

Tapas Guha & Ors.

v.

Union of India & Ors.

(Civil Appeal Nos. 4603-4604 of 2024)

06 May 2024

**[Dr Dhananjaya Y Chandrachud,* CJI, J B Pardiwala and
Manoj Misra, JJ.]**

Issue for Consideration

The Appellants in an Original Application before the National Green Tribunal (NGT) contended that there was widespread cutting of shade trees, uprooting of tea bushes and eviction of tea estate workers in the Doloo Tea Estate, the site identified for the Greenfield Airport Project in Assam, without obtaining environmental clearance. It was also contended that this was in violation of the provisions of Environmental Impact Assessment Notification, 2006, which necessitates prior Environmental Clearance and public consultation for Category-A projects in its Schedule. Whether the order of the National Green Tribunal (NGT) dismissing the Original Application holding that mere inclusion of a clause under the head ‘Environment Clearances’ in the form of said Notification does not deem the same to be mandatory for purposes of the EIA assessment study is legally sustainable?

Headnotes

Evidentiary value of the statements recorded on oath of witnesses for preparing the Report of the Secretary of the District Legal Services Authority (DLSA) – Statements show use of 200 to 250 JCBs ‘day and night’ for three days in May 2022 and prohibition in movement of inhabitants during that time – Report recorded that 89 shade trees found to be cut on inspection and a statement of the Circle Officer that 41,95,909 tea bushes have been uprooted – Considered:

Held: The Court should keep in mind that the statements of the witnesses, though recorded on an oath, have not been tested on the anvil of cross-examination – Yet the statement of the Circle Officer that 41,95,909 tea bushes have been uprooted, prima facie corroborates it, at this stage. [Paras 10-12]

The Affidavit of State Government placed reliance on the communication of the Member Secretary of the SEAC in Assam

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Digital Supreme Court Reports

– That this was a case of routine uprooting of tea bushes and shade trees to improve production of tea – Disbelieved:

Held: The argument of the Solicitor General that the possession of the site was handed over only in June 2022 and hence the destruction of the vegetation in May 2022 was not by the State authorities but likely by the inhabitants is inconceivable – On 11 May 2022, orders were issued by the District Magistrate under Section 144 CrPC – This was a prelude to the organized activities which took place in the month of May 2022, as recorded in the statements appended to the report of the DLSA – An organized operation involving over 200-250 JCBs at the behest of the tea garden workers is implausible – The clearance was evidently not a part of the regular maintenance of the tea estate but to facilitate the proposed new airport. [Paras 13-14]

National Green Tribunal (NGT) – Creation of – Purpose – Listed out:

Held: The NGT is an expert body established by a Central Statute viz., The National Green Tribunal Act, 2010, to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. [Paras 16-17]

National Green Tribunal (NGT) – Perfunctory dismissal of case – Criticized:

Held: The Tribunal ought to have verified the authenticity of the grievance – Callous approach towards adjudication undermines the integrity of the judicial process and also compromises the very purpose for which the NGT was established – Such callousness also reflects a lack of due diligence and disregard for the gravity of the environmental concerns raised by the appellants setting a concerning precedent which erodes public trust in the efficacy of environmental governance mechanisms. [Paras 16-17]

Environment – Environmental Impact Assessment Notification, 2006 – Para 2 of the Notification – Examined in the light of the facts:

Held: Paragraph 2 of the Notification makes it clear that before any construction or preparation of land by the project management except for securing the land, shall require prior environmental

Tapas Guha & Ors. v. Union of India & Ors.

clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule – Construction of airports is item 7(a) of the A Schedule to the Notification dated 14 September 2006 – Extensive activities were carried out at the site without obtaining environmental clearance and is in breach of paragraph 2 of the notification. [Paras 7 and 15]

The need for Environmental Regulations and Environmental Clearance – Explained:

Held: Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities – The infrastructure development must proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity – The requirement for Environmental Clearance prevents unchecked exploitation of natural resources and helps uphold the principles of sustainable development – The decision on whether an airport is situated at a particular place is a matter of policy, but when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, it has to be strictly complied with. [Paras 20-21]

List of Acts

National Green tribunal Act, 2010; EIA Notification S.O. 1533(E) Dated 14.09.2006.

List of Keywords

Environmental clearance; Felling trees; Tea estate; Greenfield airport.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4603-4604 of 2024

From the Judgment and Order dated 25.01.2024 of the National Green Tribunal, Eastern Zone in Original Application No. 15 of 2024 and I.A. No. 8/2024/EZ

Digital Supreme Court Reports**Appearances for Parties**

Prashant Bhushan, Ms. Ria Yadav, Advs. for the Appellants.

Tushar Mehta, Solicitor General, Nalin Kohli, Sr. A.A.G., Devajit Saikia, Advocate General, Gopal Sankaranarayanan, Sr. Adv., Raghav Shankar, Karan Lahiri, Abhikalp Pratap Singh, Ms. Aagam Kaur, Ms. Yamini Singh, Kartikey, Ravi Shankar Pandey, Aditya Dixit, Shuvodeep Roy, Saurabh Tripathi, Sumit Kumar, Ms. Rukmini Barua, Ms. Padmini Barua, Debadutta Kanungo, Ms. Alice Raj, Rahul Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Dr Dhananjaya Y Chandrachud, CJI

1. Application for intervention is allowed.
2. These Appeals arise from an order dated 25 January 2024 of the Eastern Zone Bench of the National Green Tribunal.
3. The Ministry of Civil Aviation of the Union Government decided to build a commercial Airport at Silchar in Assam since the existing defence airport is not suitable for domestic civilian operations.
4. Three tea estates, namely, (i) Doloo; (ii) Khoreel; and (iii) Silcoorie were identified by the Government of Assam for the sites of the airport. The Airport Authority of India¹ conducted a feasibility study and chose Doloo as the site for a new Greenfield Airport on land admeasuring approximately 335 hectares. AAI made a request for additional land, following which an adjacent area in the same tea estate admeasuring 69 hectares was identified. About 173 dwelling units are situated on the additional area of 69 hectares. The total land area thus admeasures 404 hectares.
5. The appellants moved the National Green Tribunal with the grievance that though in terms of the Notification dated 14 September 2006 of the Ministry of Environment and Forests, an Environmental Clearance is required for the construction of an airport, the site has been cleared of shade trees and tea bushes

¹ "AAI"

Tapas Guha & Ors. v. Union of India & Ors.

despite the absence of such a clearance. The Appellant raised concerns regarding:

- (i) extensive eviction leading to uprooting of 41,95,909 tea bushes, over 10,000 shade trees, and land acquisition in two divisions of the Tea Estate;
 - (ii) ongoing site clearance of 325 hectares with massive uprooting and felling;
 - (iii) imposition of Section 144 CrPC during eviction, utilizing 1050 bulldozers and excavators to clear 2500 bighas for the airport;
 - (iv) the airport project being Category-A, with site clearance already underway without prior Environmental Clearance, violating EIA Notification, 2006. Additionally, the proposed Airport falls under Category 'A', necessitating scoping, public consultation as per EIA Notification, 2006; however, post-eviction, no "public" remains for consultation in affected areas.
6. The National Green Tribunal², by its order dated 25 January 2024, dismissed the OA. The NGT held that an Environmental Impact Assessment Report was awaited and the Environmental Clearance for the airport has not been granted. Yet it held that the plea of the appellants for an order of restraint on the grant of site clearances and in principle approvals was without merit at that stage. The NGT also observed that the mere inclusion of a clause under the head 'Environment Clearances' in the form of said Notification does not deem the same to be mandatory for purposes of the EIA assessment study.
7. The Appeals were taken up by this Court on 22 April 2024. The Petitioners have been represented by Mr Prashant Bhushan. Mr Tushar Mehta, Solicitor General appears for the respondents. Mr Gopal Sankaranarayan, senior counsel has appeared for the intervenors. It is an admitted position that an Environmental Clearance is required for the project of setting up the airport and no such clearance has been issued. Paragraph 2 of the Notification dated 14 September 2006 is in the following terms:

"2. Requirements of prior Environmental Clearance (EC): The following projects or activities shall require

Digital Supreme Court Reports

prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

The construction of airports in item 7(a) of the Schedule.

8. By the order of this Court dated 22 April 2024, the Secretary of the District Legal Services Authority, Cachar was directed to visit the site and submit a report to this Court on:
 - (i) Whether any felling of shade trees had taken place;
 - (ii) Whether any eviction at the site had taken place; and
 - (iii) The nature of the activities which have been carried out at the site.
9. At this stage, it would be material to note that contrary to the assertions of the appellants, on 22 April 2024, an affidavit was filed by the Joint Secretary to the Government of Assam in the General Administration Department stating that:

Tapas Guha & Ors. v. Union of India & Ors.

- (i) there has been no felling of shade trees at the site in question;
- (ii) no eviction of individuals or households had taken place from the land under consideration since the tract was not inhabited; and
- (iii) removal of tea bushes “occurs routinely even as part of regular tea cultivation” for which no environmental clearance is required.

Annexed to the affidavit is a letter dated 22 April 2024 (issued on the same date as the affidavit) by the Member Secretary of the State Environment Impact Assessment Authority, Assam to the Member Secretary, SEIAA, Assam in the following terms :

“Inviting reference to the subject cited above, this is to inform you that the matter has been referred by the Special Chief Secretary (Environment & Forest), Govt. of Assam, inviting comments / opinion as to the requirement of prior Environmental Clearance (EC) for clearance of Tea bushes, uprooting /removal of shade / cover crops in respect of Doloo Tea Estate. On careful perusal of the averments made in the instant petition, it is to be stated herein that cultivation of Tea in Assam is falling within the category of **Special Cultivation** for which the Govt. of Assam / District Commissioner allot land within the ambit of Rules under the Assam Land and Revenue Regulation, 1886.

It is pertinent to point out here that in a tea garden, tea bushes and shade trees are removed and uprooted in regular intervals once the trees grow old and there is loss of production of tea. Generally, **Siris** tree species (***Albizia lebbbeck/albizzia procera***) which are fast growing indigenous species of trees in Assam, are planted as shade trees/cover crops and primarily used to meet the requirement of fuel wood for workers in the tea gardens.

As per the Assam Tea Garden Act / Policy, clearing of tea bushes and shade trees are permissible. Moreover, tea bushes are considered as agricultural crops (**Special Cultivation**) and uprooting activity of such tea bushes and shade trees do not fall under any of the project / activity to the Schedule of the **EIA Notification S.O. 1533(E) Dated 14.09.2006**.

Digital Supreme Court Reports

This is submitted for favour of your kind perusal and needful action.”

10. In pursuance of the directions of this Court, Ms Salma Sultana, a judge in the district judiciary in the State of Assam, posted as Secretary to the District Legal Services Authority Kachar submitted a report dated 27 April 2024. The report, *inter alia*, indicates that 89 shade trees were found to be cut. Ms Sultana has also stated that “the entire area is mostly a dense forest, therefore, other possible cut down shade trees were not visible due to dense forest and thick bushes”. The report also indicates that according to the statement of the Circle Officer, Shri Arunjyoti Das, 41,95,909 tea bushes have been uprooted.
11. The Secretary of the District Legal Services Authority recorded statements on oath of witnesses who were tea garden workers, the Garden Manager, Circle Officer and Patwari among other persons. Several witnesses who were examined by the officer appointed by this Court have stated that:
 - (i) tea bushes were uprooted from Doloo Tea Estate Airport site with the help of JCBs in the month of May 2022;
 - (ii) the entire operation took place over three days and involved the use of about 200 to 250 JCBs ‘day and night’;
 - (iii) shade trees were cut and uprooted; and
 - (iv) during the operation the inhabitants were prevented from moving out of their homes.
12. The Court must take cognizance of the fact that the statements of these witnesses have not been tested on the anvil of cross-examination. At the same time, at this stage, it would *prima facie* appear that these statements would match with the statement of the Circle Officer to the effect that 41,95,909 tea bushes have been uprooted.
13. The contention of the State Government in the affidavit, which was tendered before this Court on 22 April 2024, was that tea bushes are removed routinely “even as a part of regular tea cultivation” for which no prior Environmental Clearance is required. To support this submission, reliance was placed on the communication of the Member Secretary of the SEAC in Assam which also records that in

Tapas Guha & Ors. v. Union of India & Ors.

a tea garden tea bushes and shade trees are removed and uprooted at regular intervals once the trees grow old and there is a loss of production of tea. The letter dated 22 April 2024 is a self-serving document prepared on the same date as the affidavit.

14. What warrants attention, however, is that in the present case, the clearance of the site cannot be unequivocally attributed to the cultivation activities of the tea estate. The clearance was evidently not a part of the regular maintenance of the tea estate but to facilitate the proposed new airport. The Solicitor General sought to urge that the possession of the site was handed over in June 2022 and hence the destruction of the vegetation in May 2022 was not by the respondents but likely by the inhabitants. It is inconceivable that an organized operation involving over 200-250 JCBs was done at the behest of the tea garden workers. Moreover, it has emerged that on 11 May 2022 orders were issued by the District Magistrate under Section 144 CrPC. This was a prelude to the organized activities which took place in the month of May 2022, as recorded in the statements appended to the report of the DLSA. The affidavit of the Joint Secretary to the State government has been rather liberal with the truth by suppressing the actual state of facts.
15. Paragraph 2 of the notification dated 14 September 2006 requires prior Environmental Clearance “before any construction work or preparation of land by the project management is carried out except for the securing of land”. The nature of the activities which were carried out at the site was evidently of an extensive nature and is in breach of paragraph 2 of the notification.
16. There was a complete abdication of adjudicatory duties by the NGT to verify the authenticity of the grievance of the appellants. As an expert body which has been formed under a statute enacted by the Parliament, in the interest of the preservation of the environment, it was first and foremost the duty of the Tribunal to verify the authenticity of the grievance of the appellants.
17. The Tribunal, however, simply dismissed the OA having come to the conclusion that no Environmental Clearance had been issued. If the Tribunal were to enquire into the matter even on a *prima facie* assessment, the facts which have emerged before this Court would have come on the record. The perfunctory dismissal of the case by the NGT not only reflects a lack of due diligence but also demonstrates

Digital Supreme Court Reports

a disregard for the gravity of the environmental concerns raised by the appellants. This casual, if not callous, approach to adjudication not only undermines the integrity of the judicial process but also compromises the very purpose for which the NGT was established – to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. Such negligence on the part of the Tribunal sets a concerning precedent, eroding public trust in the efficacy of environmental governance mechanisms.

18. The State Government has filed an application for directions before this Court seeking the initiation of proceedings against the appellants allegedly for having misled this Court into passing of the order dated 22 April 2024. During the course of the hearing, the Solicitor General has stated that the application is not being pressed.
19. From the material which has been placed on the record, we are clearly of the view that the authorities, in the present case, have acted in violation of the provisions contained in Para 2 of the notification dated 14 September 2006 by carrying out an extensive clearance at the site even in the absence of an Environmental Clearance.
20. The State Government has emphasised the need for establishing a civilian airport at Silchar which has led to the proposal to set up a Greenfield Airport on land admeasuring 335 hectares to which an additional component of 69 hectares has been added. The decision on whether an airport is situated at a particular place is a matter of policy. However, when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, those provisions have to be strictly complied with.
21. Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities. While acknowledging the importance of infrastructure development, it is paramount that such projects proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity. The requirement for Environmental Clearance serves as a crucial safeguard against unchecked exploitation of natural resources and helps uphold the principles of sustainable

Tapas Guha & Ors. v. Union of India & Ors.

development- which safeguards the interests of both present and future generations. Therefore, while the decision to establish an airport may serve broader policy objectives, it must be executed within the confines of legal frameworks designed to protect the environment and ensure responsible resource management. Failure to adhere to these norms not only undermines the integrity of environmental governance but also risks long-term environmental degradation and societal discord.

22. Setting up an airport is specifically within the ambit of Entry 7 of the Schedule to the notification dated 14 September 2006. Admittedly, no Environmental clearance has been issued till date. Development has to be in conformity with environmental standards prescribed by the law.
23. In consequence, there shall be a direction that absolutely no activity shall be carried out in breach of the provisions of the Notification dated 14 September 2006 at the site of the proposed greenfield airport at Silchar.
24. In the event that any application for the grant of Environmental Clearance has been filed or is filed hereafter, the processing of the application shall take place on the basis of the condition of the site as it existed prior to the date on which the illegal clearance of the tea bushes and shade trees took place in the proposed site of the greenfield airport.
25. In the above view of the matter, we allow the Appeals and set aside the impugned order of the National Green Tribunal dated 25 January 2024.
26. Pending applications, if any, stand disposed of.

Headnotes prepared by:
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Result of the case:
Appeals allowed.