

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 222 of 2014

Forward Foundation & Ors. Vs. State of Karnataka & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER

Present: **Applicant:** Mr. Raj Panjwani, Sr. Adv. with Mr. Rishabh Parikh, Adv.

Respondent No. 1 : Mr. Devraj Ashok, Adv. for State of Karnataka

Respondent No. 2 : Mr. Attin Shankar Rastogi, Adv.

Respondent No. 7 : Mr. B. R. Srinivasa Gowda, Adv.

Respondent No. 8 : Ms. Shweta S. Parihar and Mr. Ankur S. Kulkarni, Adv.

Respondent No. 9 : Mr. Shekhar G. Devasa, Mr. D. Mahesh, and Mr. Manish Tiwari, Advs.

Respondent No. 10 : Mr. Raju Ramachandran, Sr. Adv., Mr. Devashish Bharuka, Mr. Suraj Govindraj and Mr. Vaibhav Niti, Advs.

Respondent No.11&12: Mr. Praveen Sehrawart and Mr. Saransh Jain, Advs.

	Date and Remarks	Orders of the Tribunal
	Item No. 01 May 04, 2016 A	Vide our judgement dated 07th May, 2016 the Tribunal had disposed of Original Application No. 222 of 2014 – Forward Foundation & Ors. Vs. State of Karnataka & Ors. By its detailed judgment various directions were passed including appointment of High Powered Committee which was required to submit its report to the Tribunal. The High Powered Committee submitted the report in relation to the project of Respondents Nos. 9 and 10 in August, 2015. The Project Proponent had preferred statutory Appeals against order dated 07th May, 2015 passed by the Tribunal before the Hon'ble Supreme Court of India which came to be disposed of vide order dated 20th May, 2015 passed by the Hon'ble Supreme Court of India. The said order reads as follows:- <i>“one of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced,</i>

		<i>final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against the original Respondent No. 9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.</i> <i>On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.</i> <i>With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.</i> <i>The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.</i> <i>Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deem fit in this behalf, after hearing the parties.”</i> On the basis of the order of the Hon'ble Supreme Court of India dated 20th May, 2015 the Applicant filed M.A. Nos. 596/2015 and 603/2015 before the Tribunal praying that order dated 07th May, 2015 be recalled, particularly, in relation to the issue No. 5 and opportunity of hearing be granted to the Respondents. When these two applications came up for hearing before the Tribunal they were disposed of vide order dated 06th April, 2016 that reads as under:- <u>“M.A. No. 603 of 2015 and M.A. No. 596 of 2015</u> <i>These Applications have been filed on behalf of the Respondent No. 9 & 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.</i>
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		<i>Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.</i> <i>With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."</i> As is evident from the above order, the Tribunal had granted liberty to the parties to address the Tribunal on the limited question as afore-stated. The parties were heard at great length and the case was heard on day to day basis. Keeping in view the order of the Hon'ble Supreme Court of India, the peculiar facts and circumstances and more particularly the fact that one of the Hon'ble Member (Dr. D.K. Agrawal) would be demitting the office on 05th May, 2016, we consider it appropriate to pass detailed directions in relation to the both the matters for which the reasons could be recorded in the later part of the day by the Tribunal. Thus, we proceed to record the operative part of the judgment with directions as is deemed proper by the Tribunal. In view of our discussion in the main judgment, the documents placed before the Tribunal and particularly keeping in view the Inspection Note prepared after site inspection by the two Hon'ble Expert Members of this Bench, we find it necessary for the Tribunal to impose certain conditions and issue appropriate directions, as a condition precedent for these projects to re-commence and/or complete their projects in accordance with law. <u>General Conditions or directions:</u>
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		1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP – 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/ wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands. (ii) 50m from the edge of the primary Rajkulewas. (iii) 35m from the edges in the case of secondary Rajkulewas (iv) 25m from the edges in the case of tertiary Rajkulewas This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of
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		sustainable development particularly keeping in mind the ecology and environment of the areas in question. All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone. All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/ lakes of Bangalore. 2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB /MoEF. 3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various
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		residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued: - At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC. - All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase. - Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately. <u>Specific Conditions / Directions for Respondent 9;</u> In addition to the above directions which should be equally part of EC condition in respect of respondents nos. 9 & 10, following specific conditions shall apply to respondent no. 9: - Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey no. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a
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		buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area. ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt. iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent no. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent no. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt. iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should
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		be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake. v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt. vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC. vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months. 10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of
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		environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office. Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment). <u>General Directions:</u> 1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The
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		Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order. 2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force. 3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/ wetlands in the city of Bengaluru. 4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law. 5. Both the Respondents Nos. 9 and 10 shall ensure
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		that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents. 6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent no. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent no. 9 to submit a fresh layout plan and the entire project may be revised in accordance with law. 7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued. 8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.
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		With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs. ,CP (Swatanter Kumar) ,JM (M.S. Nambiar) ,EM (Dr. D. K. Agrawal) ,EM (Prof. A.R. Yousuf) ,EM (B.S. Sajwan)
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