

**BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE
BENCH, PUNE**

APPLICATION NO.34/2015 (WZ)

Vanashakti & Anr. Vs. Union of India & Ors.

**CORAM: HON'BLE MR JUSTICE V.R. KINGAONKAR, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

Present: Applicant/ Appellant : Zaman Ali,Adv. & Gayatri Singh,Adv
Respondent No. 2(ii) & 3 : Sunil Dongre,Adv A.S.Mulchandani,Adv
Respondent No. 4 : Smt. M.D.Munot,Adv
Respondent No. 3(ii) : A.S. Molchandani,Adv.

Date and Remarks	Orders of the Tribunal
Item No.9 July 20, 2015 Order No.	<p>Heard Advocate for the Applicant and Assistant Government pleader A.S.Mulchandani for Respondent no. 2 & Respondent no. 3. None has appeared for Respondent no. 1, 2(II-III) and Respondent no. 4. The applicants have filed affidavit of service.</p> <p>The Respondent no. 4 filed reply affidavit.</p> <p>Adv. Gayatri Singh has pointed out that in Application 135/2013 this Tribunal has given certain directions. She states the Tribunal while referring Apex Court order in Lafarge case, in Para 23 (b) of NGT judgement noted that; <i>completion of the exercise undertaken by each State/ UT Govt. in compliance of Court's order dated 12.12.1996 wherein inter-alia each State/ UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any outlay, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest</i></p>

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(Conservation) Act, 1980". She also draws our attention to specific directions issued by Tribunal which are as under. Considering foregoing discussing, we are of the opinion that the Application will have to be partly allowed in order to protect Environment and ecology, as well as the Forests area. Consequently, we partly allow the Application and give following directions:

1. *The interim orders given by Hon'ble High Court of Bombay, Nagpur Bench, on 30/4/2004 referred in para-9 above shall continue to operate, as the state government has not submitted the necessary data and reports on the present status of forest and an undated action plan to increase the forest cover in the state to the desired level and also, comprehensive statement of the compliance of various directions of Apex court and High Court, issued in this regard. The Tribunal is required to continue the interim orders on Pre-cautionary Principle basis in the absence of above information and Tribunal is willing to reconsider the position if the state government approaches the tribunal with necessary data, reports and action plan. The said interim orders shall be part of this final order.*

6. *Forest department shall place on record the report of expert committee formed in compliance of Hon'ble Supreme Court Direction dated 12.12.1996 wherein each state government was directed to constitute an Expert Committee to identify the areas which are 'forests' irrespective of whether they are so notified, recognised or classified under any law, and irrespective of land of such 'forest' And the areas which were earlier 'forests' but stands degraded, denuded and cleared. This report shall be submitted within 3 months and also, shall be made available on Forest department's website.*

She also informs the Tribunal that the applicant Shobha Phadnvis is now M.L.A. and yet, the State Government has not complied with directions of the Tribunal in letter and spirit.

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According to Adv. Gayeatri Singh if such directions sought by elected representative of the people, who are elected from the constituency, and expounding certain public cause from 2013 protection of forest are not likely to be taken care of the Authority, in such case probity in the Governance it is likely to be put under a question due to inaction by the authorities.

It is pertinent to note that the State Govt. has already submitted previous proposal to the MoEF for corridor to keep open 100m area from the boundary of Sanjay Gandhi National Park, Borivali, in spite of the fact that said proposal is pending with the MoEF, after earlier proposal dated 14th February, 2013, was communicated to maintain ESA/NDZ activity within distance of 100m from the boundary of Sanjay Gandhi National Park, Borivali. We are at loss to know the reasons as to why the Forest Department wants to change ESA/eco sensitive area/NDZ by curtailment of distance. Though the previous proposal of 2013, is pending for consideration with the MoEF, yet, another 2015 proposal is being newly pushed ahead for change of distance to curtail ESA/Eco Sensitive Area upto 30 ft from boundary of Sanjay Gandhi National Park, Borivali. This change, in our opinion, *prima facie* will shrink ESA/Eco Sensitive Area and may give booster dose to construction activity or other likewise activities in the proximity of Sanjay Gandhi National Park, Borivali.

Under the peculiar circumstances, we direct that status-quo shall be maintained and no construction/development activity or any kind of change in the buffer zone within 100m from the boundary of Sanjay Gandhi National Park, Borivali, shall be allowed without approval of this Tribunal. The State of Mah. (through the Chief Secretary) shall, accordingly, inform the concern authorities, including the Principal Secretary of the Forest Department in particular. The BMC and Borivali Municipal authorities also shall be informed to ensure due compliance and shall reject proposal for construction activities/development

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activities within the area, as prescribed above.

We make it clear that non-compliance of the ad interim Order will entail the Principal Secretary of the concerned departments liable for penal action under provisions of the NGT Act, 2010. A copy of this order shall be communicated to Chief Secretary of State of Maharashtra by E-mail as well as delivering the same to the Principal Secretary of the Forest and Urban Department and to the P.A of Chief Secretary by the ACF, who is present during proceedings, and Registry above.

Stand over to 19th Aug, 2015.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr.Ajay A. Deshpande)

