation put by the Apex Court to the amended Clause No.7(f) in Paragraph 15 of the aforesaid decision. The Apex Court has held thus:

“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.”

(underline supplied)

18. Hence, the amended Clause No.7(f) will apply and prior environmental clearance will be required for the project of the expansion of a National Highway only if the length is greater than 100 km involving additional right of way or land acquisition greater than 40 meters on existing alignment and 60 meters on realignments and by passes. Thus, both the conditions as stipulated in Clause 7(f) must be satisfied and in those cases where both conditions are satisfied, prior permission is mandatory for the expansion of a National Highway.

19. In the present case, the question is whether the project of expansion relates to a length of more than 100 kms. As noted earlier, the argument canvassed by the petitioners is that the project extends not only to the stretch of 0.00 km to 84.120 km in Karnataka State, but also from 84.133 km to 153 km in the State of Goa. Thus, the contention is that the total length of the project is of 153 kms. On this aspect, it is necessary to look at the stand taken by the third respondent - National Highway Authority of India. More than one statement of objections are filed on record. In the writ petition, a specific ground was taken that the

length of the National Highway involved in the project to be undertaken is of more than 100 kms.

20. In the first statement of objections, the third respondent National Highway Authority of India has pleaded complete ignorance about what exactly was being done in the portion of NH 4A in the State of Goa as if Goa was on a different planet. We may also note here that even in the second statement of objections filed on 28th October 2019, nothing is stated giving a clear factual position of the work, if any, undertaken in Goa section of NH-4A.

21. It is therefore, necessary to consider the orders passed by this Court from time to time. The Order dated 17th February 2020 refers to the notification dated 22nd August 2013 and the third respondent was called upon to file an affidavit stating whether the entire proposed expansion work of the National Highway No.4A is confined to the State of Karnataka. It will be interesting to note the response of third respondent - National Highway Authority of India to the said order. An

affidavit was filed on 20th February 2020 by the National Highway Authority of India or Sri.J.H.Eligar. A contention is raised in the said affidavit that third respondent had been permitted widening by the Ministry of Environment and Forest only in the stretch of NH 4A from km 0.0 to 84.120 which is less than 100 kms. In Paragraph 4, it is stated thus:

"I further state that NHAI will not go beyond the sanctioned length of 84.120 Km up to the Goa/Karnataka Border. The stretch of NH-4A from Karnataka/Goa Border from Km 84.120 (at Anmod) to Goa is not within the control or allotted to NHAI in the State of Karnataka. I have reliably learnt that the stretch of NH-4A from Karnataka/Goa Border to Goa is not taken up for widening at this point of time."

(underline supplied)

22. Thus, in this affidavit, even after a clear order of the Court, the third respondent did not come out with the truth and an evasive statement was made in the affidavit, that it is reliably learnt that the sketch of NH-4A to Goa is not taken up for widening at this point of time. Thereafter, a memo along with documents was filed by the petitioners on 24th February 2020

enclosing therewith a letter dated 9th July 2018 submitted by the Executive Engineer, PWD, Ponda, Goa addressed to the Deputy Conservator of Forest, Panaji, Goa enclosing seven copies of the EIA report for project of Four Laning of the existing Goa/Karnataka Border-Panaji Goa Section of NH 4A from km 84.000 to km 153.075 in the state of Goa. It is only after these documents were placed on record that this Court passed an order dated 24th February 2020 observing that the work may extend to the length which is of more than 100 kms. Faced with this difficulty, time was sought on behalf of the third respondent and thereafter, on 6th March 2020, an affidavit was filed by one Ashok Teli, Assistant Commissioner and Competent Authority for Land Acquisition, in-charge of NH-4A. In Paragraphs 6 and 12 of the said affidavit, it is stated thus:

6. *I state that the stretch of Goa/Karnataka Border to Panji i.e., from km 84.120 to 153.075 is being assigned to the PWD (NH), Govt of Goa by Ministry of Road transport & Highways. From the above it is seen that the Goa Government has not applied for Environmental Clearance, as the widening is less than*

40 Mtrs., and therefore, as per the Gazette Notification dated 22.08.2013, there is exception for linear projects with length not exceeding 100 Kms., and additional width (ROW) of 40 Mtrs.

12. It is most respectfully submitted that it is clearly evident from the information provided by the Superintending Engineer circle IX(NH) Government of Goa vide their letter dated 27.02.2020 that at this point of time no works are sanctioned and no widening works are under progress concurrently on the stretches in the State of Goa i.e. from km.84/120 to km.153/075 of NH-4A and is under DPR Stage. It is also clear that there is no financial allocation for NH-4A in the state of Goa for NH-4A National Highway widening works in the jurisdiction of Government of Goa. Hence, no widening projects are at progress concurrently in the State of Goa at this point of time. Further, prior Environmental Clearance for the stretch from km.0/000 to km.84/120 in the state of Karnataka seems not attract as per MoEF&CC Gazette Notification dated 22.08.2013.

(underline supplied)

23. It is only after the aforesaid two orders dated 17th and 24th February 2021 were passed by this Court that third respondent came out with the aforesaid factual position. The third respondent - National Highway Authority of India is a

creation of the National Highway Act, 1956. It is an agency and instrumentality of the State. Therefore, it was the duty of the third respondent to place correct facts on the record while filing the statement of objections. We have already noted the stand taken by the third respondent in the first statement of objections. Though admittedly, NH 4A passes from State of Karnataka to State of Goa, a complete ignorance was pleaded in the first statement of objections about what is happening in the Section of NH-04 in State of Goa. The facts stated in the affidavit dated 6th March 2020 could have been stated by the third respondent in its first statement of objections itself. As pointed out earlier, a stand was taken by Sri.J.H.Eligar, GM (Technical) and PD of NHAI, PIU, Dharwad in his affidavit dated 20th February 2020 that he has reliably learnt that the stretch of NH-4A from Karnataka to Goa is not taken up for widening. What is stated in Paragraph 4 of the said affidavit is half truth. On 9th July 2018, EIA report was submitted for four laning of NH-4A IN Goa. This fact was suppressed in the first statement of objections and the affidavit dated 20th February 2020.

24. In fact, it was the duty of the third respondent to disclose all relevant facts. However, that was not done. Now, coming back to the affidavit dated 6th March 2020 filed by the National Highway Authority of India, the fact which emerges is that the widening work has not been undertaken in the stretch of NH 4A in the State of Goa from 84.121 km to 153.075 km. It is pleaded in Paragraph 9 of the said affidavit that the project is only at DPR stage and no financial allocation has been made for the said work. It is specifically stated in Paragraph 13 of the said affidavit that no widening projects are in progress currently in the state of Goa. The petitioner has not produced any material pointing out anything to the contrary. Therefore, we will have to accept what is stated in the said affidavit as correct.

25. In view of the statements made by third respondent in the affidavit dated 6th March 2013, there is no option but to proceed on the footing that the work of improvement/expansion of NH 4A is in progress on a stretch which is having a length of

less than 100 kms as the stretch extends from 0.00 km to 84.120 km.

26. Therefore, as per the EIA notification as amended on 22nd August 2013, for the current project of improvement/widening of NH 4A in the State of Karnataka, Environmental Clearance is not required.

27. Now, we turn to the issue of consent under Section 2 of the said Act of 1980. We must note here that initially it was proposed that Forest land having area of 84.853 hectares was required to be diverted to non-forest use. Out of the said area, extent of 78.43 hectares is falling in the forest areas of Belgaum and Haliyal forest and an area of 6.423 hectares is a part of Dandeli Wildlife Sanctuary. In the first statement of objections, reliance is placed by the third respondent on the letter dated 13th February 2019 issued by third respondent to the Principal Chief Conservator of Forests of the Government of Karnataka. It is very clearly stated in the said letter that the process of diverting additional area of 6.43 hectares of the land in Dandeli Wildlife

Sanctuary may be dropped. Thus, diversion of an area of 78.43 hectare is required to be made for non-forest use for the purpose of the said project and the area of 6.453 hectares forming a part of the Dandeli Wildlife Sanctuary has been excluded from the project. In-principle approval (Stage-1 approval) under Section 2 of the said Act of 1980 was granted under the letter dated 31st December 2015 (Annexure-R2 to the first statement of objections filed by third respondent). It is specifically mentioned therein that the said in-principle approval (Stage-1 approval) shall be valid only for a period of five years. Thus, the said in-principle approval has expired on 31st December 2020. The stage-1 approval is most material in the light of guidelines issued by the Government of India, Ministry of Environment, Forest and Climate Change on 28th August 2015 to the Principal Secretaries of all the State Governments. The guidelines record that such in-principle approval (Stage-1 approval) under the said Act of 1980 may be deemed as a working permission for tree-cutting and commencement of the work. It is only on the basis of the in-principle approval that the third respondent could have

proceeded with the work of expansion of highway which is the subject matter of this petition. The moment in-principle approval comes to an end, the working permission for tree-cutting and for carrying out the work comes to an end. Therefore, now, no work can be carried out on the basis of the aforesaid in-principle approval under the said Act of 1980. In fact, it is an accepted position that in-principle approval has come to an end on 30th December 2020. Thus, it is obvious that no further work of the project can be undertaken by the third respondent unless a fresh in-principle approval is granted or the period of in-principle approval already granted is extended.

28. Another major limb of submission made by the petitioners is based on the direction dated 13th November 2013 issued by the Government of India under Section 5 of the said Act of 1986. Paragraph 9 of the said direction dated 13th November 2013 reads thus:

“Now therefore, in exercise of powers conferred under Section 5 of Environment (Protection) Act, 1986, the following directions are hereby issued:

The following category of new and/or expansion projects/activities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs/SEIAAs before the date of putting HLWG report on the website of the Ministry, ie., 17.4.2013 and which are pending with EACs/MoEF or SEACs/SEIAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs/MoEF or SEACs/SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.

- (a) Mining, quarrying and sand mining*
- (b) Thermal Power Plants*
- (c) Building and construction projects of 20,000 sq.m area and above*
- (d) Township and area development projects with an area of 50 ha and above and/or with built up area of 1,50,000 sq.m. and above*
- (e) Red category of industries.*

29. The list of villages falling in Ecologically Sensitive Area (ESA) has been annexed to the said direction. We find that some of the villagers in Khanapur taluk of Belgaum district have been included in ESA. Paragraph 9 imposes a complete prohibition on undertaking any building and construction projects of 20,000 square meters area and above. The exception to this

prohibition is in those cases which are received by EACs/MoEF or SEACs/SEIAAs before 17th April 2013 and which are pending before EACs/MoEF or SEACs/SEIAAs. The third respondent has relied upon the Environment Clearance granted in the year 2007. However, in view of Clause 9 of EIA notification dated 14th September 2006, the life of the said clearance was only of five years. Therefore, prohibition imposed by Clause 9 of the direction dated 13th November 2013 will apply provided the work which is carried out is within the villages mentioned in the list at Annexure-A to the notification of 13th March 2013. Apart from relying on the names of certain villages in Khanapur taluk, Belgaum district mentioned in Annexure-A to the said direction, no material is placed on record by the petitioners to show that the work of the project will be undertaken even in the villages which are mentioned in Annexure-A. Therefore, the first respondent will have to examine the project undertaken by the third respondent with a view to ascertain whether the work in any areas will be hit by Clause 9 of the direction dated 13th November 2013. Ultimately, it is for the first respondent to

examine whether the project of expansion/improvement of the National Highway (NH-4A) will attract Paragraph 9 of the said direction.

Now, coming to the said Act of 2002, sub-section (4) of Section 36 reads thus:

“36 (4) The Central Government shall undertake measures,—

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.”

30. Perhaps, the provisions of sub-section (4) of Section 36 of the said Act of 2002 are in conformity with the doctrine of Public Trust and Precautionary Principle. The first respondent can always examine whether measures as required by

sub-section (4) of Section 36 of the said Act are required to be taken.

31. As far as the argument based on Wildlife Protection Act, 1972 is concerned, we have noted earlier that the third respondent has given up the project to the extent of carrying out work in Dandeli Wildlife Sanctuary. That is crystal clear from the letter at Annexure-R6 to the statement of objections dated 3rd April 2019. Therefore, we need not elaborate on the issue of violation of the provisions of the Wildlife Protection Act, 1972.

32. At this stage, we need not examine the issue whether the third respondent is trying to divide the project into two packages for bringing down the length to less than 100 kms. The reason is that no material is placed on record by the petitioners to show that such a project is likely to be undertaken in the state of Goa in near future. On the one hand, sofar as the work in 0.0 km to 82.120 km is concerned, it is claimed that substantial work has been completed. On the other hand, in the stretch of NH 4A in Goa, the matter has not crossed the DPR

stage. Therefore, one cannot be sure whether the work in the State of Goa may be undertaken in near future. Therefore, it is not possible for us to record a finding that though the project extends to a distance of more than 100 kms., the same has been artificially divided into two stretches so as to make the EIA notification redundant.

33. For the reasons which we have recorded earlier, we dispose of the petition by passing the following order:

- i) We hold that as in-principle approval (Stage-1 approval) granted under Section 2 of the Forest (Conservation) Act, 1980 to the third respondent is no longer valid, unless and until the period of the said in-principle approval is extended, the third respondent is not entitled to carry on any further work under the said project subject matter of this petition. Needless to add that subject to further directions which we are issuing, after the period of in-principle approval is extended, it will be open for the third respondent to proceed with further work;

- ii) We direct first respondent to consider whether any part of the project undertaken by the third respondent will attract the prohibition provided in Paragraph 9 of the direction issued on 13th November 2013 under Section 5 of the Environment Protection Act, 1986. The said issue shall be decided by the first respondent within a period of six weeks from the date on which a copy of this Judgment and Order is made available on the website of this Court. Needless to add that the issue will be considered by the concerned authority of the first respondent after giving an opportunity of being heard to the third respondent;
- iii) We hold that in the facts of the case, it is not necessary for the third respondent to obtain prior environmental clearance as contemplated by EIA notification dated 14th September 2006 (as amended by the notification dated 22nd August 2013). We make it clear that this finding has been recorded in view of the fact that no material is placed on record to show that the similar work is being undertaken on the stretch of NH 4A in the State of Goa;

- iv) It will be always open for the first respondent to undertake measures in accordance with sub-section (4) of Section 36 of the Biological Diversity Act, 2002;
- v) It will be always open for the petitioners to make a representation to the appropriate authority of the first respondent calling upon the said authority to exercise the powers under sub-section (4) of Section 36 by specifically pointing out the measures which are required to be undertaken;
- vi) Subject to the directions issued as above, no relief can be granted to the petitioners and accordingly, the Petition is disposed of. All I.As stand disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**