

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

Execution Application No. 29/2018
IN
O. A. No. 386/2016

Society for Protection of Culture, Heritage, Environment,
Traditions and Promotion of National Awareness Applicant(s)

Versus

National Highway Authority of India & Ors. Respondent(s)

Date of hearing: 21.05.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Ms. Jyoti Yadav, Mr. Shagun Sharma, Advocates

For Respondent (s): Mr. Mukhopadhyay, GM (NHAI), Mr Mukesh
Kumar, Ms. Kritika Shukla, Advocates
Mr. Kush Sharma, ASC, DDA
Mr. Satish Kumar, Mr. Anil Grover, AAG for State
of Haryana
Mr. Mukul Singh, Advocate for MoEF&CC
Mr. Shashank Saxena, Advocate

ORDER

1. The issue for consideration is remedial action for protection of environment along the highways. The steps to be considered are ensuring green cover to minimise increased Particulate Matter (PM) levels in the air quality, leaving of space on both sides of highways for expansion and tree plantation, preventing direct access to the highway without a by-lane/exit routes and regulating the opening of access to the buildings from the

highways without by-lanes. We may refer to the background in which questions have arisen.

2. The Applicant approached this Tribunal for directions under Section 15 of the NGT Act, 2010 to ensure mandatory green cover on both sides of highways on the pattern of notification dated 25.07.2012 issued by the Town and Country Planning Department, Government of Haryana under Section 5(4) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. The notification publishes Draft Plan 2031 AD for Sohna and provides that “the eastern and western peripheral roads of 75m width has been proposed with 100m wide green belt on outer side and 50m green belt on inner side. A minimum width of 60 meters has been proposed for sector dividing roads. The width of Gurgoan-Sohna-Alwar road, Rewari-Sohna-Palwal (NH-71) road and Sohna-Ballabgarh road has been proposed to be widened to 60m with 50m wide green belt on either sides.”
3. The applicant alleged that continuous movement of vehicles causes dust pollution and increase of PM_{2.5} and PM₁₀ and consequential health hazards. The applicant also alleged that large number of structures have been built on the sides of highways having direct illegal access to NH8, destroying the space for mandatory green cover. Reference was also made to layout plan of DDA dated 28.09.2017 providing for 30 mts wide green strip on either side of the highway. The applicant relied upon the judgement of the Hon’ble High Court of Punjab and

Haryana in *Ahuja Vaishno Dhaba No.1 v. State of Haryana*¹ to the effect that no construction can be allowed in 30 – 50 mts of highway on either side. Further reliance was placed on the 2009 Guidelines (Guidelines on Landscaping and Tree Plantation (IRC:SP-21-2009) prepared by IRC stipulating maintaining green areas on the highways. Reference was also made to “Green Highways (Plantation, Transplantation, beautification and Maintenance) Policy-2015” (the 2015 Policy) of the NHAI further revising the said guidelines.

4. On 05.09.2017, the application was disposed of by recording the statement on behalf of the NHAI that the Green Highways (Plantation, Transportation, Beautification and Maintenance) Policy of 2015 will be followed to ensure plantation of green belt on both sides of the roads wherever Government land was available after leaving scope for expansion. The NCT Delhi, State of Haryana and State of Rajasthan were also directed to ensure such action. The State Government and all Local Authorities were to issue directions to the Group Housing Societies, owners of commercial plots, offices, and residential blocks for plantation of the trees along the boundaries of the plots and around the buildings. The State Government and Local Authorities were to encourage plantation of trees in public parks for better environment and for better ambient air quality.
5. Present execution application seeks enforcement of the above directions.

¹(2003) 2 RCR (Civil) 598 (DB).

6. Notice was issued on 24.04.2018. After giving due opportunity to the concerned parties, the matter was taken up on 03.10.2018. The Tribunal took note of the allegation that the green areas were not being maintained as per the declared policy. Construction was being allowed within 30 to 50 meters of the highways illegally resulting in dust pollution and degradation of environment. Reference was made to the judgment of Hon'ble High Court of Punjab and Haryana in *Ahuja Vaishno Dhaba No.1 v. State of Haryana and Others*² as follows:

“25.We have thoughtfully considered the rival submissions and agree with the learned counsel for the petitioners that the amendments made by the Punjab Scheduled Roads & controlled Areas Restriction of Unregulated Development Act, 1963 are discriminatory. **Undisputedly, 1963 Act has been enacted to prevent haphazard and substandard development along scheduled roads and in the controlled area in the State of Haryana. Section 3 prohibits erection or re-erection of buildings along scheduled roads within 100 meters on either side of the road reservation of a bypass or within 30 meters on either side of the road reservation of any scheduled road which is not bye-pass.** Proviso to this section exempts activities involving repair of a building which was in existence immediately before the commencement of 1963 Act or any erection or re-erection of an existing building which does not involve any structural alteration or addition. In a case where erection or re-erection of an existing building involves any structural alternation or addition then the same can be carried out with

²(2003) 2 RCR (Civil) 598 (DB)

the permission of the Director. It also exempts laying out of means of access to a road with the permission of the Director and erection and re-erection of a motor fuel-filling station or a bus que shelter with the permission of the Director. Likewise, Section 6 imposes restriction on erection and re-erection of buildings in controlled areas and Section 7 prohibits change of land use without the permission of the Director. Section 8 contains provisions for grant or refusal of permission referred to in Section 3 or Section 6 or Section 7 or license under Section 7 of the Act. Section 10 provides for appeal by any person aggrieved or affected by any order of the Director passed under Section 8(2) granting permission or license subject to condition or refusing permission or license. The Rules of 1965 contain detailed provisions for implementing the provision of the parent Act.”

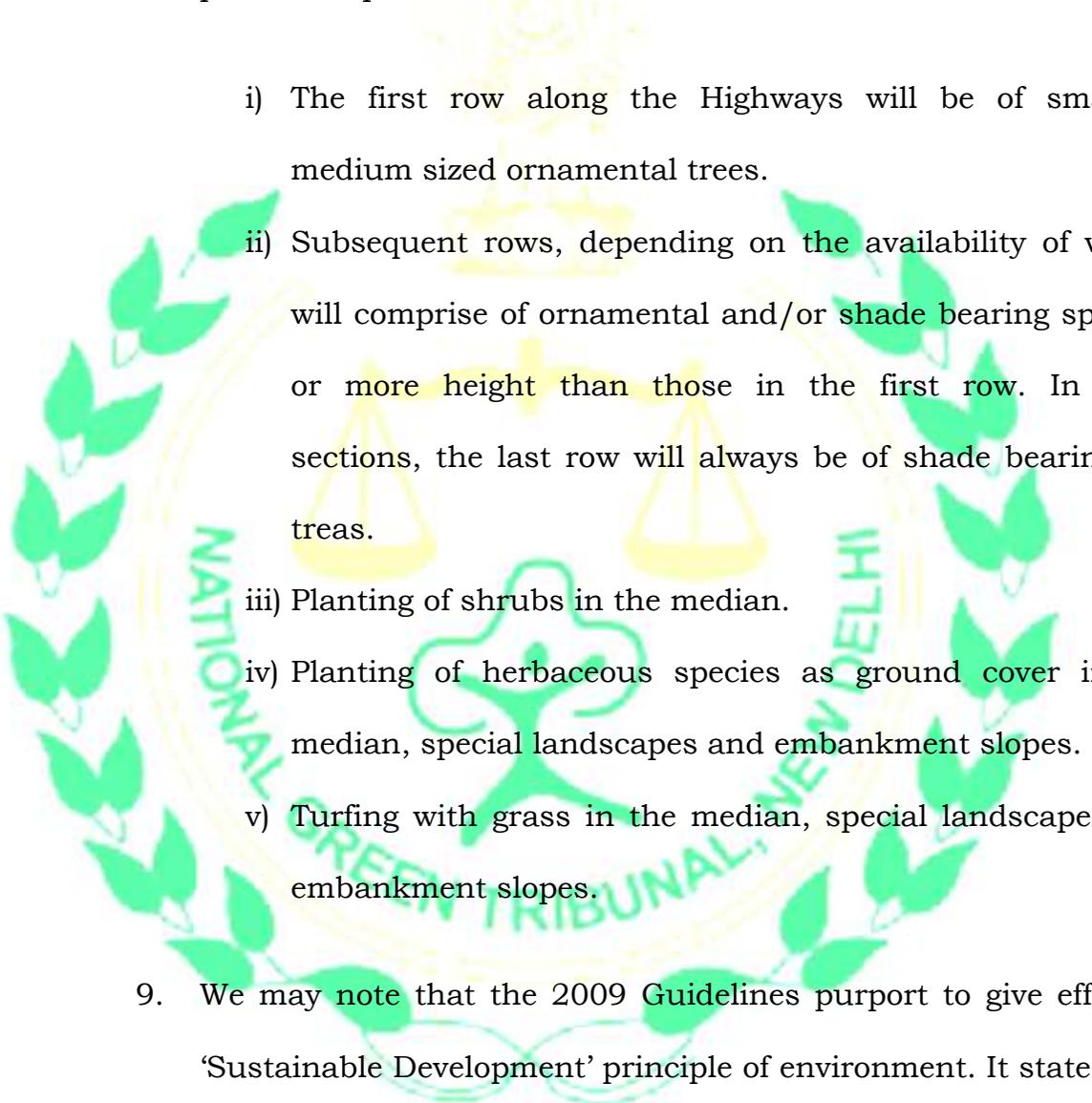
27. we cannot ignore the fact that unauthorized constructions raised on the sides of the National Highway cause great injury to the public interest and every attempt made by individuals to take law into their own hands deserves to be discouraged.”

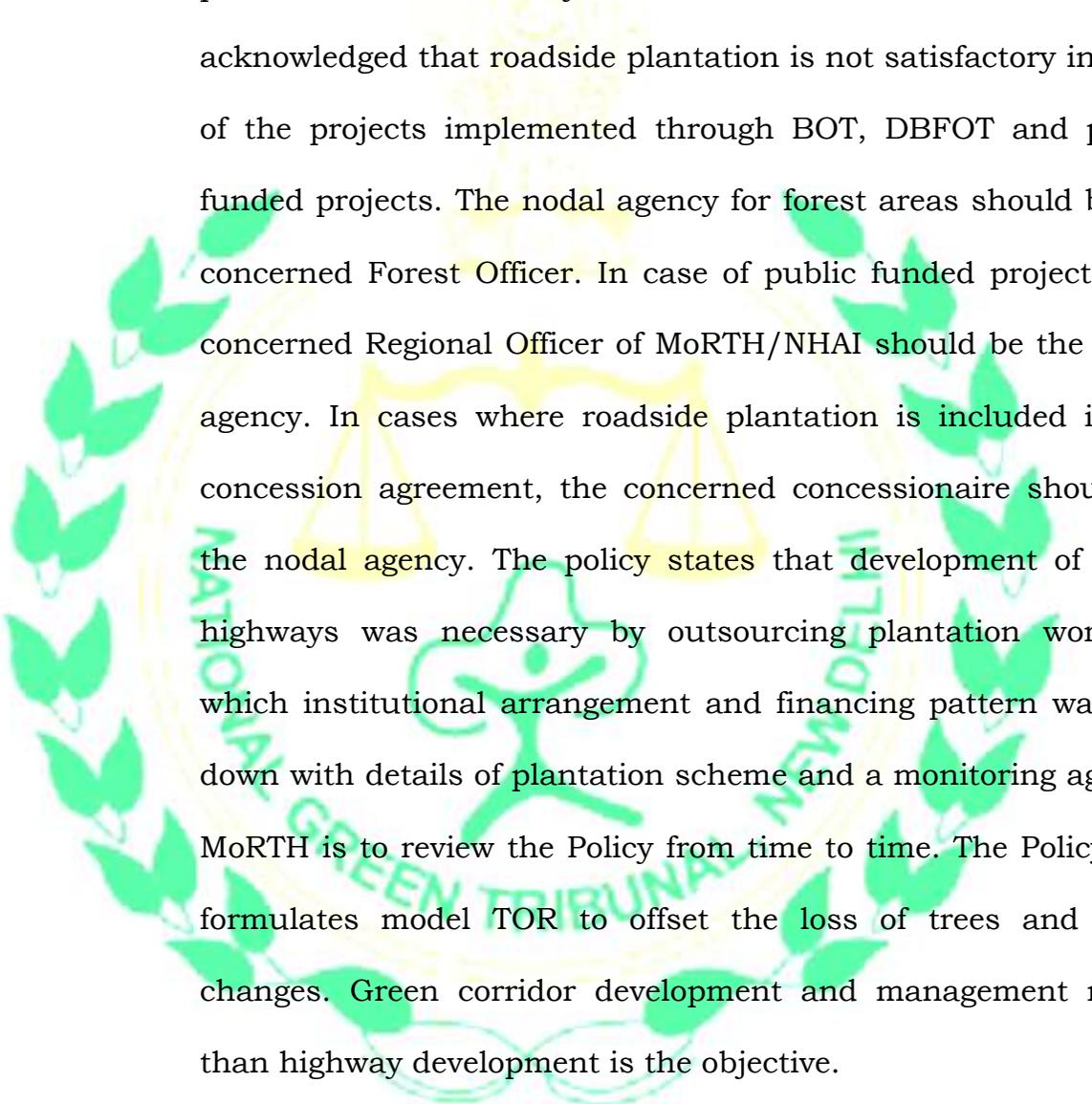
7. The Tribunal noted the stand of the NHAI in the affidavit dated 13.06.2018 to the effect that Tree Plantation Policy, 2015 was formulated as per 2009 Guidelines. The green cover was not required up to 30/50 meters of the Highway. Green Highway Policy could not be followed in projects executed on PPP model. The Tribunal held that tree plantation must be done within the Right Of Way (ROW) and in the land earmarked for afforestation in view of the IRC Guidelines. Landscaping was required in

urban as well as rural areas and right of way must be available for development on the sides of the highways for which the same should be left encroachment free. The Tribunal referred to the Control of National Highways (Land and Traffic) Act, 2002. It was observed that the 2009 Guidelines and 2015 Policy will help protection of environment and improvement of air quality. Plantation was necessary in accordance with the said Guidelines and the Policy. Accordingly, the Tribunal directed designation of teams for removal of encroachments, ensuring green belts and restoring such green belts by preparing an action plan. Guidelines laid down in “Manual of Specifications and Standards for Six Laning of National Highways through Public Private Partnership’, the 2009 Guidelines and the 2015 Policy were directed to be followed in its true spirit and substance. It was also observed that for environmental protection and improvement of ecology, requisite land should be acquired, erection or re-erection of building within the specified distance from the Highways may be prohibited and access permitted only through by-lanes or exit routes.

8. In response to the above directions, an affidavit has been filed on 30.04.2019 to the effect that Office Memorandum (OM) 18.12.2018 has been issued to the Project Directors and Regional Officers for creation of individual teams to undertake work of Green Work Development, maintenance and protection. The said teams are also to remove encroachments. NHIDCL has issued letter dated 14.02.2019 for formation of such Task Force which is to ensure restoration of green belt and removing encroachments. The NHAI and NHIDCL are adhering to the 2009 Guidelines and

2015 Policy. The Policies are meant for ensuring 'sustainable development' by minimum ecological disturbance to the surrounding areas. Detailed Guidelines for Roadside Plantations are given in the Chapter 11 and Maintenance of Roadside Plantation in Chapter 10 of the IRC:SP:21-2019 Guidelines. The said Guidelines provide that depending on the available ROW, plantation pattern should be worked out as follows:

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- i) The first row along the Highways will be of small to medium sized ornamental trees.
 - ii) Subsequent rows, depending on the availability of width, will comprise of ornamental and/or shade bearing species, or more height than those in the first row. In rural sections, the last row will always be of shade bearing tall trees.
 - iii) Planting of shrubs in the median.
 - iv) Planting of herbaceous species as ground cover in the median, special landscapes and embankment slopes.
 - v) Turfing with grass in the median, special landscapes and embankment slopes.
9. We may note that the 2009 Guidelines purport to give effect to 'Sustainable Development' principle of environment. It states that construction of highways result in felling of trees and project proponents need to mitigate environmental loss from all possible angles. Land needed for avenue plantations and landscape improvement must be planned. Width of ROW must be sufficient. Measures for landscape have been suggested in the Guidelines. Tree plantation is to be treated as an important component which should be functional for protection of slopes, providing



shade in summer, for aesthetic effects and overall beauty. The Guidelines provide for transplantation of trees and minimum land width for a road. The Guidelines also provide for detailed measures for roadside plantation and maintenance with the purported object of mitigating pollution, providing shade, reducing noise pollution, soil erosion, tree species, plantation patterns etc. The Policy reiterates the 2009 Guidelines. It is acknowledged that roadside plantation is not satisfactory in most of the projects implemented through BOT, DBFOT and public funded projects. The nodal agency for forest areas should be the concerned Forest Officer. In case of public funded projects, the concerned Regional Officer of MoRTH/NHAI should be the nodal agency. In cases where roadside plantation is included in the concession agreement, the concerned concessionaire should be the nodal agency. The policy states that development of green highways was necessary by outsourcing plantation work for which institutional arrangement and financing pattern was laid down with details of plantation scheme and a monitoring agency. MoRTH is to review the Policy from time to time. The Policy also formulates model TOR to offset the loss of trees and other changes. Green corridor development and management rather than highway development is the objective.

10. Some of the relevant provisions of the 2009 Guidelines are as follows:

“1. Scope

1.2 There is always a conflict between development and environment and, therefore, a trade-off is necessary to balance the two, so that, development is sustainable. The first adverse consequence of widening from environmental point of view, is the inevitable felling of trees growing along the

highways. On the hill sides and other fragile environmental settings, much more adverse impact are expected on the surroundings.

1.3 It is the responsibility of the road agencies to offset the loss of trees and other changes resulted into the surroundings. There is a need to follow the approach of “Corridor Development and Management” rather than “Highway Development”. Apart from mitigating the environmental losses, road agencies must plan to enhance the aesthetics of the highway corridor from all possible angles. Highway should not be looked upon merely as transportation, but as a part and parcel of the environmental and socio-economic milieu.

1.4 The land needed for the avenue plantation and landscape improvement has to be consider during the project formulation stage itself. As a result, after consultation when the plantation is actually to start, the land is available for planting. The width of the remaining ROW is many times not sufficient enough to accommodate even a single row of plants whereas at some places, 3 to 4 rows can be planted. Two ensure availability of sufficient width for avenue plantation, the requirement of land for tree plantation should be accessed and included in the land acquisitions plans prepared for highway widening project.

3.7 Tree Planting or Arboriculture

3.7.2 Roadside planting of trees may be in the form of avenues, groups or groves. Where conditions are favourable, for example in groves, fruit bearing trees may be preferred.

3.7.3 The amount of planting to be provided at different situations need careful attention. While roads in the landscape devoid of trees or woodlands may require little or no planting, extensive planting is necessitated in settle rural landscapes where a new road may introduce more new elements than the countryside can absorb.

3.8 Transplantation of Large Tree

Occasion may arise when grown-up tree has to be cut for making room for constructing a road, a building or other structure. It would be desirable to save this plant by transplanting it at a suitable site. To do this successfully some time is necessary. In winter when the tree is dormant a less active, it should be pruned heavily leaving a

bare framework of the large branches. A 40 to 50 cm wide trench 1 to 2 m deep should be dug along the stem as much distance away from it, deepening from the stature of the specimen, cutting all the roots, big and small, in the process.

11. Broad Guidelines of Roadside/Median Plantation

11.1.2 Tree plantation is the most effective, economical and useful remedy for control of environmental pollution. Besides, it is the cheapest way of landscape improvement. Trees have innumerable direct and indirect benefits of supplying timber and fuel at maturity. During the lifetime, they supply fodder, fruits, seeds, help in controlling soil erosion and water conservation, offer shade and are oxygen producing industries to combat ever increasing air pollution (Appendix-II). Big foliage trees also help in reducing noise and dust pollution.

11.2.1 The main objectives of planting along the highways are as follows:

- To provide for aesthetic enhancement of the project corridors.
- To reduce the impacts of air pollution and dust, as trees and shrubs are known to be natural sink for air pollutants.
- To provide much needed shade on glaring hot roads during summer.
- To reduce the impact of ever increasing noise pollution caused due to increase in number of vehicles.
- To arrest soil erosion at the embankment slopes.
- Prevention of glare from the headlight of incoming vehicles.
- Climatic amelioration.
- Moderating the effect of wind and incoming radiation.
- To define the ROW especially to highlight sharp horizontal curves during night.

11.11 Species for Median

11.11.1 The shrubs to be planted in the median should be of low or medium height for prevention of the headlight glare. One to two rows of flowering shrubs will be provided according to the varying width of the median in different sections. In sections whether median width is less than 1.5 m,

only turfing of grass is proposed. Some herbaceous species may also be planted as a ground cover, not only on the medians but on special landscapes and embankments slopes also. The species proposed for the purpose of turfing/ground cover are: Cynodon dactylon, Cythocline perpurea, Solanum nigrum, Alternanthera, Chlorophytum, Eupatorium, Wedelia, Duranta, Portulacca, Ipomea, Pelia cadri, Beleprone oblongata, Tradescantia, Asparagus, Ophepogon grass etc. The shrub species proposed in the median are mainly Bougainvillea and Thevetia nerifolia (Kanar). However, other suitable species may be planted in consultation with the local horticulture specialists Region-wise specific list have been given in Annex A to F.”

11. The 2015 Policy provides for the principles to be followed for preparation of the Environment Management Plan, the implementation of the Environmental Monitoring Program, Guidelines for Rehabilitation of Dumpsites, Quarries and Borrow Areas, Guidelines for Siting, Operation and Re-development of Borrow Areas etc. The Guidelines for Rehabilitation of Borrow Areas clearly provide for indicative rehabilitation measures which could be community water storage facility, recreational water spots, or rehabilitation by re-vegetation of the borrow areas.

12. Some of the relevant features of the Policy are as follows:

“Green Highways (Plantation & Maintenance) Policy-2015

VISION

To develop ecofriendly National Highways with participation of the community, farmers, NGOs, private sector, institutions, government agencies and the Forest Department. Documentation of species to be planted along National Highways.

OBJECTIVES

To evolve a policy frame work for plantation along National Highways;

To reduce the impacts of air pollution and dust as trees and shrubs are known to be natural sink for air pollutants;

To provide much needed shade on glaring hot roads during summer;
To reduce the impact of ever increasing noise pollution caused due to increase in number of vehicles;
To arrest soil erosion at the embankment slopes;
Prevention of glare from the headlight of incoming vehicles; Moderating the effect of wind and incoming radiation; Employment to local people;
Augmenting in maintaining biodiversity”

4.1. Planation Pattern

- *The first row along the Highways will be of small to medium sized ornamental trees.*
- *Subsequent rows depending on the availability of width will comprise of ornamental and/or shade bearing species, of more height than those in the first row. In rural sections the last row will always be of shade bearing tall trees.*
- *Planting of shrubs in the median.*
- *Planting of herbaceous species as ground cover in the median, special landscapes, and embankment slopes.*
- *Turfing with grass in the median, special landscapes, and embankment slopes.*

9. Institutional arrangements and Financing Pattern

9.1.3 The Nodal agency for forest areas will be the concerned forest range office. In case of Public Funded Projects the concerned Regional Officer of MoRT&H/NHAI will be the nodal agency. In cases where roadside plantation is included in the concession agreement, the concerned concessionaire will be the nodal agency.

9.1.4 MoRTH/NHAI shall take up the plantation work if the contractor / concessionaire fail to implement the plantation program within the stipulated time period as per agreement at the risk & cost of the concerned contractor/concessionaire after terminating the particular scope of the contract. The responsibility of ensuring compliance to specifications will, however, rest with the nodal agency as per IRC-SP:21-2009.

B. Guidelines for Median Plantation:

One or two rows of flowering shrubs are recommended in accordance to the varying width of the median in different sections. In sections where median width is less than 1.5 meter, only grass turf is recommended. In median width of 3 meters, one row of shrub whereas in 5 meter median width, plantation of two rows of flowering shrubs are proposed.

Only two rows of shrubs will be planted on median width of 5 meters and these plants will be at a spacing of 1.5 meters from the inner edge of the median.

The plants will be at spacing of 3 x 3 meters and size of the pits for planting will be 0.6m dia and deep. Therefore, total no. of plants per km will be 333 in case where single row is proposed and 666 in case of two rows.

The surface for the median plantation should be well prepared. The masses of loose derbies on the median and any convexities will be removed and similarly any concavities are to be filled by good soil. The surface should have sufficient layer of good quality soil so as to have a better growth and survival of grasses and shrubs.”

13. From the above, the following questions emerge for consideration:

- i) Whether adequate steps are being taken for maintenance of green belts on both sides of all categories of highways consistent with ‘Sustainable Development’ principle?
- ii) Whether progress of removing encroachments to achieve the object of leaving the highways free from direct access and leaving sufficient space for plantation is sufficient or any further steps are required?

Re(i): Whether adequate steps are being taken for maintenance of green belts on both sides of all categories of highways consistent with ‘Sustainable Development’ principle.

14. We find that the 2009 Guidelines as well as the 2015 Policy lay down exhaustive framework with a view to comply with the environmental norms on sides of the highways but the actual implementation of the mandate of law is the question. Sufficient space must be kept vacant for plantation and if such space is not laid down, the same must be laid down. Similarly, clear provision is required to regulate direct access to Highways and distance within which no construction is to be allowed. The 2015 Policy has to be fully implemented for which adequate plantation is

required on land abutting National and State Highways. Plantation is also required around Group Housing Societies, Commercial Plots and Offices, apart from parks and other public places which need to be maintained by the local authorities or societies, especially when such constructions are on the sides of the Highways.

15. We may notice that apart from 2009 Guidelines and 2015 Policy, the National Green Highways Mission (NHGM) of MoRTH was initiated in 2016. The task of planning, implementation and monitoring roadside plantation along one lakh kms network was entrusted to NHGM under the NHAI. An App to monitor real-time progress of the plantation operation and its management was also launched. As per reports in public domain, the tree plantation drive is also an intrinsic part of the government's commitment to the world community at the Paris Climate Change meet (CoP 21) to do more to protect the environment. India has set the Intended Nationally Determined Contributions (INDCs) target of bringing down the Green House Gases (GHG) emissions by 35 percent by 2030. India has a total 46.99 lakh kms of road length, out of which over 96,214 kms are National Highways, accounting for only 2 per cent of total road length. However, the National Highways carry about 40 percent of the automobile traffic load. The NHGM was to develop all of existing National Highways and 40,000 kms of additional roads as Green Highways. As per the NHGM, wherever possible provision would be made for 4-5 metres of roadside plantation. The monitoring of plantation status was also included as an integral part of the Policy. The planting agency was also required to supervise all field

operations like site preparation, seed sowing, plantation saplings and quality of planting material used. The monitoring agency was also to follow up the progress on continuous basis and conduct performance audit of the executing agencies for various projects on an annual basis.

16. Problem of PM_{2.5} and PM₁₀ is universal. Steps to limit the said values to the prescribed standards need to be addressed in respect of all highways and not merely National Highways. Green belts are necessary so that environmental norms are maintained. Absence of green belts by not leaving requisite space on the roadside directly results in addition to air quality particularly PM_{2.5} and PM₁₀ which is detrimental to public health. This problem is of more magnitude when highway is passing through cities/towns and therefore making of exception in such areas may not be desirable. Even regulation of existing constructions may need to be considered in the context of 'Sustainable Development' in the interest of public health. Mandate of maintaining air quality is an overriding factor being part of right to life. Right to property cannot override right to life. The regulatory bodies thus have statutory and constitutional right to deal with the matter.

17. We are accordingly of the view that steps being taken for maintenance of Green belts on the sides of the Highways are not adequate. Responsibility for such Green belts is required to be clearly defined in view of the fact that as per 2015 Policy, the accountability is of Concessionaires if so included in the agreement and on their failure, will be of MoRTH/NHAI. The

Nodal agency is the concerned Forest Officer. The extent to which Green Belts have been successfully provided needs to be clearly indicated. If Green Belts have not been provided either on account of encroachment or lack of space, extent of such failure needs to be identified and addressed. Wherever such plantation is not provided, it is obvious that there is violation of environmental norms. Cognizance of such violation and remedial actions needs to be taken by the MoEF&CC.

18. We may note that while National Highways are covered by Entry 23 of List I, State Highways are covered by Entry 13 of List II of 7th Schedule to the Constitution. Subjects of legislation or policy with reference to the said entries may relate to acquiring land or provisions for construction of Highways and other incidental issues. Environment protection is an independent subject. With reference to Entry 13 of List I read with Article 253, the Parliament has enacted Environment (Protection) Act, 1986 for prevention, control and abatement of environmental pollution in pursuance of UN Conference on Human Environment, 1972. The Environmental Clearance Regulations, 2006 framed under Section 3(2) of the said Act require prior environmental clearance for projects mentioned in the schedule to the said regulations. Entry 7(f) of the Schedule relates to Highways. National Highways fall in Category A and State Highways fall in Category B. EIA is required for National Highways from the MoEF&CC and for State Highways from SEIAA. Such environmental clearance is given as per the principle of 'Sustainable Development'. Even though National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 deal with the subject of

highways, the environmental clearance can and must lay down suitable conditions for protection of environment which could be over and above the statutory mandate of Highways Act or the Policies/Guidelines of the Ministry of Road Transport or the Highway Authority. Concept of 'Sustainable Development' apart from being enforceable under Section 20 of the NGT Act, it is also a component of Article 21 of the Constitution and thus is required to be read into every Statute or Policy. This requirement is inherent. Moreover, scope of Entry 7 (f) in the Schedule of the 2006 notification does not cover every Highway while environment issues relate to constructions on sides of Highways and access to the Highways. The MoEF&CC in co-ordination with the MoRTH is thus required to consider the question of access to Highway not being allowed directly but only through by-lanes/exit lanes, distance being maintained between the Highway and any other construction. Sufficient area must be left on the sides of the Highways, not only for expansion but also for plantation of trees. Plea that such requirement cannot govern Highways on PPP model is unacceptable being contrary to the overarching Principle of 'Sustainable Development'. Plea that no area being specified as being required to be kept vacant on sides of Highways, plantations are required only if space is available cannot be accepted. The mandate of law requires space to be left on the roadsides. Once it is so, extent of such space must be specified. In absence thereof plan for plantation and preventing encroachment and construction on roadside and also preventing direct access to Highway will be difficult to be implemented.

Re(ii): Whether progress of removing encroachments to achieve the object of leaving the highways free from direct access and leaving sufficient space for plantation is sufficient or any further steps are required.

19. It can hardly be disputed that there is large scale encroachment of Highways by constructions overlooking and even extending up to the highways, making it difficult to implement the policy of plantation. The difficulty is compounded by absence of adequate policy framework to prevent direct access to the highways from commercial establishments and vice versa. The issues are integral. Control of direct access to highways and plantation needs to be effectively planned and monitored. The affidavit filed merely refers to circulars issued but does not give the data of action on the ground. The concept of Sustainable Development is not satisfied by mere issue of directions without ensuring implementation on the ground with effective coercive enforcement regime. Compiling of authentic data with the help of satellites or other equipment is the need of the hour.

20. We find it difficult to disagree with the pertinent observations in the judgement of the Hon'ble High Court of Punjab and Haryana in *Ahuja Vaishno Dhaba No.1 v. State of Haryana and Others*³ to the effect that unauthorized constructions on the side of the highways is a known fact. There is no sufficient action for removing the unauthorized encroachment/ construction. In this regard, the observations of the Hon'ble High Court of Punjab and

³(2003) 2 RCR (Civil) 598 (DB).

Haryana in the case of *Gurdial Shyam Lal Pvt. Limited v. The State of Haryana*⁴, are:

“We cannot altogether ignore the fact that unauthorised constructions have, in fact, been raised on both the sides of the National Highways within the territory of the State of Haryana, and the departmental authorities have been rather lukewarm and at times even negligent in enforcing the provisions of the 1963 Act by removing the unauthorised encroachments/constructions on both the sides of the National Highways passing through the territory of the State of Haryana.”

21. The Control of National Highways (Land and Traffic) Act, 2002 has been enacted with the objective that National Highways were rapidly getting congested and choked by undesirable roadside developments and encroachments. The absence of legislation empowering competent authority to remove encroachment on National Highways resulted in shops, hotels, tea stalls, petrol pumps, residences and commercial establishments extending their activity right on the national Highway land. The National Highway Act, 1956 and the National Highway Authority of India Act, 1988 did not give powers to the Central Government to prevent or remove encroachments on land under the national Highway which are to restrict access to them from the adjacent land or to regulate traffic movement of any category of vehicles or animals on the national Highways.

⁴1996 (1) RRR 272 (P&H)

22. While 2002 Act contains certain provisions by way of Sections 28 and 29 with regard to the right of access, no clear policy has been shown in this regard applicable to all the National Highways. With regard to the State Highways, there may be different State statues dealing with the matter but in absence of requirement of not permitting direct access to Highway and maintaining green belt alongside all highways, the mandate of 'Sustainable Development' is not met. It may be necessary to have a National Policy applicable throughout India covering National and State Highways for environment protection and for green cover as an implicit part of 'Sustainable Development'. It is well-known that just adjacent to Highways, commercial buildings or residential colonies, dhabas (roadside eateries) are being set up which lead to huge congestion and air pollution. No space is available for tree plantation along the Highways, particularly when Highways are passing through inhabited areas. An appropriate policy and its effective enforcement mechanism is necessary including setting up of Special Task Force or institutional set up for the same. Enough legal authority is available under the Environment (Protection) Act, 1986 to regulate and restrict even existing activities adjacent to Highways and to prevent direct access to Highways even if constructions have already been made. Right to property or ownership is subject to the concept of 'Sustainable Development' which requires leaving Highways free from direct access, with greenery all along with the Highways. In any case, for any future road construction, requiring of leaving specified space and regulating access must be clearly laid down.

23. Information about the extent of encroachments removed and continued needs to be duly compiled. Similarly, extent to which highways are free from direct access and wherever they are not free from direct access also needs to be exhaustively compiled. Such compilation in respect of National Highways may be done by NHA and NHIDCL. With regard to State Highways, it may be compiled by Chief Secretaries of States/UTs in coordination with their respective Environment, Forest and Public Works Departments. Such data may be finally compiled at national level with inputs from the States by the MoEF&CC with a view to enforce the environmental norms and workout an appropriate regulatory mechanism so as to ensure that principle of 'Sustainable Development' is implemented by effectively having Green Belts on both sides of all category of Highways in the country. A central monitoring mechanism is required to monitor that encroachments on the Highways are removed so that there can be Green Belts and no direct access is provided on the roads. It is a matter of common knowledge that highways are encroached for private gains. Roads are converted into parking to sub serve the commercial buildings constructed on the roadsides. Some residential complexes are also constructed which is adjacent to the roads. Apart from traffic hazards, this becomes a major reason for air pollution. Effective regulatory regime is required to ensure that roadsides upto a specified distance are No Construction Zone and are used exclusively for plantation so as to compensate for the loss to the ecosystem by concreting of soil which results in obstruction to harnessing of rain water. Use of roads causes air pollution. To make up for this loss, plantation on both sides of the roads up to a specified width

is a mandatory requirement of the 'Sustainable Development' principle which can be enforced by this Tribunal under Section 20 of the NGT Act, 2010. For this purpose, a case is made out for issuing directions to the MoEF&CC.

24. Accordingly we direct the Secretary MoEF&CC in collaboration with Secretary MoRTH to evolve an effective monitoring mechanism at national level with the object of ensuring maintenance of Green Belts on both sides of all Highways upto specified distance, there is no construction upto specified distance, there is no direct access to the Highway, there is no encroachment and buildings on roadsides are regulated in terms of environmental norms so that no air/water pollution or encroachment of Highway is caused. For this purpose, MoEF&CC may collect the requisite data in respect of National Highways from NHAI and in respect of State Highways from respective States and UTs. The data by the State may be compiled by the Chief Secretaries of States/UTs in coordination with their respective Environment, Forests and Public Works Departments. We suggest that data should be compiled with reference to the following:

- i) Extent of encroachment and action plan for its removal.
- ii) Provisions for leaving space up to a particular distance from the road for expansion and for plantation.
- iii) Extent of access directly allowed from Highway to buildings and ensuring that there is no direct access to the road obstructing existing or potential plantation.
- iv) Buildings near roads upto a specified distance are regulated to ensure that no air, water or other pollution is

caused and no encroachment takes place or space on roads on account of activities of such buildings.

v) Extent of plantation carried out.

vi) Highway where no space is left for ensuring green belt on the sides.

vii) Highway projects on PPP model where green plantation cannot be done according to NHAI.

25. The monitoring mechanism may deal with the issue in following parts:

i) Future policy with regard to Highways to be constructed henceforth;

ii) Policy with regard to Highways already constructed or in progress where space is available;

iii) Policy with regard to Highways where constructions have already been made with regard to division in nature of construction and legality thereof.

26. The MoEF&CC may file an affidavit within two months.

27. Member (Administration), NHAI may file further affidavit about the extent of encroachment on National Highway, action plan for removal of such encroachment, extent of plantations, extent of access directly allowed from highways to buildings, requirement of distance from highways for construction and indicating the status of preparation and execution of action plans by individual teams to ensure green work development and status of removal of encroachment by Task Force constructed by NHIDCL.

List the matter for further consideration on 19.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 21, 2019
Execution Application No. 29/2018 IN
O. A. No. 386/2016
AK

