

Item No. 4

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 06/2020(WZ)  
I.A. No. 11/2020 & I.A. No. 61/2021

Shankarlal Gopalbhai Patel

.....Applicant

Versus

Union of India & Ors.

....Respondent(s)

Date of hearing: 20.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Sanjay Upadhyay, Advocate  
Respondent(s) : Ms. Manasi Joshi, Advocate for R-1/MoEF&CC  
Mr. Parth H. Bhatt, Advocate for R-2, 3, 5 and 6  
Ms. Priyanka Vyas along-with Mr. Yashaswi Kant,  
Advocates for R-7/PP  
Mr. Saurabh Kulkarni, Advocate for R-8/PP  
Ms. Vanita Bhargava, Advocate for R-11/PP

**ORDER**

1. This application has been moved under Section 14 & 15 read with Section 18(1) of the National Green Tribunal Act, 2010 with the prayers that wind mills be not allowed in the areas of Sangara, Village Nakhtarana, Kutch, Gujarat; the Respondents/Government Authorities be directed to issue closer of operation to Respondent No. 7-M/s. Green Infra Wind Energy Ltd. and cancel the leases granted in the above-mentioned area and impose compensation upon Respondent No. 7 for the damages caused to that area, in accordance with law. Further, it is prayed that the leases granted to the other Private Respondents should also be directed to be cancelled; an Expert Committee be appointed for identification of forest area in pursuance of the order dated 12.12.1996 in

*T. N. Godavarman v. Union of India W.P. (C) No. 202 of 1995* and complete the task of identifying forests especially in Kutch District.

2. In the body of the application, it is submitted that the Respondent No. 7-M/s. Green Infra Wind Energy Ltd. is indulging in rampant illegal felling of trees for construction of wind farms in Sangnara Village, Kutch Region, State of Gujarat. The Respondent No. 7 had proposed to build more than 40 windmills though still there is no identification done of forest area in the State of Gujarat. For many months, indiscriminate felling of trees has been done around the area surrounding the wind farms. Construction of unauthorized approach roads is resulting in destruction of water sources, which is extremely harmful for the environment and local bio-diversity. These projects have completely annihilated the sources of fresh water in the region, which is used for drinking purpose as well as for agricultural purposes, in Sangnara and 4 surrounding Villages. The Respondent No. 7 was granted lease of 12 ha. of land by the Respondent No. 2/State of Gujarat on the outskirts of Sangnara Village for erection of wind farms. Similarly, 7 more wind energy companies namely, Adani Wind Energy (MP) Pvt. Ltd./Respondent No. 8, Shree Torrent Power Ltd./Respondent No. 9, Vish Infrastructure LLP/Respondent No. 13, Bajrang Wind Park (Kutch) Pvt. Ltd. /Respondent No. 12, Suzlon Gujarat Windpark Ltd. /Respondent No. 11, Srijan Energy Systems Pvt. Ltd. /Respondent No. 10 and Sarjan Pvt. Ltd./Respondent No. 14 have either started the process of establishing the wind farms or their projects are in pipeline. There are more than 30 windmills that are in the process of getting established in the said Village without carrying capacity having been conducted.

3. On 25.07.2019, the Sarpanch of Village Sangnara had written a letter to the Deputy Collector, Nakhtrana, informing him about the

decision taken by the Gram Sabha, where-in it was decided that the Village Sangnara was not in favour of erection of any more wind mills. The leased area being shown to be waste land in revenue record was in fact 'deemed forest' according to the dictionary meaning. A Panchnama was conducted at windmill points of Respondent No. 7 on 22.08.2019, where-in it is stated that there were 10 windmill points at the seam of the Village Sangnara. At point 15, "flow of water" was found and the sound of peacock was heard with number of trees at this point counted to be 43 and the total numbers of trees were recorded to be 53. Point no. 15 was situated near Momay Mata Deri and had grazing ground with Government fencing. The number of trees felled by Respondent No. 7- M/s. Green Infra at point 18 were 50 and at point 17, the number was 111. The Respondent No. 2/State of Gujarat had to determine a criteria as to what would constitute a 'deemed forest' i.e. determine the number of trees that would have to be in 1 Ha. of land for the land to be designated as a 'deemed Forest'. In *T.N. Godavarman Case (Supra)*, it was directed that the felling of trees shall only be in accordance with the working plans/schemes approved by the MoEF&CC. Any 'deemed forest' ought to be saved especially in the desert eco-system. The upcoming wind energy farms, which are being set up by the Respondent No. 7, are related to 2 MW capacity, which would generate huge amount of noise pollution and would also be contrary to the Noise Pollution Rules, 2000 as well as the Guidelines of the Respondent No. 1/MoEF&CC. Despite the wind power being termed as a clean energy, its environmental implications are extremely grave. The projects use various types of fluid for the smooth operation of the Wind Turbine Generator (WTG) such as (a) Generator Cooling fluid which is used as coolant, which is a mixture of glycol and water, similar to what is used in automobile radiators, (b) lubricating oil, better known as synthetic oil, which is used in the gear

box, (c) Hydraulic oil for operating the blade pitch system, (d) mineral oil/transformer oil. These oils would fall in the category of hazardous waste. Despite that, no initiative has been taken on the part of the Respondent No. 1, MoEF&CC or CPCB and SPCB to regulate such operations by ensuring that the Wind Farm Operators operate only after seeking necessary permission. Approximately 432 trees were felled by the Respondent No. 7 for which it was liable for prosecution under the Saurashtra Felling of Trees Act, 1951. The Respondent No. 7 has been imposed a fine of Rs. 3,04,950/- on 30.08.2019 for felling of trees without permission from Respondent No. 6/Mamlatdar. The Respondent No. 7 is constructing road on grazing land, affecting adversely the livelihood of the Villagers, who are dependent on grazing land for their pastoral activity. With these facts, above prayers have been made.

4. When the matter was first heard on 29.01.2020, a direction was issued to the Registry to issue notice to the Respondents. Pursuant to which a service affidavit has been filed, as per which the service upon all the Respondents is sufficient.

5. From the side of **Respondent No. 7/Green Infra Wind Energy Ltd.**, learned Counsel Ms. Priyanka Vyas along-with Mr. Yashaswi Kant have appeared. They have filed an affidavit dated 13.04.2021, where-in it is submitted that the Answering Respondent had applied for license to be granted for 18 locations in Village Sanganara after which he was granted license for 12 locations but he has finalized only 10 locations subsequently. The learned Counsels for the Respondent No. 7 who are present before us, say that as per the affidavit filed from the side of Respondent No. 5/District Magistrate, Bhuj, Gujarat & Respondent No. 6/Office of Mamlatdar, Nakhatrana, Gujarat dated 04.11.2022, all the leases granted to the Answering Respondent were revoked and therefore,

as on date, his name should be deleted from the array of the parties. Therefore, we are not referring to the remaining contents of his reply affidavit dated 13.04.2021.

6. From the side of Respondent No. 11/Project Proponent (PP), learned Counsel Ms. Vanita Bhargava has appeared. A reply affidavit dated 04.10.2021 has been filed, where-in it is submitted that the Answering Respondent was sanctioned 4 ha. of land for 20 years period vide order dated 26.10.2015, which was open and a barren waste land and not a part of any of the forest or Gauchar land. Further, 7 hectares of land was allotted to the Answering Respondent for the purpose of setting up of Wind Farm Projects for Power Evacuation Purpose vide order dated 01.08.2015. On 11 hectares of land, 6 windmills have been erected and foundation for two windmills have been laid in the year 2017 itself. The Gujarat Energy Development Agency (GEDA) had issued the Commissioning Certificates in the year 2017 to 6 windmills, the details of which have been given in tabular form in para 3 of the affidavit. The work could not commence at 3 locations within a period of two years from the allotment of the land, therefore, the same was surrendered. The Collector revoked grant of licenses at these 3 locations subject to payment of 3.20 lakhs, which has been paid by it. Revised Order dated 15.07.2021 was issued directing completion of work at the two remaining locations in a time bound manner. Violent protest had broken out because of which work could not proceed at two locations. But the learned Counsel who is present today states that at these two locations subsequently, the windmills have been set up and they have been made operational.

7. Further, it is submitted by the learned Counsel for the Respondent No. 11 that the Original Applicant is seeking a blanket ban on the setting up of wind farms as well as cancellation of the leases without pointing

out as to how they are detrimental to the environment. Against the Answering Respondent, there is no finding that any trees were felled by it.

8. Pursuant to the order of this Tribunal, an inspection was conducted by the Principal Chief Conservator of Forest, who in its report has categorically stated that there is no notified forest area in Sangnara Village and in the said report, it has been verified that the Answering Respondent has been validly allotted 4 hectares land for wind farm projects by the Collector, Bhuj, Kutch vide order dated 26.10.2017 and 7 hectares of land vide order dated 01.08.2015, pursuant to the policy of allotment of land on lease for establishment and setting up wind farm project, declared vide Government Circular dated 11.06.2004. The land is a barren and unused Government waste land and has hilly terrain, which cannot be used for agricultural or any other purpose.

9. Further, it is made clear by the Dy. Conservator of Forest, Kutch, West Forest Division, Bhuj vide another letter dated 24.04.2015 that 51 hectares of land falling in the subject Survey No. 84, Paiki of Village Sangnara was allotted under land bank to the Forest Department vide order dated 07.06.2000. After that, plantation has been done on 35 hectares of land and the permission to set up windmill was given in the remaining 16 hectares of land adjacent to the plantation land. The Answering Respondent had no clause requiring it to take prior permission for felling of trees in the sanctioned orders. The Answering Respondent had sought permission to fell 188 trees, which was granted by the Mamlatdar on condition that twice the number of trees would be planted by it. The Answering Respondent had already erected the windmills at 7 locations and foundation work has been completed at one location. The learned Counsel at this stage states that she has made thematic information about the current position and as per current position the

windmills at only 7 locations are functional and at one location, only foundation work is completed. There is no cogent evidence extended from the side of the Applicants to the effect that trees were felled by the Answering Respondent without any permission. The Principal Chief Conservator of Forest (PCCF) stated that subject land has significant vegetation with good natural tree cover. It is opined by him that 4 hectares of subject land does not fall in forest area and 7 hectares of subject land has no plantation. Reliance is also placed on Section 2(c) of the Saurashtra Felling of Trees (Infliction & Punishment) Act, 1951, which provides that 'trees' shall not include shrubs, bushes and such other varieties as may be notified by Government by Notification in the Official Gazette. The wind farms which are set up by the Answering Respondent did not involve any clearing of forest or cutting/chopping/felling of trees. As per the guidelines issued by the MoEF&CC, WTG's should be 300 meters away from Villages. The distance of all the 7 windmills of the Answering Respondent and one windmill which is still under erection is far away than 300 meters from Sanganara Village as the distance is given in tabular form in para no. 10 of the reply affidavit of Respondent No. 11. The Answering Respondent has set up bird guards and reflectors on the electric poles and lines to avoid any accidental death of the birds. The Applicant's statement on 05.07.2020 to the effect that he discovered the carcasses of a number of peacocks that died due to the power line of wind turbine generators, is denied because Sanganara Village is not the natural habitat of peacocks and the documentary evidence does not establish that any such death of peacock happened due to the windmill of the Answering Respondent. The Hon'ble Supreme Court in Writ Petition (C) No. 838/2019 directed that overhead transmission lines be laid underground on priority basis in Great Indian Bustard (GIB) area, where-ever feasible, within a period of one year from

the date of the order. Where this is not found to be feasible, the matter is to be referred to a Committee. It is clarified that the area allotted to the Answering Respondent is not a Great Indian Bustard area. The Government of India has set an ambitious target of achieving 175 GW power capacity from renewable energy resources by the year 2022 and out of this, 60 GW is to come from wind power because of which the Government is promoting wind power projects in entire country through private sector investment by providing various fiscal and financial incentives. Therefore, it is submitted that the Applicants have no ground to get the windmills set up by the Answering Respondent shut down or closed or their licenses to be cancelled.

10. From the side of **Respondent No. 8/Adani Wind Energy (MP) Pvt. Ltd.**, learned Counsel Mr. Saurabh Kulkarni has appeared. He has filed an affidavit dated 22.06.2020, where-in it is submitted that he has been impleaded prematurity because his project is yet to be started.

11. From the side of Respondent No. 2/State of Gujarat, Respondent No. 3/Forest & Environment Department, Government of Gujarat, Respondent No. 5/District Magistrate, Bhuj, Gujarat & Respondent No. 6/Office of Mamalatdar, Nakhatrana, Gujarat, learned Counsel Mr. Parth H. Bhatt has appeared and states that he has filed reply affidavit only on behalf of **Respondent Nos. 2 & 3**, where-in it is submitted that the area of Sanganara Village, Taluka Nakhatrana, District- Kutch has been analyzed using the Decision Support System (DSS) of Forest Survey of India and out of about 1347 ha. of total area, 7 different patches totaling to only 18 ha. comprise of crown density between 0.4 to 0.6 Parameters, which does not satisfy norm to be classified as forest by dictionary meaning in this matter. Therefore the area where the permission has been granted for setting up the windmills, is not covered in the definition



of 'deemed forest'. Further, it is submitted in the affidavit that on a complaint made by local people of Sanganara Village regarding illegal felling of trees by Green Infra Wind Energy Ltd.(Respondent No. 7), cognizance was taken and a fine of Rs. 3,04,950/- has been imposed for felling of 432 trees vide order dated 30.08.2019 and further, it is directed that double the number of trees shall be planted by it and in another case, local Mamlatdar, Nakhtrana imposed fine of Rs. 47,500 for cutting of 95 trees and further has directed to plant double of that number of trees vide order dated 23.07.2020.

12. From the side of Respondent No. 5/District Magistrate, Bhuj, Gujarat & Respondent No. 6/Office of Mamlatdar, Nakhtrana, Gujarat, following stand has been taken:-

*"2. I say and submit that there were in all 40 permissions granted to four companies for the purpose of setting up windmills, details of which are as under:*

- |   |   |    |
|---|---|----|
| 1) Suzlon Gujarat Wind Park Ltd., Rajkot    | - | 11 |
| 2) Green Infra Wind Energy Ltd., New Delhi  | - | 12 |
| 3) Torrent Power Ltd., Ahmedabad            | - | 10 |
| 4) Adani Green Energy (MP) Ltd., Ahmedabad- |   | 07 |

*3. I say that out of the aforesaid 40 permissions, 32 number of permissions no activity for setting up Windmill has commenced, moreover 25 have already been revoked, as the concerned company was unable to commence its operations within the prescribed time limit. In other words, since no activity undertaken by the company within the prescribed time limit, the said permissions came to be revoked. I say and submit that for 7 locations stay has been granted by the Ld. Collector Kutch-Bhuj on the Notice of revocation. A tabular chart indicating the present status of said 40 permissions accorded to four companies is reproduced herein below for ready reference of the Hon'ble Tribunal-*

<i>Sr. No.</i>	<i>Name of the Company</i>	<i>Number of permissions</i>	<i>Current status</i>
1.	<i>Suzlon Gujarat Wind Park Ltd., Rajkot</i>	<i>11 locations</i>	<i>8 locations Windmill Installed 3 locations Permission revoked</i>
2.	<i>Green Infra Wind Energy Ltd., New Delhi</i>	<i>12 locations</i>	<i>All permissions revoked</i>
3.	<i>Torrent Power Ltd., Ahmedabad</i>	<i>10 locations</i>	<i>All permissions revoked</i>
4.	<i>Adani Green Energy (MP) Ltd., Ahmedabad</i>	<i>7 locations</i>	<i>Stay granted by the collector, Kutch-Bhuj vide order dated 16.05.2022 on the Notice of revocation dated 24.03.2022</i>

13. From the side of **Respondent No. 1/MoEF&CC**, learned Counsel Ms. Manasi Joshi has appeared and states that the affidavit dated 06.01.2021 filed earlier does not relate the area in question i.e. Sananara Village, Taluka Nakhatrana, District- Kutch and also it is admitted by her that no current position has been placed on record from their side.

14. In view of the pleadings, we come to the conclusion that as on date only 7 windmills are found to have been completed and operationalized by Respondent No. 11/Suzlon Gujarat Wind Park Ltd. and one is in the process of being made functional as the work is said to be going on.

15. We also find from the affidavit of the Principal Chief Conservator of Forest that the said locations where the windmills are made operational and one is in the process of being completed, does not fall in the 'deemed forest' area. The learned Counsel for the Applicants has also set up one of the prayers that the identification of 'deemed forest' be also ordered to be done.

16. In this regard, we find that in para no. 6 of the affidavit of Respondent No. 2/State of Gujarat, Respondent No. 3/Forest & Environment Department, Government of Gujarat that the Government of Gujarat vide letter dated 24.10.2014 of Secretary, Forest and Environment Department has also proposed the parameters for classification of an area as Forest by dictionary meaning to the Government of India, which has been quoted in the said paragraph and that the Government of Gujarat Notification dated 25.11.2011 has been issued, where-in a reference was made of Hon'ble Supreme Court's Judgment dated 06.07.2011 in Interlocutory Application Nos. 1868, 2019, 2225 to 2227, 2380, 2568 and 2937 in Writ Petition No. 202/1995 (*Supra*) and vide this Notification, the Committee has been constituted for proper implementation of Guidelines and Regulations.

17. The learned Counsel for the Respondent Nos. 2 & 3 states that the work of identification of the 'deemed forest' is going on, which is evident from the constitution of the Committee, which has identified the Sanganara Village not falling in the 'deemed forest' category as is stated in the paragraph 7 of the said affidavit but regarding other areas, work is still going on. The learned Counsel for the Applicant says that significant progress has been made in this regard to identify the 'deemed forest'. Though the finalization of the 'deemed forest' in the Village Sanganara is being disputed by the learned Counsel for the Applicant. We expect from the State of Gujarat that the work of identification of 'deemed forest', which has been directed by the Hon'ble Supreme Court, shall be completed at the earliest.

18. After having made above analysis and having perused the evidences on record as well as the submissions made by the parties, we are of the view that the 7 windmills which have been set up by the

Respondent No. 11 and one which is in the process of being completed, are not falling in the forest area as per evidence laid before us today and there is no credible evidence to the effect that any of the birds/peacock have got killed from the windmills set up by the Respondent No. 11 because the photographs which have been placed before us by the learned Counsel for the Applicant, cannot establish that the said accident happened from the windmill set up by the Respondent No. 11. Other windmills which were proposed, their leases have already been cancelled.

19. We also find that this project is for the public interest as electricity crisis is there all over India and efforts are being made by the Government of India also in order to enhance the electricity production through green energy, therefore, this project would be treated to be of public interest. If some loss to the environment is happening on account of the setting up of these windmills, that would be treated to be far less than the benefit it would be rendering.

20. Hence, we are of the view that no grievance appears to be surviving to the Applicant at this stage and therefore, this application deserves to be disposed of without any specific direction. If any grievance is left to the Applicant, he may approach us separately.

21. All connected applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 20, 2023  
Original Application No. 06/2020(WZ)  
I.A. No. 11/2020 & I.A. No. 61/2021  
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