

Brief Summary
Final Order dated 15/01/2016 in PIL 156 of 2006
Nagrik Chetna Manch Vs. State of Maharashtra and PMC

Paragraph 6 of page 9: CONSIDERATION OF SUBMISSIONS

6. We have carefully considered the submissions. ...In the paragraph 2 of the writ petition, there are specific averments that the said hills on which the proposed road is to be constructed were taken up for afforestation by the State Government and the afforestation has been successfully carried out on these hills by the Social Afforestation Department. In the paragraph wise reply dated 7th February 2007 filed by Shri Madhav Latkar, the correctness of the said averments has not been denied." "...the Corporation has relied upon the letter dated 25th January 2007 (Exhibit B to the reply) addressed by the Deputy Conservator of Forests, Pune Division, Pune to the Municipal Commissioner. Paragraph 1 of the said letter specifically records that the area covered by the proposed Paud Phata Road to Balbharti was covered by the Green Pune Project which was implemented from the year 1994 to 1996 and a large number of trees such as Glirisidia, Subabhul etc have been planted thereon. It is stated that it is a man made forest and therefore, it is not included in the designated forest by the District Committee. Thus, it is an admitted position that the man made forest will be adversely affected by the construction of the proposed road as number of trees will be felled or cut for the purpose of its construction.

...Apart from requirement of felling trees, as it happens in all major cities, constructions will come up on both the sides of the road which will destroy the forest.

...The Apex Court in its several decisions has expanded the scope of Article 21 of the Constitution of India. The Apex Court has held that every citizen has a right to live in a pollution free environment. It cannot be disputed that the green cover over the city of Pune has been considerably depleted during the last few years.

It will be necessary to make a reference to the directive principles of the State Policy incorporated in the part IV of the Constitution of India. Article 48A Protection and improvement of environment and safeguarding of forests and wild life.

Paragraph 9 on page 13 of the Order:

9. ... "51A. Fundamental duties.—It shall be the duty of every citizen of India-
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;....." (emphasis added)

The Apex Court dealt with Articles 48A and 51A in the case of Assn. for Environment Protection v. State of Kerala⁴. In the first three paragraphs, the Apex Court has observed thus:

1. ...Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc. because it is believed that they belong to all living creatures.
2. ...The ancient Roman Empire developed a legal theory known as the “doctrine of the public trust”...The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few.
3. ...After 26 years, Article 48A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, fundamental duties of the citizens were enumerated in the form of Article 51A (Part IVA). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51A(g)]. (emphasis added)

Paragraph 10 on pages 15-16 of the Order

10. ...The word `Forest' under Article 48A and clause (g) of Article 51A cannot be restricted to a forest within the meaning of Indian Forest Act, 1927 or the Forest Conservation Act,1980. Such a narrow meaning will defeat the very object of both the provisions. The forest within the meaning of the said Articles must include a man made forest. Therefore, the endeavour of the Municipal Corporation should be to save and protect the man made forest.

Paragraph 11 on pages 16-17-18 of the Order

11... “63. It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely –

XXXXX

XXXXX

XXXXX

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(1b) urban forestry, protection of the environment and promotion of ecological aspects ;]” (emphasis added)

Thus, it is the mandatory duty of the Municipal Corporation to make adequate provision by any means or measures to preserve the urban forestry, to protect

the environment and to promote ecological aspects. Thus, the mandatory duty of a Municipal Corporation is to make adequate provision for urban forestry. Clause (1b) will include a duty to maintain the forests which already exist in the urban area within its jurisdiction and to protect it.

...There is no conscious application of mind by the Pune Municipal Corporation to the drastic adverse effect of the construction of the proposed road on the environment and in particular on the existing man made forest. ...Thus, the decision making process has been vitiated by non consideration of the relevant factors. Apart from the non consideration of the mandatory duty under the MMC Act, the Corporation seems to be ignorant of the provisions of Article 48A and Clause (g) of Article 51A. The Constitutional mandate has not been considered by the Corporation.

Paragraph 12 on pages 18-19 of the Order

12....There is one more important reason as to why we cannot permit the construction of the proposed road on the basis of the impugned resolution. ...the Municipal Commissioner constituted a Committee of Experts.

Paragraph 15 on page 24 of the Order

15...report of majority of the members of the Expert Committee is annexed to the said affidavit as Annexure IV. It recommends that the construction of the proposed road should not be undertaken.

Paragraph 17 on page 25 of the Order

17. The Municipal Commissioner realised the necessity of constituting a Committee of Experts. Unless the Committee is allowed to submit its final report and the same is considered by the Pune Municipal Corporation, surely, the Municipal Corporation cannot proceed with the construction of the proposed road. This is so in the light of the fact that before passing the impugned Resolution, the Environment Impact Assessment was not made and the attention of the General Body was not invited to the fact that the man made forest will be destroyed by the construction of the proposed road. In fact, this Court has recorded a finding that non consideration of several factors including the provisions of the Constitution and statutory mandatory duties of the Corporation has resulted in vitiating the decision making process. When the Municipal Commissioner on his own appointed the Committee of Experts, the Municipal Corporation cannot proceed further with the decision to construct the proposed road without allowing the Committee to submit its final recommendations.

Paragraph 20 on page 28 of the Order

20. Unless a proper study is made by the Committee of Experts, it cannot be held that the destruction of the forest for the construction of the proposed road is in public interest and is for a public good.

21. Therefore, for all the reasons recorded earlier, the impugned Resolution will have to be set aside. However, it will be open for the Pune Municipal Corporation to invite the recommendations from the Committee of Experts already constituted by the Municipal Commissioner and thereafter, to take a fresh decision. ...Considering the mandatory obligation of the Municipal Corporation under the MMC Act, before taking a drastic decision of the construction of the proposed road which will substantially destroy the man made forest, the Environment Impact Assessment needs to be made. Before taking a conscious decision, if any, of permitting the construction of the proposed road, the impact of the construction of the proposed road on the environment will have to be considered by the Municipal Corporation in the light of the mandate of the Articles 48A and 51A and its mandatory duty to protect environment.

Paragraph 22 on page 28 of the Order

22. Considering the material placed on record and the reasons recorded above, as of today, the impugned resolution will not stand the test of legality. We may make it clear that we have not gone into the issue whether there can be a reservation shown for the construction of the proposed road in the revised Development Plan. All contentions of the parties in that behalf are kept open.

Para 23 on page 29 of the Order

23. Hence, we pass the following order:

- (i) Subject to observations made in the Judgment, the impugned Resolution No.532 passed by the General Body of the Pune Municipal Corporation on 27th February 1996 is hereby quashed and set aside;
- (ii) Rule is accordingly made absolute with no order as to costs.

Nagrik Chetna Manch
18 Apr. 17