

Serial No.03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No.7/2021

Date of Order: 30.09.2021

Kaustav Paul Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Biswanath Somadder, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : In-person
For the Respondent(s) : Dr. N Mozika, ASG
Mr. A Kumar, Advocate General with
Ms. R. Colney, GA
Mr. R Deb Nath, CGC for R/10

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

When the matter is taken up for hearing, the learned Senior Advocate who appears in-person in this Public Interest Litigation (PIL), draws our attention to the minutes of the meeting of the High Powered Committee (HPC) dated 29th September, 2021. For convenience, the entire minutes of the said meeting of the High Powered Committee (HPC) is setout hereinbelow:-

“MINUTES OF MEETING
MEETING OF THE HIGH POWERED COMMITTEE

Dated 29th September, 2021.

All members of the High Powered Committee were present in the meeting held on 29.9.2021. The list of the members present in the meeting is enumerated below:

- i. Shri Amit Kumar, Advocate General;
- ii. Shri Kaustav Paul, Senior Advocate (Petitioner in person);
- iii. Col. Narendra Sheoran, Executive Director (P), NHIDCL, Regional Office, Shillong;
- iv. Shri M.B.K. Reddy, IFS (Addl. Principal Chief Conservator of Forest (T); and
- v. Shri Jiwat Vaswani, Environmentalist and Hotelier & Owner of M/s Jiva Hospitality.

The meeting of the High Power Committee (HPC) constituted vide order of the Hon'ble High Court of Meghalaya dated 30.6.2021 in PIL No. 7/2021 was held today i.e. 29.09.2021 at 12.30 PM in the office of learned Advocate General.

The meeting was held to discuss the issue concerning 20 or more trees falling in Chainage Stretch between 5.6 to 5.8.

Mr. K. Paul, learned Senior Advocate and Mr. Jiwat Vaswani, Environmentalist suggested that if the road can be shifted by 3 meters on the right hand side, all trees can be saved.

Col. Narendra Sheoran, Executive Director (P), NHIDCL, Regional Office, Shillong apprised the Committee Members that there are large number of difficulties in shifting right of way by 3 meters. He submitted that the following difficulties would arise:

- (a) The alignment of road by shifting the right of way by 3 meters shall necessarily involve diversion of land in Upper Shillong which is part of protected/reserved forest;
- (b) This would necessarily entail user agency to obtain a fresh forest clearance under Forest Conservation Act and it would involve taking clearance right from the start. This would also involve clearance by State Forest Department and Ministry of Forest Environment and Climate Change, Govt. of India;
- (c) User agency will further be required to change proposals for compensatory afforestation etc.;

(d) He also submitted that earlier clearance was obtained by user agency by going through the rigorous process and it took almost 2 years;

(e) It was also stated that project would be adversely affected which would delay the project and it would also lead to cost escalation also;

(f) It is also likely to affect the speed at which vehicle can travel in this stretch. He also emphasised that in this stretch as against the requirement of 60 meters Right of Way for construction of a 4 lane highway, only 24 meters right of way has been acquired due to many constraints. Due this even median width has been reduced to 0.61 meters against requirement of 2.5 meters. He, therefore, submitted that it is not worthwhile to save 20 trees which are not of the same nature which have already been saved by shifting the utility lines;

Shri M.B.K. Reddy, IFS (Addl. Principal Chief Conservator of Forest (T) also endorsed the views of Col. Narendra Sheoran by stating that clearance would be required under the Forest Act including clearance from Ministry of Forest, Environment and Climate Change, Government of India and it is a time consuming process.

In view of the above issue, Members felt that the above said report be placed before the Hon'ble High Court on 30.09.2021.

(Kaustav Paul)
(Senior Advocate)

(Amit Kumar)
(Advocate General)

(Col. Narendra Sheoran)
(Executive Director (P), NHIDCL,
Regional Office, Shillong)

(Shri M.B.K. Reddy, IFS)
(Addl. Principal Chief
Conservator of Forest (T)

(Shri Jiwat Vaswani)
(Environmentalist and Hotelier &
Owner of M/s Jiva Hospitality)"

The issue in this PIL centres around cutting/felling of trees (some of which are of considerable heritage) for the purpose of widening of National Highway 40, which connects Shillong to Dawki (commonly referred to as the Shillong-Dawki road), particularly in the vicinity of the

Eastern Air Command. By our order dated 30th June, 2021, we had constituted a 5(five) member High Powered Committee (HPC), which were directed to look into the specific grievances as sought to be highlighted in the instant PIL. A comprehensive report was directed to be submitted by the High Powered Committee (HPC), after conducting a thorough and detailed enquiry with regard to the issue as highlighted and upon inspection of the actual site. Further observations/directions are contained in our order dated 30th June, 2021. A report was thereafter prepared by the High Powered Committee (HPC) on 21st July, 2021, which was submitted before this Court and was duly taken note of in our order dated 22nd July, 2021. The following conclusion arrived at by the High Powered Committee (HPC) for resolution of the issue centering around this PIL was taken note of by this Court on 22nd July, 2021:-

“(i) NHIDCL has agreed in terms of its undertaking to execute the project for expansion of NH 40 (Shillong to Dawki) without cutting any heritage tree (between Chainage km 6.590 to km 7.360);

(ii) As per the undertaking of NHIDCL, around 135 heritage trees falling (in) the right of way will be saved in pursuance of the understanding reached between all the stakeholders between the Chainage stretch of 6130-7360;

(iii) As and when the need arises, the user agency/concerned authority can approach the State Government for seeking approval for laying down utility infrastructure like water pipeline and telephone lines, etc., through reserved forest in terms of general approval of the Government of India under the Forest Conservation Act, 1980 and MoEF and CC guidelines for the stated public utility projects;

(iv) Transplantation of certain non-heritage trees is not a viable solution since it appears to be costly and cumbersome. Therefore

the HPC is of the view that compensatory afforestation and strip plantation may be adopted as an effective and viable solution; and

(v) The Highway expansion project should be completed at the earliest in public interest without cutting the heritage trees as discussed above.”

Thereafter, on 9th August, 2021, upon hearing the parties, we were of the view that another round of deliberation was required by the 5(five) Member High Powered Committee (HPC) in order to resolve the issues centering around this PIL. The result of such deliberation, in the form of minutes of meeting of the High Powered Committee (HPC) dated 29th September, 2021, is now before us and has been set out at the outset.

After perusing the said minutes of the High Powered Committee (HPC), we are of the view that there is an imperative necessity for realignment of the road by shifting right of way by three (3) meters for a stretch of 200 meters only. This endeavour is required to be done only in order to protect the environment and conservation of the trees (some of which are of considerable heritage). It cannot be said that this action will compromise with the development/expansion of the road project, which is for a total length of approximately 72 Kms. Here we are concerned with a stretch of 200 meters only. The Executive Director (P), National Highways & Infrastructure Development Corporation Ltd. (NHIDCL) has highlighted a few difficulties, which are duly recorded in the minutes of the High Powered Committee (HPC) dated 29th September, 2021. However, we do not consider these difficulties to be of such an insurmountable nature,

which would weigh in favour of felling of the heritage trees that fall within the stretch of 200 meters or for that matter, compromising with the environment, particularly when the total development/expansion of the road project is for a considerable length of about 72 Kms.

For a fresh forest clearance under the Forest (Conservation) Act which is required to be obtained for this limited purpose, the learned Assistant Solicitor General shall impress upon the concerned Ministry to issue such clearance within a period of four weeks from date. Similarly, we would also request the learned Advocate General to ensure that necessary clearance is facilitated by the State Forest Department within a similar period of time. If other clearances are required to be obtained from the Ministry of Forest Environment and Climate Change, Government of India, the learned Assistant Solicitor General shall use his good office to ensure that those clearances are also obtained within a period of four weeks from date. Once all clearances are obtained in terms of this order, the process of realignment shall be completed by the National Highways & Infrastructure Development Corporation Ltd. (NHIDCL) within a period of six weeks therefrom.

The above time specific directions are issued by us only because the Executive Director (P), National Highways & Infrastructure Development Corporation Ltd. (NHIDCL), has apprehensively stated that earlier clearance was obtained by the user agency by going through a rigorous process and it took almost two years. We do not find the excuse of

time consuming process as a justifiable reason in order to compromise with protection of our environment and conservation of heritage trees. In view of our specific directions, we do not expect that there would be any delay in obtaining necessary clearances from the appropriate authorities, as apprehended by the Executive Director (P), National Highways & Infrastructure Development Corporation Ltd. (NHIDCL), Regional Office, Shillong.

The writ petition stands disposed of accordingly.

(H.S. Thangkhiew)
Judge

(Biswanath Somadder)
Chief Justice

Meghalaya
30.09.2021
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