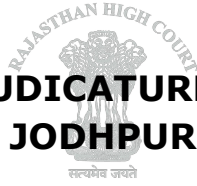




RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR



IN RE:

**SAVE THY TREES (1.19 LAKH IN NUMBER) PROPOSED TO
BE CUT DOWN FOR ESTABLISHMENT OF PUMPED
STORAGE PROJECT IN SHAHBAD BLOCK DISTRICT BARAN.**

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN
Order**

portable

09/10/2024

By the Court:

1. This Court is extremely worried about the reports dated 08.10.2024 published in daily newspapers i.e., Rajasthan Patrika and Dainik Bhaskar, wherein it has been highlighted that at a short distance of 15 kms from the Kuno National Park in Rajasthan's territory i.e. District Baran, 1.19 lakh trees are being proposed to be cut down for establishment of a Pumped Storage Project in Shahbad Block of Baran District, Rajasthan.

2. The newspaper reports indicates that the Project shall consume a huge quantity of forest area and the full grown trees, which will not only potentially endanger the ecological balance by increasing carbon emissions, but would also be dangerous for the flora and fauna. The area is densely forested and any kind of intensive deforestation would threaten the existence of the flora and fauna of the area. The newspaper reports also shows that this 450 hectares of land soaks about 22.5 lakh metric tons of carbon and if the same is done away with then, it shall have a great impact upon the climate change. This deforestation may also lead to other side effects such as soil erosion, and will act as an impediment in achieving other key environmental benefits.





3. The alternate land provided in Jaisalmer District for afforestation is about 712 kms. away, and as per the report they soak only 3500 metric tons of carbon dioxide which is much lesser than the quantity, currently being soaked at Baran District, where as per the scientific data is soaking about 22.5 lakh metric ton of carbon dioxide.

4. This Court observes that the Right to a Green and Healthy Environment is considered as a facet of Right to Life enshrined under Article 21 of the Constitution of India, which in turn casts responsibility upon the State and its functionaries, not only just protect the environment from any potential degradation but also take active steps to preserve, protect and revive the same, thereby ensuring a true meaningful life to its citizenry.

4.1 This Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of ***M K Ranjitsinh & Ors Vs. Union of India & Ors. (Writ Petition (Civil) No.838 of 2019***, decided on 21.03.2024 relevant portion whereof is reproduced as hereunder: -

"The right to a healthy environment and the right to be free from the adverse effects of climate change

19. India's efforts to combat climate change are manifold. Parliament has enacted the__Wild Life (Protection)Act 1972, the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act 1986, the National Green Tribunal Act 2010, amongst others. In 2022, the Energy Conservation Act 2001 was amended to empower the Central Government to provide for a carbon credit trading scheme. The Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules 2022 were made in exercise of the powers under the Electricity Act 2003 to ensure access to and incentivise green energy. The executive wing of the



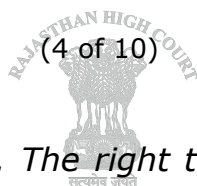
government has implemented a host of projects over the years including the National Solar Mission (discussed in greater detail in the subsequent segment), the National Mission for Enhanced Energy Efficiency, the National Mission for a Green India, and the National Mission on Strategic Knowledge for Climate Change, amongst others. Despite governmental policy and rules and regulations recognising the adverse effects of climate change and seeking to combat it, there is no single or umbrella legislation in India which relates to climate change and the attendant concerns. However, this does not mean that the people of India do not have a right against the adverse effects of climate change.

20. Article 48A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Clause (g) of Article 51A stipulates that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Although these are not justiciable provisions of the Constitution, they are indications that the Constitution recognises the importance of the natural world. The importance of the environment, as indicated by these provisions, becomes a right in other parts of the Constitution. **Article 21 recognises the right to life and personal liberty while Article 14 indicates that all persons shall have equality before law and the equal protection of laws. These articles are important sources of the right to a clean environment and the right against the adverse effects of climate change.**

24. Despite a plethora of decisions on the right to a clean environment, some decisions which recognise climate change as a serious threat, and national policies which seek to combat climate change, it is yet to be articulated that the people have a right against the adverse effects of climate change. This is perhaps because this right and the right to a clean environment are two sides of the same coin. As the havoc caused by climate change increases year by year, it becomes necessary to articulate this as a distinct right. It is recognised by Articles 14 and 21.

25. Without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to





life is not fully realised. The right to health (which is a part of the right to life under Article 21) is impacted due to factors such as air pollution, shifts in vector-borne diseases, rising temperatures, droughts, shortages in food supplies due to crop failure, storms, and flooding. The inability of underserved communities to adapt to climate change or cope with its effects violates the right to life as well as the right to equality. This is better understood with the help of an example. If climate change and environmental degradation lead to acute food and water shortages in a particular area, poorer communities will suffer more than richer ones. The right to equality would undoubtedly be impacted in each of these instances.

27. The right to equality under Article 14 and the right to life under Article 21 must be appreciated in the context of the decisions of this Court, the actions and commitments of the state on the national and international level, and scientific consensus on climate change and its adverse effects. From these, it emerges that there is a right to be free from the adverse effects of climate change. It is important to note that while giving effect to this right, courts must be alive to other rights of affected communities such as the right against displacement and allied rights. Different constitutional rights must be carefully considered before a decision is reached in a particular case.

29. Of late, the intersection between climate change and human rights has been put in sharp focus, underscoring the imperative for states to address climate impacts through the lens of rights. For instance, the contribution of the UN High Commissioner for Human Rights to the 2015 Climate Conference in Paris emphasized that climate change directly and indirectly affects a broad spectrum of internationally guaranteed human rights. States owe a duty of care to citizens to prevent harm and to ensure overall well-being. The right to a healthy and clean environment is undoubtedly a part of this duty of care. States are compelled to take effective measures to mitigate climate change and ensure





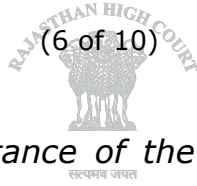
that all individuals have the necessary capacity to adapt to the climate crisis.

35. India faces a number of pressing near-term challenges that directly impact the right to a healthy environment, particularly for vulnerable and indigenous communities including forest dwellers. The lack of reliable electricity supply for many citizens not only hinders economic development but also disproportionately affects communities, including women and low-income households, further perpetuating inequalities. Therefore, the right to a healthy environment encapsulates the principle that every individual has the entitlement to live in an environment that is clean, safe, and conducive to their well-being. By recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the wellbeing of present and future generations. **It is imperative for states like India, to uphold their obligations under international law, including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment.**

4.2 This Court is further conscious of the judgment rendered by the Hon'ble Apex Court, ***IN RE: T.N. Godavarman Thirumulpad v. Union of India, (Writ Petition (Civil) No. 202 of 1995, decided on 06.03.2024)***, relevant portion whereof is reproduced as hereunder: -

"The tiger perishes without the forest and the forest perishes without its tigers. Therefore, the tiger should stand guard over the forest and the forest should protect all its tigers."





This is how the importance of the tigers in the ecosystem has been succinctly described in 'Mahabharata'. The existence of the forest is necessary for the protection of tigers. In turn, if the tiger is protected, the ecosystem which revolves around him is also protected. The tiger represents the apex of the animal pyramid and the protection of their habitat must be a priority.

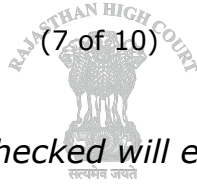
4.3 This Court is also conscious of the judgment rendered by the Division Bench of Hon'ble High Court of Sikkim in the case of ***In Re: Recent Felling of Trees in Gangtok (WP (PIL) No.04 of 2020***, decided on 10.01.2022 relevant portion whereof is reproduced as hereunder: -

16(i). Before dealing with the merits of the matter, it is apposite to cite a Poem which poignantly comes to mind, On Killing a Tree, by Gieve Patel. The poem is relevantly reproduced hereinbelow;

"On Killing a Tree

*It takes much time to kill a tree,
Not a simple jab of the knife
Will do it. It has grown
Slowly consuming the earth,
Rising out of it, feeding
Upon its crust, absorbing
Years of sunlight, air, water,
And out of its leprous hide
Sprouting leaves.*

*So hack and chop
But this alone won't do it.
Not so much pain will do it.
The bleeding bark will heal
And from close to the ground
Will rise curled green twigs,
Miniature boughs*



*Which if unchecked will expand again
To former size*

No,

*The root is to be pulled out —
Out of the anchoring earth;
It is to be roped, tied,
And pulled out — snapped out
Or pulled out entirely,
Out from the earth-cave,
And the strength of the tree exposed
The source, white and wet,
The most sensitive, hidden
For years inside the earth.*

*Then the matter
Of scorching and choking
In sun and air,
Browning, hardening,
Twisting, withering,
And then it is done.*

GIEVE PATEL"

(ii) The theme of the poem is a confrontation between two different attitudes, saving and cutting a tree. It is a tirade against the practice of felling a tree. The poem describes the growth of a tree, the years of consumption of the earth, absorption of sunlight, air, water and nutrients from the soil to grow into a mature tree and the pain on its destruction. The poem makes an implied plea to maintain an ecological balance. The poem is extracted herein merely to sensitize us into the effort that goes into growing one tree. We may also look at a poem by Maya Angelou —When Great Trees Fall|| which is rich in its ecological perspective, as also —Planting a Tree|| by Joyce Kilmer which praises the planter, these are not being extracted herein to prevent prolixity. It is the visionary planters and foresters of the erstwhile Kingdom of Sikkim who had planted these trees which have been ruthlessly felled, these trees had stoically assisted the ecological balance thus far and stood witness to history unfolding in this State. It is indeed the





bounden duty of every citizen to be sensitised about such matters and to ensure that each of us play an active role in ensuring the protection of a tree and to fell it only when no other option remains. Every effort should be made to construct alongside the tree or around it and to prioritise saving it.

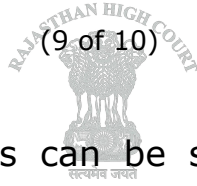


5. Taking serious notice of the situation, suo moto cognizance is taken to find out a speedy solution to the issue in question. Let the matter be treated as a petition and registered as:

SUO MOTO : IN RE: "Save The Trees (1.19 Lakh In Number) Proposed To Be Cut Down For Establishment Of Pumped Storage Project in Shahbad Block District Baran"

Versus

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change. (Forest Conservation Division)
2. The Principal Secretary, Environment and Forest Department, Government of Rajasthan, Secretariat, Jaipur.
3. The PCCF (HOFF), Department of Forest, Government of Rajasthan, Jaipur.
6. A needful response shall be submitted before the Court for consideration. Both the reports of the daily newspapers i.e. Rajasthan Patrika and Dainik Bhaskar which are exhaustively dealt with, shall form a part of the pleading and be dealt with appropriately.
7. The conservation biologist who has given his expert opinion, to the best, could also be consulted. This Court also proposes that while filing their reply, the learned counsel may also contemplate



as to how 1.19 lakh trees can be saved, and if there is any alternative land available where this project can be undertaken and also, whether the proposed afforestation could take place in the same area to avoid any kind of imbalance in soaking of the carbon dioxide.

8. However, this Court desists itself from passing any interim order at this stage. Though, we request Mr. Mukesh Rajpurohit, learned Deputy Solicitor General and Mr. Mahaveer Bishnoi, learned Additional Advocate General, to assist the Bench whenever the matter would be listed as a Suo Moto Public Interest Litigation. Moreover, as per **learned Deputy Solicitor General and learned Additional Advocate General, at this juncture, there is no immediate danger to the cutting of the trees for at least next 15 days, because the stage one approval is yet to be received from the State.**

9. Learned Deputy Solicitor General and learned Additional Advocate General shall be required to file a detailed response before the Court where the Suo Moto Public Interest Litigation will be listed.

10. Issue notice to the respondents. A copy of this order along with the annexures shall be supplied today itself in the office of the Deputy Solicitor General and Additional Advocate General, for necessary compliance.

11. The Registry is directed to register it as a Suo Moto Public Interest Litigation and to list this matter before the appropriate Division Bench having roster of 'Public Interest Litigation' within 10 days from today.





12. Mr. Sandeep Shah Senior Advocate and Mr. Lakshya Singh Udawat & Ms. Mehali Mehta, Advocates are hereby appointed as Amicus Curiae to assist the Court in this matter. Mr. Shah, learned Senior Counsel would render *pro bono* assistance, while Mr. Udawat and Ms. Mehta, Advocates would be paid remuneration by the Rajasthan High Court Legal Services Committee, Jodhpur, as per Rules.

13. Learned Deputy Solicitor General and learned Additional Advocate General are hereby directed to supply a copy of reply alongwith the relevant documents to the learned Amicus Curiae, two days prior to listing of the matter, so as to enable them to prepare and render their assistance to the Court in the matter. The undertaking given by the learned Deputy Solicitor General and the learned Additional Advocate General to the effect that the trees in question would not be cut down at least for the next 15 days, shall remain in currency, till the next date.

(MUNNURI LAXMAN),J

Dharmendra Rakhecha & BhumikaP/-

(DR. PUSHPENDRA SINGH BHATI),J