

Reportable

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

Civil Appeal Nos 6497-6498 of 2021

Citizens for Green Doon

Appellant

Versus

Union of India and Others

Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The appellant had earlier moved a petition under Article 32 of the Constitution - Writ Petition No 529 of 2021 - to challenge: (i) the Stage-I Forest Clearances dated 29 September 2020 and 24 December 2020 issued by the Ministry of Environment, Forest and Climate Change¹ in respect of the stretches of road forming a part of National Highway No 72A in Uttarakhand and Uttar Pradesh; and (ii) the Wildlife Clearance dated 5 January 2021 issued by the Standing Committee of the National Board for Wildlife. Noting that the primary challenge was to the Stage-I Forest Clearances, this Court by its order dated 7 September 2021 reserved the liberty of the appellants to adopt appropriate proceedings by moving the National Green Tribunal² to

1 “MoEF&CC”

2 “the Tribunal”

challenge the Stage-I Forest Clearances. Directions were also issued, granting permission to the appellant to challenge the Wildlife Clearance at the appropriate stage.

- 2 Following the order of this Court, the appellant moved the Tribunal in Original Application No 240 of 2021, invoking its jurisdiction under Section 14(1) of the National Green Tribunal Act 2010³. The Tribunal by its order dated 6 October 2021 declined to entertain the challenge, primarily on the ground that the appellants had attempted to ‘circumvent’ its appellate jurisdiction under section 16 by invoking its original jurisdiction under Section 14 instead. The reasons which have been adduced by the Tribunal are contained in the following extract from its judgment:

“6. We have heard learned Counsel. We find no justification to entertain the application, circumventing the remedy of appeal. Further, the applicant itself has mentioned that as far as linear projects are concerned, simplified procedure is applicable. Stage-I approval itself is considered as working permission for cutting of trees. Thus, if the approval has been validly granted, the cutting of trees in the scope of permission so granted will not be treated as violation of law. In absence of challenge to the grant of EC, submission that EC has been wrongly granted or that the reports on the basis of which EC has been granted are factually incorrect cannot be gone into. The project is for upgradation and expansion of road, also involving some constructions. There is no reason to presume that laid down standards and precautions for road constructions will not be followed. There is no material

3 “NGT Act”

to show any such violation. If any such violations are found, the same can always be challenged in accordance with law.

7. Undoubtedly, cutting of even a single tree is a matter of concern. Having regard to ecological services of the trees, all efforts have to be made to protect every tree. At the same time, in certain situations, cutting of trees is permissible under the law, with the requisite approval of the statutory authorities, subject to compliance of the statutory conditions, following all necessary safeguards, including afforestation and translocation wherever possible. In the present case, order granting FC lays down necessary conditions. No violation thereof is alleged. In these circumstances, no case is made out for interference by this Tribunal. The application is dismissed.”

3 Ms Anitha Shenoy, senior counsel appearing on behalf of the appellant submitted that:

- (i) An appeal lies to the Tribunal under Section 16(e) only against an order or decision made by the State Government or other authority under Section 2 of the Forest (Conservation) Act 1980⁴;
- (ii) The circular dated 28 August 2015 of the MoEF&CC stipulates that in-principle approval granted under the FC Act by the Central Government may be deemed to be the working permission for tree cutting and commencement of work if the funds for compensatory afforestation, net present value (NPV) and other conditions as stipulated in the in-

4 “FC Act”

principle approval are fulfilled by the user agency;

- (iii) The above circular has been made in the context of projects involving linear diversions of forests, such as laying of roads amongst other activities;
- (iv) The circular, however, provides that no non-forest activity in the forest area covered under Section 2 of the FC Act would be permitted and carried out in any manner, unless an order has been passed by the competent authority of the State Government and placed in the public domain; and
- (v) In the present case, as a matter of fact, no order for the felling of trees was stated to have been placed in the public domain and hence, the grant of a Stage-I Forest Clearance in and of itself would not be amenable to the appellate jurisdiction of the Tribunal.

4 Based on the above premises, it has been urged that the Tribunal was not justified in dismissing the Original Application invoking the provisions of Section 14 of the NGT Act, particularly when the view which has been taken by the Tribunal in an earlier decision is that in the absence of an order of the State Government under the provisions of Section 2 of the FC Act, no appeal would be maintainable.

5 In support of the above submissions, it has also been urged that on 11 September 2021, an application was moved before the Divisional Forest

Officer⁵ under the Right to Information Act 2005⁶, seeking a specific disclosure of information on whether any permission for the felling of trees had been granted. The response of the DFO to the query on 11 October 2021 was that no order for the felling of trees has been issued. Yet, in the additional documents which have been filed in these proceedings on behalf of the respondents, an order dated 27 August 2021 of the DFO, permitting the felling of trees, has been placed on the record. In this backdrop, it has been urged that it is inconceivable as to how the DFO, if he had granted the permission for felling of trees on 27 August 2021, responded to the RTI query on 11 October 2021 by stating that no permission has been granted. It has been submitted that an extensive exercise of tree cutting has been carried out without placing the order dated 27 August 2021 in the public domain, despite the mandate of the circular dated 28 August 2015. Hence, it was urged that as a result, not only the appellant but the other parties have been precluded from moving the Tribunal in the exercise of its appellate jurisdiction.

- 6 On the other hand, Mr K K Venugopal, learned Attorney General for India appearing on behalf of the respondents has drawn attention of the Court to the following developments:

- (i) Both, the Stage-I Clearance which was issued on 23 December 2020 and the Stage-II clearance which was issued on 20 July 2021, have been placed on the website of the MoEF&CC;

5 “DFO”

6 “RTI Act”

- (ii) On 27 August 2021, the permission for logging of trees was granted by the DFO, which was annexed to the counter-affidavit filed in these proceedings by National Highway Authority of India;
- (iii) In the circumstances, the felling of trees has proceeded after the receipt of requisite clearances, namely, the Stage-I as well as Stage-II clearances and a specific permission for felling of trees, which was granted on 27 August 2021 as contemplated in the circular dated 28 August 2015;
- (iv) Of the twenty kilometres corridor on the segment of National Highway No 72A between Ganeshpur and Dehradun, an elevated highway over 12 kilometres will be provided with underpasses for wildlife. Hence, far from the project disturbing the wildlife in the area, the project as conceived would, in fact, ensure the safety of wildlife against accidents of the kind that took place in the past on the highway.

7 Hence, it has been urged by the Attorney General that a public project should not be injuncted once the requisite clearances have been obtained.

8 At the outset, while dealing with the rival submissions, it becomes necessary to conceptualize the nature of the jurisdiction of the Tribunal under Section 16 of the NGT Act. Section 16(e) stipulates that a person aggrieved by an order or decision made (after the commencement of the NGT Act) by the State Government or other authority under Section 2 of the FC Act, may

prefer an appeal to the Tribunal within a period of thirty days. Hence, on a plain reading of the provisions of Section 16(e), it is evident that the right to an appellate remedy arises upon an order or decision being made by the State Government or any other authority under the provisions of Section 2 of the FC Act. Apart from the provisions of Section 16(e), Section 2A of the FC Act provides a remedy of an appeal to the Tribunal to a person aggrieved by an order or decision of the State Government or other authority under Section 2. Section 2A of the FC Act is *pari materia* with Section 16(e) of the NGT Act. Section 2(ii) of the FC Act stipulates that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, *inter alia*, that “any forest land or any portion thereof may be used for any non-forest purpose”. The provisions of Section 2, therefore, contemplate the passing of an order by the State Government with the prior approval of the Central Government so as to, *inter alia*, permit the conversion or use of forest land for non-forest purpose. Therefore, unless an order has been passed or a decision is made, the appellate remedy before the Tribunal would not be available.

- 9 A circular dated 28 August 2015 was issued by the MoEF&CC to prescribe a simplified procedure for the grant of permissions for felling of trees standing on forest land to be diverted for the execution of linear projects. Paragraph 2 of the circular, insofar as it is material, is extracted below:

“2. Accordingly, in supersession of this Ministry’s, said letter/guidelines of even number dated 7th May 2015, I am directed, to say as below:

- (i) With a view to facilitate speedy execution of projects involving linear diversion of forest land such as laying of new roads, widening of existing highways, transmission lines, water supply lines, optic fiber cabling, railway lines etc., in-principle approval under the Forest (Conservation) Act 1980 (FC Act) issued by the Central government may be deemed as the working permission for tree cutting and commencement of work, if the required funds for compensatory afforestation, net present value (NPV), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies specified in the in-principle approval are realised from the user agency and where necessary, for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected;
- (ii) After the afore-mentioned compensatory levies specified in the in-principle approval are realised from the user agency and where necessary, for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected, the State government or a Senior Officer not below the Rank of a Divisional Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government shall pass an order for tree cutting and commencement of work of a linear project in forest land for a period of one year. The Central Government may extend the permission for one more year subject to submission of reasonable progress report from the State Government as regards to the steps taken to comply with the remaining conditions stipulated in the in-principle approval.

- (iii) No non-forest activity in the forest area that is covered under Section 2 of the FC Act would be permitted and carried on in any manner whatsoever unless an order specified in para (ii) above has been passed by the competent authority of that State government and is placed in the public domain by putting it on its website and all other requirements in accordance with law are complied with;
- (iv) For the purpose of Section 2A of the FC Act and Section 16 (e) of the National Green Tribunal Act, 2010 (NGT Act) the Order for tree cutting and commencement of work of linear project in forest land, specified in para (ii) above, shall be an order under Section 2 of the FC Act;
- (v) An appeal as per provisions of Section 2A of the FC Act and/or Section 16(e) of the NGT Act can be filed against any such order specified in para (ii) above for tree cutting and commencement of work of linear project in forest land;
- (vi) In the event of filing of such appeal, it would be open for the person aggrieved, to assail the order/clearance granted by the Central Government under Section 2 of the FC Act which forms an integral part and sole basis of the order specified in para (ii) above;
- (vii) The State Government and the project proponent shall take further action as has been stipulated by the Hon'ble National Green Tribunal in their judgment dated November 2012 in Appeal No 7/2012 to accord publicity and to ensure availability in public domain of in-principle approval under the FC Act accorded by the Central Government and the order specified in para (iii) above. State Government and the

project proponent shall also ensure strict compliance of other direction(s) contained in the said----;

(viii) The State Governments, in such cases shall seek and obtain from the Central Government final/formal approval under the FC Act for diversion of such forest land at the earliest, and in any case not later than five years from the date of grant of the in-principle approval.

- 10 Clause (i) of paragraph 2 of the above circular indicates that in order to facilitate the expeditious execution of projects involving linear diversion of forest land, including laying of new roads, an in-principle approval of the Central Government under the FC Act would be deemed as working permission for tree cutting and commencement of work subject to certain conditions. These conditions include: (i) the provision of fund for compensatory afforestation; (ii) net present value; (iii) a wildlife conservation plan; (iv) plantation of species and plants; (v) all such other compensatory levies specified in the in-principle approval being realized; and (vi) transfer and mutation of non-forest land in favour of the State Forest Department. The subsequent stipulation in the circular, however, indicates that no non-forest activity in a forest area (which is covered under Section 2 of the FC Act) would be “permitted and carried out” unless an order has been passed by the competent authority of the State Government, and is placed in the public domain by putting it on its website.
- 11 The grievance of the appellant before this Court is that the permission for tree felling dated 27 August 2021 was not placed in the public domain, as

mandated by the circular dated 28 August 2015. On the contrary, when an application for disclosure of information was moved under the RTI Act to the DFO on 11 September 2021, the response on 11 October 2021 was that no order had been passed for permitting the felling of trees. Yet the same officer, namely, the DFO Dehradun, had passed an order on 27 August 2021 granting the permission for the felling of trees, which was annexed to an application for additional documents filed by the respondents for the first time in this Court. The DFO has misled the appellants by furnishing incorrect information in response to the RTI query. The permission for felling trees has to be placed in the public domain, which again, according to the appellant, was not done. The purpose of placing the permission in the public domain is to ensure that persons aggrieved would have a right to challenge it. There is no rebuttal to this grievance of the appellant. A veil of secrecy does not portend well for environmental clearances, since it takes away the right from individuals to challenge them using legal remedies. In the meantime, tree felling proceeded apace. This lack of transparency, leading to a lack of accountability, is in stark contrast to the “environmental rule of law”, which is crucial for good governance. In **H.P. Bus-Stand Management & Development Authority vs Central Empowered Committee**⁷, a three Judge Bench of this Court of which one of us was a part (DY Chandrachud, J) described the “environmental rule of law” in the following terms:

“49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that

are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection...**Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects.** The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.”

(emphasis supplied)

- 12 The fact of the matter as it stands today is that the permission granted by the DFO for felling of trees has been placed on record in the form of a letter

dated 27 August 2021, as noticed above. In terms of the provisions contained in the circular dated 28 August 2021, the order for tree cutting and commencement of work of linear projects is to be treated as an order under Section 2 of the FC Act. Evidently, therefore, the order dated 27 August 2021 is amenable to the remedy of an appeal, which would now lie before the Tribunal under Section 16(e) of the NGT Act. That an appeal lies before the Tribunal is clarified by the terms of the circular itself. In view of the availability of an appellate remedy, the appellant has stated that it would be willing to pursue the remedy of an appeal which lies before the Tribunal in terms of the provisions which have been noticed above. However, it has been urged that until the appeal is disposed of by the Tribunal, a stay of further activities of tree felling ought to be granted.

- 13 The request for the grant of an order of stay by this Court restraining the felling of trees has been opposed on behalf of the respondent. Mr K K Venugopal, learned Attorney General urged that any order of injunction at this stage would cause serious obstruction in the implementation of the project and it should not be granted, particularly when requisite permissions have been obtained and necessary safeguards are in place to protect the wildlife.
- 14 Since the order dated 27 August 2021 is amenable to an appellate remedy under Section 16(e) of the NGT Act, as well as under the provisions of Section 2A of the FC Act, when read in the context of circular dated 28 August 2015, it would be appropriate to grant liberty to the appellant to do so.

- 15 While the remedy of filing an appeal to the appellant has become available as a result of the supervening developments which have taken place during the pendency of the present proceedings, namely the order dated 27 August 2021 being placed on the record of this Court, we must express our view in regard to the reasons which weighed with the Tribunal in rejecting the original application. The Tribunal was moved by the appellant by invoking the jurisdiction under Section 14, under which it has jurisdiction to entertain civil cases where a substantial question relating to the environment, including enforcement of any legal right relating to the environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. The enactments which are specified in Schedule I include the FC Act. Thus, where a substantial question relating to the environment is raised involving the implementation of the FC Act, even the original jurisdiction of the Tribunal under Section 14 could have been invoked.
- 16 The Tribunal was not justified in rejecting the application filed by the appellants under Section 14 by observing that the appellant was attempting to circumvent the remedy of an appeal under Section 16. The Tribunal's decision in the case of **Vimal Bhai vs Union of India**⁸ has placed the matter beyond doubt, by noting that "*[t]he cause of action for filing an Appeal would commence only from the date when such publication is made in the newspapers, as well as from the date when the forest clearance and permission to use the Forest land for non-forest purpose is displayed in the*

website of the concerned State Government or the MoEF, as the case may be". However, for the sake of clarity, we have set the legal position at rest in the discussion in the earlier part of this judgment.

- 17 The Tribunal rejected the application filed by the appellants also on the ground that as far as linear projects are concerned, a simplified procedure is applicable and a Stage-I approval itself is considered as working permission for the cutting of trees. Hence, the Tribunal held that if the approval has been validly granted, this would not be treated as a violation of law. At that stage before the Tribunal, the order for permitting the felling of trees, which was passed on 27 August 2021 by the DFO, had not been placed on the record nor was it in the public domain. Hence, consistent with the provisions of the law as they stand, we are of the view that the Tribunal was in error in rejecting the challenge to the Stage-I clearance by the invocation of the remedy under Section 14.
- 18 For the above reason, we allow the appeals and set aside the impugned judgment and order of the Tribunal dated 6 October 2021, and restore Original Application No 240 of 2021 to the file of the Tribunal for a decision afresh. In addition, we also grant liberty to the appellant to challenge the permission which has been granted for the felling of trees by the DFO on 27 August 2021, in terms of the provisions of Section 16(e) of the NGT Act read with the provisions of Section 2A of the FC Act (together with the contents of the circular dated 28 August 2015).

- 19 As regards the question of stay, we are inclined to grant some breathing room to the appellant to move the Tribunal, so as to allow them to urge all the submissions which are available to them to challenge the orders for the felling of trees. We are at this stage desisting from making any observation on the merits, so as not to preclude the rights and contentions of the parties. However, in order to allow the appellant to file an appeal before the Tribunal, in terms of the liberty granted above, there shall be an interim order restraining the further felling of trees, which shall remain in operation until 26 November 2021. However, we specifically direct that the appellant shall, in order to place the nature of their objections beyond doubt, file brief written submissions before the Tribunal cataloguing their grounds of challenge. The Tribunal is directed to pass a reasoned order on the merits, with reference to each of the grounds of challenge which is raised before it by the appellant in the course of their written submissions. In view of the fact that the order dated 27 August 2021 has been placed on the record only during the course of the proceedings in this Court, we also direct that if the appeal is filed within a period of one week, the Tribunal shall entertain the appeal on merits and shall not reject it on the ground of limitation. The appeal shall be listed before the Tribunal on the next working day after the filing of the appeal by the appellant. The appellant would be at liberty to move the Tribunal for interim orders.

20 The appeals are disposed of in the above terms.

21 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

.....J.
[Vikram Nath]

New Delhi;
November 16, 2021
CKB