

Saving India's Forests and Wildlife

The pioneering role of the
Supreme Court of India



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This book is dedicated to
those in the judiciary
who have helped and continue
to help save India's
wildlife and natural heritage.

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FOREWORD

November 14, 2003

India has some of the finest wildlife laws in the world. But, as anyone concerned with protecting wildlife in this country will confirm, the implementation of such laws is nothing short of abysmal.

In 1995 due to the complete absence of political will to implement both forests and wildlife legislation the Supreme Court was forced to step in and force the authorities to fulfill their responsibilities. Over the past eight years the Supreme Court issued over 200 orders and interim orders regarding forest India, especially with regard to the historic Writ Petition 202 in the matter of T.N. Godavarman Thirumalpad Vs Union of India.

Few across this country realize this remarkable role that the apex court has played. Its orders were the single most important factor in stopping the illegal felling of trees (by some estimates, to the extent of Rs. 6,000 crores per annum!). Several thousand unlicensed saw mills were shut down. A specially constituted High Powered Committee for the Northeast began functioning at the behest of the Supreme Court to regulate the working of all wood-based industries in the 'Seven-Sisters' states of the Northeast.

To ensure that the court's orders had a real impact on the ground, a Special Investigation Team (SIT) was constituted post the Supreme Court order of January 13, 2000. The SIT was asked effectively check all illegal movement of forest produce. The court gave it sweeping powers to protect the forests of our country.

Following close on the heels of this, the Honorable Court also created two Empowered Committees for the states of Madhya Pradesh and Chattisgarh. More than 1,000 Interlocutor Applications (IAs) related to forest issues had flooded the courts. These Empowered Committees dealt successfully with many of these cases.

After seeing how efficient this step was, in 2002, the Supreme Court created a national level committee – called the Central Empowered Committee (CEC). The documents contained in this compilation are to a large extent the result of the CEC's working diligently to execute the Supreme Court's wishes in letter and spirit.

Sanctuary magazine is proud to publish a selection of these Supreme Court Orders and CEC recommendations and directions from the period August 2002 to November 2003. Because of space constraints we had to leave out several cases, but a complete set is available in the public domain in electronic format.

A perusal of these documents will provide an amazing insight into the monumental service our apex court has undertake in the interests of forests and wildlife. The documents reveal a wealth of information and deal with a diverse range of issues.

In the days to come, I hope more people will petition the CEC and the Courts of our land so that those who believe they are above the law realize that we will no longer tolerate their cavalier bending and breaking of laws at the cost of natural India. Sanctuary will endeavour to produce a similar selection of legal orders and directions for the benefit of those individuals and groups who seek to defend wild India.



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**EXTRACTS FORM
THE SUPREME COURT OF INDIA
ORDERS**

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

**IN
T. N. GODAVARMAN THIRUMALPAD Vs. UNION OF INDIA & OTHERS
WRIT PETITION (CIVIL) 202/1995**

**&
JAMMU & KASHMIR ENVIRONMENT FORUM
WRIT PETITION (CIVIL) NO. 171 /1996**

ORDER

(Dated: 12-12-1996)

(A landmark order defining ‘forest’, which is to be understood according to its dictionary meaning for the purposes of F.C. Act, ban imposed on all non-forest activities on forest lands without prior approval of the Central Government under the F.C. Act, ban imposed on felling and transportation of timber in the North Eastern States, ban on felling of trees in forests in hill areas, Janmam areas, Himachal Pradesh and J & K. Directions issued to constitute expert committees in each state to identify forests, report on sustainable capacity of forests qua saw mills etc.)

In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, learned counsel appearing for the States and the parties/applicants and in addition, the learned Amicus Curiae, Shri. H. N. Salve, assisted by Sarvashri U. U. Lalit, Mahendra Vyas, and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the Court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel and, therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the Learned Attorney General and the other learned counsel on these aspects.

It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short the ‘Act’) and the meaning of the word “forest” used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area, which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the

Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works and Ors. Versus State of Gujarat and Ors.* (1987 (1) SCC 213), *Rural Litigation and Entitlement Kendra -Versus – State of U.P.* (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in *W.P. (C) No. 749/95 (Supreme Court Monitoring Committee Vs. Mussorie Dehradun Development Authority & Ors.)*. The earlier decision of this court in *State of Bihar Vs. Banshi Ram Modi and Ors.* (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under;

1. GENERAL

In view of the meaning of the word “forest” in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any “forest”. In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of the particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, Veneer mills and ply-wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms. from its border, in Assam, should be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.
3. The felling of trees in all forests is to remain suspended except in accordance with the working Plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.
4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water-ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.
5. Each State Government should constitute within one month an Expert Committee to:
 - (i) identify areas which are “forests”, irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

- (ii) identify areas which were earlier forests but stand degraded, denuded or cleared, and
 - (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.
6. Each State Government should within two months, file a report regarding:-
 - (i) The number of saw mills, Veneer and ply-wood mills actually operating within the State, with particulars of their real ownership,
 - (ii) The licensed and actual capacity of these mills for stock and sawing,
 - (iii) Their proximity to the nearest forest,
 - (iv) Their source of timber.
 7. Each State Government should constitute within one month, an Expert Committee to assess.
 - (i) The sustainable capacity of the forests of the State qua saw mills and timber based industry,
 - (ii) The number of existing saw mills which can safely be sustained in the State,
 - (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.
 8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.
 9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and senior another Officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU & KASHMIR

1. There will be no felling of trees permitted in any “forest”, public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.
2. In ‘forests’ the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu & Kashmir Wild Life Protection Act. 1978 or any other law banning such felling or removal of trees.
3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS Officer posted in the State of Jammu & Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation as member Secretary and will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.
4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted deal with this aspect. This direction will cover the submerged areas of the Thein Dam.
5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local institutions.
6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will -

- (a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and
 - (b) be undertaken by either the Corporation itself, the Jammu & Kashmir forest Department or the receiving agency.
7. The State of Jammu & Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.
 8. No saw mill, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 Kms. From the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL:

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest' and which has not been converted from an earlier 'forest'. This ban will not apply to permits granted to the right-holders for their bonafide personal use in Himachal Pradesh.
2. In a 'forest', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.
3. For this purpose, the State Government is to constitute an Expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.
4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all 'forest areas'. This will however not apply to:
 - (a) trees which have been planted and grown, and are not of spontaneous growth, and
 - (b) are in areas which were not forests earlier, but were cleared for any reason.
2. The State Government, within four weeks from to day, is to constitute a committee for indentifying all 'forests'.
3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forest may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.
4. In so far as the plantations (tea. coffee, cardamom etc.) are concerned, it is directed as under:

- (a) The felling of shade trees in these plantations will be”
 - i) limited to trees which have been planted, and not those which have grown spontaneously;
 - ii) limited to the species identified in the TANTEA report;
 - iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and
 - iv) under the supervision of the statutory committee constituted by the state Government.
 - (b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile; eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.
 - (c) The State Government is directed to ascertain and identify those areas of the plantation which are a ‘forest’ and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.
 - (d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of ‘forests’.
5. As far as the trees already cut, prior to the interim orders of this court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure.
 6. In so far as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977 in C.A. Nos. 1344-45 of 1976. After the order is made in those Civil Appeals on the I.As. pending therein, if necessary, this aspect may be re-examined.
 7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any Court (including High Court) or Tribunal.

6. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.
7. We are informed that the Railway authorities are still using woken sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.
8. I.A. Nos. 7,9,10,11,12,13, and 14 in Writ Petition (Civil) No. 202 of 1995 and I.A. Nos. 1,3,4,5,6,7,8 and 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of accordingly.
9. List the matter on February 25, 1997 as part-heard for further hearing.

(2)

ORDER

I.A. No. 60

(Dated: 7.1.98)

(Order on illegal felling of trees from tribal lands and from government owned forest land in Bastar by influential persons with alleged connivance of the Revenue and Forest officials)

I.A. No. 60 of 1997 in W.P. (C) No. 202 of 1995.

Taken on board.

Learned amicus curiae prayed for directions being issued as mentioned in the application. Shri G. L. Sanghi, learned counsel for the State of Madhya Pradesh has no objection to grant of prayers (1) and (3) in the I.A. while the matter covered by prayer (2) is left by the Govt. of Madhya Pradesh to the discretion of this Court for making such orders as it may consider appropriate. Shri Sanghi also stated that the Govt. of Madhya Pradesh has been actively pursuing the matter and is doing all that is necessary in the light of the report of the Lokayukta of Madhya Pradesh, but because of certain constraints, it has not been possible for the State Govt. to do all that is necessary in this behalf. Shri Sanghi stated on instructions that the Govt. of Madhya Pradesh has no reservation in the matter and is committed to a full investigation into the matter, identification of all the culprits and necessary action including prosecution of the culprits so identified.

We are also informed that the Board of Revenue of Madhya Pradesh is seized of the matters in which validity of the transactions of transfers by tribals is under consideration so that the question of restoration of the land to the original owner (tribal) on annulment of those transactions would depend on the outcome of those matters. Shri Sanghi stated that the appropriate procedure would be adopted to request the board of Revenue to hear and decide all those matters at the earliest so that necessary action could be taken by the State Govt. as a follow up measure in the interest of the tribal land owners who have been duped in this manner by the transferees in contravention of the statutory provisions. In view of this statement made by learned counsel for the State of Madhya Pradesh, no order at this stage is called for on prayers (1) and (3) in the application. the same would be taken up for consideration after decision is rendered by the Board of Revenue in those matters. The Govt. of Madhya Pradesh will report to this Court the decision of the Board of Revenue as soon as it is rendered.

Prayer No. (2) in the application is for a direction for investigation to be made by the Central Bureau of Investigation (C.B.I.) in the facts and circumstances of this case. we take note of the fact that the State Government in spite of its desire as reported to us, has been unable to deal with the matter expeditiously and have it investigated in the manner required in spite of the report of the Lokayukta of Madhya Pradesh. In these circumstances, to uphold the rule of law, it is necessary that investigation into the entire matter covered by the report of the Lokayukta of Madhya Pradesh be made by the C.B.I.; and that the necessary follow – up action including prosecution of the persons found involved should be made by the C.B.I. In view of the sand taken by the Govt. of Madhya Pradesh and its obvious inability to complete the task expeditiously, we make this direction and require the C.B.I. to undertake this task and complete it expeditiously.

A copy of the report of the Lokayukta of Madhya Pradesh and the connected papers be sent to the Director, C.B.I. with a copy of this order for prompt action.

Liberty is granted to the Director, C.B.I. to seek any further directions which may be found necessary.

(3)

ORDER

(Dated: 15.1.1998)

(A Comprehensive order on the management of forest in the Northeastern States, establishment of industrial estates for shifting wood based units, moratorium on issuing new licenses to any wood based industry for five years etc.)

Learned Attorney General submits that the perception of the Ministry of Environment and Forests is as under:

1. It has been estimated by the HPC that about 1.20 lakhs cubic meters of illicitly felled seized timber, belonging to the State Governments is lying in the forests and depots for varying periods of time between 1 to 2 years and is thereby getting degraded on account of decay and rotting of the wood. It is necessary to dispose it off at the earliest to minimize any further loss in its monetary value. There is in addition, considerable quantity of timber claimed by the private industry and local people. In view of the approaching monsoon season (April 98) all such timber needs to be disposed off with urgency to save further loss in quality, as also in value, albeit with proper checks and balances.
2. Given the weak infrastructure in the North-Eastern region, it does not seem feasible to transport such huge quantities of timber for auction in markets outside the region in a short time. Moreover, there would be uncertainty of the response in timber markets far away from the source of timber which has been subject to elements of degradation in varying degrees. There is also the likelihood of local resentment, in an otherwise sensitive area, if all such material is removed from the region without processing and value addition, which could be conceived as creating an adverse effect on the region's economy.
3. Even though the proliferation of wood-based industries has been the main cause of degradation of forests in the North-Eastern States, considering the extent of forests. (64% of the geographical area) and the dependence of the local people on the forest resources in the region it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries. However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated to the maintenance of environment and ecology as well as bonafide local needs.
4. There shall be no fresh felling in the forests belonging to the Government, district and Regional Councils till the disposal of their existing stocks of legal and illegal timber.
5. In view of the multi-dimensional issues impinging upon forest protection, foolproof institutional arrangements need to be put in place, and made functional under the strict supervision of the North-East Council (NEC). Technical backstopping in the forestry matter will be provided by MoEF by opening a separate cell in the ministry under an officer of the rank of CCF and starting a satellite office of the Forest Survey of India at Shillong.

We appreciate the perception of MoEF as reflected by the Learned Attorney General.

We have heard the amicus curiae, the learned Attorney General and learned counsel for North-Eastern States. In view of the report of the High Power Committee and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North-Eastern States, we consider it appropriate to make the following order:-

1. Disposal of timber shall commence only after the concerned Principal Chief Conservator of Forests irrevocably certificate that inventorisation of all felled timber in the State has been completed.

2. As a first measure all inventorised timber, including seized timber lying in the forests should be immediately transported to specified forest depots.
3. All illegal/illicit timber found in possession of an offender or abandoned in the forest shall be confiscated to the State Government and shall be disposed off in accordance with the procedure to be adopted for disposal of Government timber.
4. Out of the seized timber, logs found suitable for manufacture of veneer and plywood shall be processed by the State Governments within their own factories and by hiring such facilities. The finished product carrying marketed freely.
5. The remaining timber belonging to Government and District Councils shall be first offered for sale to Government Departments for their bonafide official use and the rest shall be sold in public auction or through sealed tenders after fixing floor price by an Expert Committee with a representative from the MoEF. Private timber owners whose stocks have been cleared by HPC shall have the option of selling the timber either in the auctions organised by the State Forest Departments/Forest Development Corporations or directly.
6. The State Governments shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests.
7. Timber as per inventory cleared by HPC may be allowed to
 - (a) be converted / utilised if the unit is located within the notified industrial estates. As the relocation in proposed industrial estates may take some time, existing units with only legal stocks may convert this timber, as one time exception, notwithstanding anything contained in para 12 hereunder, till such stocks last subject to the maximum period as per the norms prescribed by the High Power Committee (vide their III report) of six months whichever is less. Any stock remaining thereafter shall vest in the State Government. However, fresh trees/timber will be allotted to these units only when they start functioning within the designated industrial estates. The territorial Deputy Conservator of Forests/Divisional Forest Officer shall be responsible for ensuring that such units process the legal stocks only and will closely monitor the various transit permits (inward and outward) and maintenance of the prescribed records. All such records shall be countersigned (with date) by an officer not less than the rank of an Assistant Conservator of Forests.
 - (b) allowed to be sold to other units which are located in these industrial estates subject to the condition that such transactions are routed through an authority notified/constituted by the Principal Chief Conservator of Forests.
 - (c) The State Governments shall ensure disposal of illegal timber before permitting the conversion/ disposal of legal/authorized timber available with the wood based industries.
8. Transportation of auctioned timber (as well as legal timber) including sawn timber outside the North-Eastern Region shall only be done through railways under the strict supervision of the Forest Department. The Railway Board shall give priority for providing rakes/wagons for such transportation.
9. Modalities for transportation of timber/timber products and alternative modes in case of difficulties in transportation by Railways, will be worked out by the State Governments in concurrence of the ministry of Environment and Forests.
10. Existing inventorised stock of timber originating from plantations in private and community holdings in the State of Meghalaya, Mizoram, Tripura, Manipur and Nagaland may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the

necessary laws and rules may be framed within six months.

Pricing of Timber

11. The State Governments shall ensure that timber/forest produce is supplied to industries, including Government Undertakings, at full market rate. The existing royalty shall be reviewed and revised upwardly by a Committee constituted under the Chairmanship of Principal Chief Conservator of Forests with representatives from the concerned Departments and shall also include a representative of Ministry of Environment and Forest. The prices of timber for which royalty has not been realized in full shall also be reviewed by this Committee and the concerned industry shall be required to pay the revised price of the royalty (including surcharge, fee etc.,) whichever is higher after deducting the part royalty already paid.

Licensing

12. Licenses given to all wood based industries shall stand suspended.
13. Wood based industries which have been cleared by the High Power Committee without any penalty shall have the option to shift to industrial estates which shall be identified by the States within 45 days and developed within six months thereafter.
14. Units which have been penalized because they were found to exceed normal recovery norms, but were within 15% of the said norms, will have a right to approach the High Power Committee on or before 9th February, 1998. The High Power Committee shall examine all relevant material, in particular the income tax and excise records for the preceeding three years. The High Power Committee shall dispose of all such applications within 45 days thereafter and such mills may be granted licence if the High Power Committee finds that it is not against public interest so to do.
15. Units which have not furnished details/information to the High Power Committee so far or which have not been cleared by the High Power Committee, shall not be granted any licence and the stocks in their custody if any, shall be confiscated to the State Government. In case of leased mills belonging to corporations / trusts / cooperative societies owned / controlled managed by the State Government and where the lessees have been penalized by the High Power Committee. The leases shall stand revoked. Such mills shall, however, be eligible for relicensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government.
16. Units who do not want to shift to the designated industrial estates shall be allowed to wind up as per law.
17. Henceforth, licenses of units shall be renewed annually only in those cases where no irregularity is detected.
18. There shall be a complete moratorium on the issue of new licenses by the State Government or any other authority, for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed with the concurrence of Ministry of Environment and Forests.
19. Number of wood based industries shall be determined strictly within the quantity of timber which can be felled annually on sustainable basis as determined by the approved working plans from time to time. If it is found that units after relocation in industrial estate have excess capacity then their capacities shall be reduced pro rata to remain within the sustainable levels.

Forest Protection

20. An action plan shall be prepared by the Principal Chief Conservator of Forests/Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable areas and quarterly report shall be submitted to the Central Government for approval. The approved plan together with the modifications, if any, shall be acted upon.

21. To ensure protection of the forest wealth the forest officers in the North Eastern States may be empowered with authority to investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other States in the Country.
22. The State Governments shall be responsible for providing all facilities including security and police force to strictly enforce forest protection measures to stop illicit felling, removal and utilization of such timber. The Chief Secretary shall review the various matters concerning forest protection and development in his state at least once every six months with senior forest officers upto the rank of Conservator of Forests. Regional Chief Conservator of Forests of MoEF shall be invited to all such meetings.

Scientific Management of Forest

23. Working Plans for all forests divisions shall be prepared by the State Governments and got approved from the Government of India. Forest working shall be carried out strictly in accordance with the approved prescriptions of the working plans. The working plans should be prepared within a period of two years. During the interregnum the forests shall be worked according to an annual felling programme approved by the MoEF which shall be incorporated in the concerned working plan. In case a working plan is not prepared within this time frame, future felling will remain suspended till the regular working plan is prepared and got approved.
24. The forests under the District, Regional and village Councils shall be worked in accordance with working schemes which shall specify both the programme for regeneration and harvesting and whose period shall not be less than 5 years.
25. The maximum permissible annual yield in the ad interim measures suggested above, shall not exceed the annual harvestable yield determined by Ministry of Environment and Forests. The plantation schemes raised on private and community holdings shall be excluded from these requirements but shall be regulated under respective State rules and regulations.
26. The States shall identify ecologically sensitive areas in consultation with leading institutions like the Indian Council of Forestry Research and Education, Wildlife Institute of India, North Eastern Hill University, North Eastern Regional Institute of Science and Technology, leading NGOs, etc., and ensure that such areas are totally excluded from any kind of exploitation. The minimum extent of such areas shall be 10% of the total forest area in the State.

Action against Officials.

27. The State Government shall identify within 45 days all those forest divisions where significant illegal fellings have taken place and initiate disciplinary/criminal proceedings against those found responsible. The first action taken report (ATR) in this regard shall be submitted to the Central Government within three months which shall be followed by quarterly reports (QRs.) till the culmination of the matter.

General

28. Timber extraction in forests irrespective of ownership, except in private plantations, shall be carried out by a State agency only. The States shall endeavour to adopt pattern obtaining in the State of Himachal Pradesh as described in para 2-5-3 of the Rajamani Committee Report.
If there be any local laws/customs relating to the forest in any State, the concerned State Government may apply to this Court for the needed modification, if any, with alternative proposal.
29. The penalties levied on the wood based industries as ordered by the High Power Committee shall constitute the revolving fund to meet the expenses involved in collection and transportation of seized illegal timber. These can be augmented by utilising the funds generated by the initial sales of illegal

timber already available in the forest /depots.

30. Each State shall constitute a State level Expert Committee for matters concerning the preparation of working plans, their implementation, development of industrial estates, shifting of industrial units to these estates, rules and regulations regarding the grant and renewal of licenses to wood based industry and other ancillary matters, under the chairmanship of Principal Chief Conservator of Forests and with a nominee of Ministry of Environment and Forests as one of its members. Any decision of this Committee which is not acceptable to the State Government shall be referred to the Central Government.
31. The existing permit system in Arunachal Pradesh shall stand abolished. The State Government may provide financial assistance in cash or kind in the form of timber only for the bonafide use of the local tribals alone. Such concessional timber shall not be bartered or sold. Felling of trees for such purpose shall be carried out only by a Government agency.
32. The total sale proceeds from the sale of seized timber, as well as timber products manufactured and disposed by the State Government (vide para 4) and penalties would be credited to the State Revenues. Out of this, the State shall utilise one half of the amount for raising forest plantations by local tribal population and as assistance to the tribals. The remaining one half of the total sale proceeds, after deduction of the expenses therefrom, would go to the State coffers for other developmental activities in the State.
33. The States shall ensure that sufficient budgetary provisions are made for the preservation of biodiversity and protection of wildlife.
34. To ensure that timber/forest produce smuggled across the border may not be used as a cover for trade in illegal timber, it is directed that all such timber seized by Customs/Border Security Force should not be redeemed in favour of individuals who are smuggling it but should be confiscated and handed over to the concerned State Forest Department along with offenders, vehicles, tools and implements for prosecution under the relevant acts.
35. For the proper and effective implementation of these orders, Ministry of Environment and Forest will have the liberty to issue suitable directions consistent with this order.
36. Action taken report be filed by each State Government and the Ministry of Environment and Forests every two months.
37. Liberty to apply for modification/clarification in case of need.

(NOTE: In this order the term “State Government” would include District Council also except where the context implies otherwise).

(4)

ORDER

I.A. No. 548

(Dated: 14.2.2000)

(Order prohibiting removal of dead, dying, diseased, drift wood and grasses from National Park and Sanctuaries)

UPON hearing the counsel, the Court made the following

I.A. No. 548 (filed by Mr. P.K. Manohar, Adv.): An application has been filed through the Amicus Curiae in Court, inter alia, praying for clarification that the order dated 12th December, 1996 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing tree from the areas notified under Section 18 or 35 of the Wildlife Protection Act, 1972. Let the same be taken on record.

Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park or Game Sanctuary or forest. If any order to this effect has already been passed by any of the respondent-States, the operation of the same shall stand immediately stayed.

Reply be filed within three weeks.

The Union of India will also indicate in its reply affidavit as to what safeguards or steps should be taken in relation to such trees.

The Registry should communicate this order of stay to the Chief Secretaries of all the States immediately without payment of process fee.

(Note: Subsequently the word “forest” was deleted)

(5)

ORDER

I.A. NO. 424

(Dated: 22.9.2000)

(Order prohibiting felling of trees [as per approved Working Plans] without ensuring regeneration)

Re: Felling and regeneration

We have heard the learned counsel for the parties are some length. The concern of the State of Madhya Pradesh is that they should be permitted to do the felling as per the working Plans while the concern of the Amicus Curiae and the Central Government is that regeneration should take place.

Pursuant to the order dated 28th February, 2000 passed by this Court, a discussion took place between Shri. C. P. Oberoi, Inspector General of Forests & Special Secretary, on the one hand and Shri. K. S. Sharma, Chief Secretary, Madhya Pradesh on the other. This discussion took place on 11th April, 2000 and the brief records in respect thereof have been filed in Court.

With regard to lifting ban on felling of trees from land other than Government forest land, it is recorded in these minutes that the State of Madhya Pradesh was revising the Rules for transit of forest produce and felling of trees from private areas. This Court was to be approached for lifting the ban only after the process of revision of these Rules is completed. The Advocate General for the State of Madhya Pradesh informs us that within a month these Rules will be finalised and placed before this Court after which further orders will be passed.

In regard to felling of trees from Government forests as per the approved Working Plans, it is recorded in the minutes as follows:

“After felling is done in a particular area as per the approved Working Plans, prescriptions given in the Working Plans are required to be properly implemented to ensure the regeneration. However, in Madhya Pradesh at times, though felling has been done as per the approved Working Plans, necessary prescriptions which ensure regeneration, have not been implemented, perhaps, due to non-availability of sufficient funds.

It was agreed that in future, re-felling, even as per the approved Working Plans shall be done for any area in respect of which sufficient budgetary provisions have not been made for implementation of prescriptions given in the Working Plans for regeneration. IGF & SS mentioned that in respect of areas where felling has been done in last three years and the corresponding prescriptions for regeneration have somehow not been implemented, a phased programme for three years may be prepared. Allocation of adequate budget provisions for implementation of the same may be made by the State Government. Chief Secretary, MP informed that State has 208 of the country’s forest area, hence, it should be provided central assistance on prorata basis to enable the State Govt. to implement the various prescriptions of the Working Plans. He also mentioned that if forests are not worked as per Working Plans, it may lead to their degradation IGF & SS has advised that the State Govt. may utilise funds already provided under the Central Sponsored Schemes and Central Sector Schemes and prepare suitable proposals which would be considered by the Ministry on merits.”

From the aforesaid, it is evident that the felling is far in excess of what would be justified with reference to the regeneration, and the main cause in respect thereof is non-availability of sufficient funds. Even with regard to the felling of trees as per the Working Plans in the last three years, the corresponding prescription for regeneration has not been implemented.

Two questions immediately arise for consideration. One is with regard to the implementation of the

Working Plans in so far as felling is concerned and the second is with regard to the regeneration of forests. It is quite obvious that the two activities must co-exist. There cannot be felling without regeneration because that will over a period of time only result in the forests vanishing. There has been shortfall with regard to the regeneration and as a result thereof forest cover is depleting. That shortfall has to be made up and for the future such felling has to be done which will ensure that there is at least no further depletion of the forest cover, and that the targets for increase in forest cover, as contemplated in the Working Plans, are met. In other words, regeneration should be commensurate with the felling, and to the extent stipulated in the Working Plans. The Working Plans were approved by the Central Government. It is therefore for the Central Government primarily to ensure the implementation thereof. In view of what is contained in the minutes, we feel it would be appropriate to hold that the State of Madhya Pradesh is at liberty to approach the Ministry of Environment & Forests for permission to carry out any further felling in accordance with the Working Plans, and any permission which is granted hereafter will be effective and the orders of this Court will not stand in the way of carrying out the felling to the extent so permitted. A report, however, will be filed in Court within three weeks of any such permission being granted so as to enable the Court to oversee whether any orders are called for.

We are sure that the Central Government will deal with any such request made by the State expeditiously, and keeping in mind all factors including the principle of sustainable development.

As far as regeneration of the forest is concerned, it is quite evident that the State of Madhya Pradesh does not have the funds required for carrying out the task nor there is any likelihood of their being able to raise finances in respect thereof.

A suggestion has been mooted to the effect that for regeneration of forest, there should be a joint venture between the State of Madhya Pradesh and the Central Government whereby the working capital, in whole or substantially the whole, can be provided by the Central Government and the regeneration of degraded forests carried out. Such a venture can be on a commercial basis which will be not only profitable to both the State and the Centre but, what is more important, it will hopefully generate lot of employment opportunities for the local population. This aspect should be looked into and a plan finalised and implemented preferably within a period of eight weeks from today. The final decision so taken may be intimated to the Court by way of an affidavit.

It is to be borne in mind that taking an overall view is important for the country that in certain areas where natural forest exist, the same should be preserved. The political boundaries are drawn for various considerations but as far as the environment is concerned one has to, take a holistic view and in that view of the matter one cannot overlook the fact that even though the national average of the forest cover is low, even that low figure is there because of the higher percentage of the forest cover in the Hill States and in the State of Madhya Pradesh and in North Eastern States. Majority of the States in India fall short of national average as far as the forest cover is concerned. For the benefit of the said States also nay for the benefit of the whole region, it is important that there should not be any further depletion of the forest cover in these sensitive areas of Madhya Pradesh and in the Himalayas and the other sensitive areas like the Western Ghats etc. In order to ensure the preservation and regeneration of forests in these areas, the Central Government should consider whether the deficient States should not be asked to contribute towards the preservation of the existing forest cover and compensation/incentive given to the forest-rich States to preserve and regenerate forest. In a sense, there should be a partnership of all the States to ensure the maintenance and improvement of the forest cover. This suggestion should be considered by the Committee of the Secretary (Finance) and Secretary, Ministry of Environment & Forests in consultation with the Chief Secretaries of all the States and a report submitted preferably within eight weeks.

We further direct that the Central Government should call for the particulars from each State and then reconsider the Working Plans which have been approved and carry out such modifications as it may deem proper so as to ensure that the regeneration is commensurate with the felling of the trees. The particulars will

be called for by the Central Government within two weeks, the said particulars will be supplied by the State concerned within four weeks thereafter and a report submitted by the Central Government to this Court within eight weeks.

Re: Regularisation of encroachments

The learned Amicus Curiae has brought to our notice a request which has been made by the State of Madhya Pradesh to the Central Government for regularisation of encroachments. As per the aforesaid minutes dated 11th April, 2000 to which the Chief Secretary, Madhya Pradesh was a party, one of the important conditions for regularisations of encroachment is the carrying out of compensatory afforestation over the equivalent land. The proposal for regularisation is for the period 1-1-1977 to 25-10-1980. One cannot shut eyes to the fact that there would be encroachment thereafter.

Experience has shown that whenever regularisation takes place subject to imposition of conditions such as compensatory afforestation, the regularisation becomes effective without the conditions ever been fulfilled.

In our opinion, it will be more appropriate that the conditions imposed in relation to regularisations are required to be fulfilled first before any regularisation is granted. The result of this would be that the regularisation would be deferred but the fulfillment of the conditions ensuring inter alia compensatory afforestation would be ensured. This is a matter to be considered by the Central Government.

In other words, the eligibility condition for permission to grant regularisation of the encroachments would be the fulfillment beforehand of conditions under the Guidelines, especially in regard to compensatory afforestation.

The request of the State of Madhya Pradesh should be considered by the Ministry of Environment & Forests and a decision taken within eight weeks.

(6)

ORDER

(Dated: 12-3-2001)

(Order protecting forest officials against whom false complaints filed by the accused booked in forest offences)

The Amicus Curiae has brought to our notice an FIR No. 55/2001 which is stated to have been lodged against officials of the Forest Department at the behest of the SC & ST Commission. Liberty is granted to the Amicus Curiae to file a formal application, but in the meantime we stay the arrest of A. K. Saxena, ACF and Mahesh Chand, Forest Guard as well as of the driver of the vehicle in which they were traveling on 6th January, 2001 when they are stated to have seized illegally cut wood in Badaun in the State of U.P. Application be filed by the next date of hearing.

(7)

ORDER

(Dated: 12.3.2001)

(Orders on seizure of 200 of railway wagons transporting illegally felled timber from the North the Eastern States in violation of the Hon'ble Supreme Court's order dated 12.12.96)

Mr. K. N. Raval, Addl. Solicitor General has placed on record a report of the Special Investigation Team (SIT) with regard to 200 wagons of timber which were seized in an around Delhi and Tinsukhia which had originated from Tinsukhia. According to the statement filed, the total quantity of such timber was 1768.895 cubic mt. in respect of 32 wagons. Details of other seizure are not readily available as the cases are stated to be pending.

The Union of India will file an affidavit giving full details, inter alia, of the consignors and the consignees of the timber and it will also be indicated as to who were the authorized representatives of the consignors before the SIT and who were the railway officials responsible for allowing illegal timber to be moved out of Assam and North-Eastern States. The names of the endorsees regarding the timber on the railway receipts, if available, should also be indicated.

The Union of India shall immediately and without any undue delay and preferably within 48 hours insure the entire quantity of timber seized. The insurance should be comprehensive and should cover against all risks including fire, theft, looting, lost, etc.

(8)

ORDER

(Dated: 23.4.2001)

(Further orders on seizure of illegal timber transported in railway wagons from North Eastern States)

On 12th March 2001, Shri M. K. Jiwrajka had filed in Court the Special Investigation Team – Action Taken Report which pertained to seizure of 200 wagons of timber in Delhi. It was then directed by this Court that an affidavit should be filed on behalf of the Union of India. This affidavit has been filed along with the analysis of the detailed wagons. The details purport to show, inter alia, the names of the consignors and the consignees as well as the endorsees of the railway receipts. According to the particulars given, the loading stations were in the North Eastern States including Assam. According to the Report, a large quantity of timber did not have proper hammer-marks and some of the transit passes were also invalid. We are informed that one or two applications which were filed were referred to SIT who after hearing the applicants has ordered confiscation of the timber as no proper explanation in respect of the source thereof had been given.

It is contended by Shri Harish N. Salve, the learned Amicus Curiae that perhaps, and in fact very likely, many more wagons containing timber would have moved from North East though it is only 202 wagons which were detained. We direct the Railway Board to file within 10 days from today details with regard to movement of wagons from these North East loading stations indicated in the analysis attached to the affidavit of the Union of India to places outside the said States in the last three years. The information will indicate as to what is the quantity of timber which was sent. The affidavit will also indicate as to why the railways have permitted timber being transported which did not have proper hammer-marks and who were the officers responsible for allowing unhammer marked timber to be loaded and transported and what action has been taken in regard to them by the railway authorities.

Responses to the SIT Report as well as to the affidavit of Shri A. R. Chadha, DIG (Forests), Ministry of Environment & Forests, filed in Court today along with the analysis of the detained wagons should be filed within 10 days by the Chief Secretaries of Arunachal Pradesh, Assam, Nagaland, Tripura, Meghalaya, Mizoram and Manipur. Copies of the affidavit of Shri Chadha and the copies of the SIT Report may be given to the Standing Counsel of these States by the Registry immediately.

The affidavit of Shri Chadha discloses, and this is supported by Shri Salve, that apprehending laxity on the part of the authorities the illegal felling of timber in the North Eastern areas is again gathering momentum. It has been the experience of this Court that illegal felling and transportation of timber is firstly caused by the existence of licensed and unlicensed saw mills and the transportation of the timber by road and rail. Till we receive information of the state of affairs from the respective Chief Secretaries, we hereby prohibit movement of all timber (sawn & unsawn) and veneer from any of the North Eastern States to any other part of the country either by road or by rail or by waterways or in any other manner whatsoever. We further direct the States to take immediate action to suspend immediately the working of all the errant saw mills which are shown as the consignors in column 10 of the analysis of the detained wagons because it is from these saw mills that the illegal timber has found its way to Delhi.

Till next date of hearing, no further cutting of the trees with or without permit shall be allowed. The Ministry of Environment & Forests will also indicate as to in what manner the timber which has been seized is proposed to be sold and the proceeds appropriated.

To come up on 10th May, 2001 when the Chief Secretaries, Arunachal Pradesh and Assam as well as the Forest Secretaries of all North Eastern States should be personally present in Court.

(9)

ORDER

(Dated: 23.4.2001)

(Order constituting the State Empowered Committees for the States of Madhya Pradesh and Chhattisgarh for expeditious disposal of pending Interlocutory Applications pertaining to the said states)

Direction with regard to setting up of Nodal Agencies in the States of M.P. and Chhattisgarh to dispose of the interlocutory applications with regard to overseeing the working of the forest.

The Advocate General for the State of M.P. has suggested that if a Nodal Agency could be set up within the State of M.P. to oversee the working of the forest with power to dispose of applications and take decisions, the State of Madhya Pradesh would be willing and would allow for such a Nodal Agency to function. This Nodal Agency should be statutory and be constituted under Section 3(3) of the Environment Protection Act. The suggestion of the Advocate General is that the Nodal Agency should consist of about two nominees of the Central Government, two of the State Government and two of the NGOs and one Chairman to be nominated by the Central Government. Hopefully, the members of the Nodal Agency should be finalised by the Central Government in consultation with the State Government. This Nodal Agency which will then become a role-model for similar agencies in the other States should, if possible, be set up within the next ten days.

A similar suggestion has also been made by the Advocate General for the State of Chhattisgarh. Needful be done on this behalf within the same period. The Nodal Agencies should be delegated the power under Section 5 of the said Act as has been done in the case of Bhure Lal Committee.

To come up on 10th May, 2001.

(10)

ORDER

I.A. No. 795

(Dated 23.4.2001)

(I.A. filed by Amicus Curiae Mr. Harish Salve, Senior Advocate for declaring Matheran as Ecologically Sensitive Zone under the Environment (Protection) Act, 1986)

I.A. No 2001/ (Filed in Court by Amicus Curiae with regard to the Forest of Matheran in the State of Maharashtra)

An application has been filed by the learned Amicus Curiae for direction on the alleged destruction of forest of Matheran in the State of Maharashtra.

Issue notice to the Union of India as well as to the State of Maharashtra returnable on the next date of hearing.

(11)

ORDER

I.A. No. 707

(Dated: 18.2.2002)

(Order in respect of collection of minor forest produce except from areas declared as national parks and sanctuaries)

It is clarified that the order of this Court prohibiting cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other

words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.

The I.A. stands disposed of.

(12)

ORDER

Contempt Petition (C) No. 193/2001

(Dated: 18.2.2002)

(Contempt proceedings initiated for felling of trees in violation of orders of the Hon'ble Supreme Court in the Nilgiri District, Tamil Nadu)

In pursuance to the order dated 23rd November, 2001, we direct the Principal Chief Conservator of Forests to conduct a survey of the plantations within the State and to give a report as to the extent of illegal felling of trees which has taken place, the area of the land where this illegal felling has been done and the

owner of the plantations to whom the land belongs, so that on the next date of hearing appropriate orders can be passed in terms of the suggestions of the learned Amicus Curiae in this Court's order dated 23rd November, 2001, with regard to compulsory afforestation on the ratio of two hectares of land for every one hectare in which the trees have been felled. The report be furnished by the PCCF within eight weeks.

List on 23rd April, 2002.

(13)

ORDER

(Dated: 9.5.2002)

(Order constituting the Central Empowered Committee for monitoring the implementation of the Hon'ble Supreme Court's orders in the Forest Matter)

- (1) It is submitted that till the Central Government constitutes a statutory agency as contemplated by Section 3 of the Environment (Protection) Act, 1986, it is necessary and expedient that an authority be constituted at the national level to be called Central Empowered Committee (hereinafter the Empowered Committee) for monitoring of implementation of Hon'ble Court's orders and to place the non-compliance cases before it, including in respect of encroachment removals, implementations of working plans, compensatory afforestation, plantations and other conservation issues.
- (2) The Empowered Committee shall comprise of a Chairman to be nominated by Ministry of Environment and Forest (MoEF) in consultation with the Amicus Curiae. It will have one nominee of the MoEF, and two NGOs (also to be nominated in consultation with the Amicus Curiae). Shri M.K. Jiwrajka will be its Member-Secretary. The persons so appointed (other than the nominee of the Ministry) shall not be removed without leave of the Court.
- (3) Pending interlocutory applications in these two writ petitions as well as the reports and affidavits filed by the States in response to the orders made by the Court shall be examined by the Committee, and their recommendations will be placed before Hon'ble Court for orders.
- (4) Any individual having any grievance against any steps taken by the Government or any other authority in purported compliance with the orders passed by this Hon'ble Court will be at liberty to move the Committee for seeking suitable relief. The Committee may dispose of such applications in conformity with the orders passed by Hon'ble Court. Any application which cannot be appropriately disposed of by the Committee may be referred by it to this Hon'ble Court.
- (5) The Committee shall have the power to:
 - (a) Call for any documents from any person or the Government of the Union or the State or any other official.
 - (b) Summon any person and receive evidence from such person on oath either on affidavit or otherwise.
 - (c) Seek assistance/presence of any person(s)/ official(s) required by it in relation to its work.
- (6) The Committee may decide its own procedure for dealing with applications and other issues. Union of India shall provide suitable and adequate office accommodation for the Committee. The expenditure incurred on the working of the Committee including salary/remuneration (to the extent not payable by the Government) to the members and supporting staff, may be met out of income accruing to the Special Investigating Team (SIT). Necessary procedure for this may be formulated by the Committee in consultation with the SIT.
- (7) The Committee is empowered to co-opt one or more persons as its members or as special invitees for

dealing with specific issues. While dealing with issues pertaining to a particular State, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State shall be co-opted as special invitees.

- (8) The Committee shall submit quarterly reports to the Hon'ble Court. It will be at liberty to seek clarifications/modifications needed by it from Hon'ble Court.

I.A. No. 295 is disposed of in the aforesaid terms.

(14) ORDER

(Dated 12.8.2002)

(Order on the recommendations in I.A. No. 703 relating to the encroachments on forest land)

Re: Report of Central Empowered Committee

Recommendations of the Central Empowered Committee have been received. The parties may file their response to the Reports/Recommendations within three weeks.

The Empowered Committee was set up under orders of this Court. In our opinion, the said Empowered Committee should be notified under Section 3 of the Environment (Protection) Act as being a Committee for all the forest areas in the whole of India with power to give directions, hear objections and take decisions so that there is no need to approach this Court from time to time. Mr. A. D. N. Rao states that he will take instructions regarding this and inform the Court on the next date of hearing. We hope that by that date formal notification would be issued.

According to the Report of the Central Empowered Committee, there is large scale encroachment in the forest area, the total area being 7,25,861 hectares. This encroachment is in the area where the forest exists. The other States have much less land area under forest. A question had arisen as to why the States which are deficient in forest should not contribute to a fund to be disbursed amongst the States which have forests, which are prevented from cutting the same or allowing the same to be habitated. This is one of the main measures in which the forest can be conserved as the forest cover in existence is woefully low. In other words, taking the country as a whole, it should be the duty of the States which are deficient in the forest cover to

contribute money in order to prevent deforestation: thereby preserving the ecological balance.

Notice to issue to the Union of India and the various State Governments / U.Ts. who will address arguments on this aspect on the next date of hearing and will also file the written submissions. The Amicus Curiae may also address on this aspect on the next date of hearing.

To come up on 9th September, 2002.

(15)

ORDER

I.A. No. 780

(Dated: 2.9.2002)

(Order on commercial vandalism indulged by various companies including multinational companies by painting advertisements on rocks around Rohtang Pass and Manali area in Himachal Pradesh)

NEERI has not given a report, and on the contrary, they want some documents to be supplied to them and Rs.2,50,000/- deposited. The earlier order requiring NEERI to give a report is recalled.

We direct the Secretary, Empowerment Committee Mr. Jivrajika and Mr. Mahendra Vyas to go to various locations in Himachal Pradesh and give a report with regard to advertisements which are painted on the rocks in and around the area. The Report be given within ten days. To come up on 16th September, 2002.

Learned Amicus Curiae draws our attention to a list submitted in Court by Mr. Arun Jaitley which indicates other entities other than Coca-Cola and Pepsi who have also painted their advertisements on the rocks. The list of ten such entities is taken on record and notice is issued to them also returnable on 16th September, 2002. Notice be issued by the Registry without payment of process fee.

Mr. Ashok Desai has drawn our attention to an order passed by the State of Himachal Pradesh dated 14th and 21st August, 2002 under Section 5 of the Environment Protection Act whereby the Coca-Cola and Pepsi Companies have been directed to remove the advertisements within 15 days. While the advertisements have to be removed the mode or method of removal cannot be left to the sweet will of the wrong doer. It will have to be ensured that the removal of the advertisements does not cause violation or adversely affect the ecology of the area. For this purpose, it is better that the entities to whom such notices have been issued first inform the State Governments and this Court as to the mode and manner in which it proposes to remove the advertisements and it is only after the same is approved by an appropriate authority that the action of removal

would be permitted to be undertaken.

The Committee of Mr. Jivrajika & Mr. Mahendra Vyas will be at liberty to take any expert in the first instance to assist them. To meet expenses of the Committee, the Coca-Cola and Pepsi will deposit initially Rs. 50,000/- each in this Court within three days from today. The money when deposited will go to meet the expenses of the Committee. The representatives of Coca-Cola and Pepsi Cola will be at liberty to accompany the Committee.

To come up on 16th September, 2002.

(16)

ORDER

(Dated: 9.9.2002)

(Draft notification on constitution of the Central Empowered Committee under the Environment (Protection) Act, 1986 approved by the Hon'ble Supreme Court)

A draft of the proposed notification under Section 3(3) of the Environment (Protection) Act, 1986 constituting the Central Empowered Committee has been shown to the Court. According to the draft, the Committee is being constituted for a period of five years. The constitution of the Committee would be: (i) Shri P. V. Jayakrishnan, Secretary to the Government of India, Ministry of Environment and Forests as Chairman; (ii) Shri N. K. Joshi, Additional Director General of Forests, Ministry of Environment and Forests as Member; (iii) Shri Valmik Thapar, Ranthambore Foundation as Member; (iv) Shri Mahendra Vyas, Advocate, Supreme Court of India as Member and (v) Shri M. K. Jiwrajka, Inspector General of Forests, Ministry of Environment and Forests as Member Secretary. They all are appointed in their personal capacity. A formal notification will be issued within a week. As and when this notification is issued, whatever functions and responsibilities had been given to the Empowered Committee will now be exercised by this statutory Committee.

(17)

ORDER

I.A. No. 276

(Dated: 20.9.2002)

(Order for removing encroachments in Tatkola Reserved Forest in Chikmagalur District, Karnataka on the basis of the recommendations of the CEC)

I.A. Nos. 276 with I.A. Nos. 413, 437, 453 and 454

We are here concerned with the alleged encroachment into the Tatokola Forest in the State of Karnataka.

On 29th July, 1998 this Court directed the State of Karnataka to indicate the extent of encroachment in the forest land in the State. With regard to Tatkola Reserved Forest there were allegations regarding large scale deforestation. Shri R. M. N. Sahay, Conservator of Forest was appointed as the Commissioner of this Court and directed to go to Tatkola Reserve Forest and to give a report about the present state of affairs in that forest.

Subsequently, on 7th May, 1999 this Court passed another order on the receipt of the Report of Shri Sahay. In the said Report, Mr. Sahay had stated that there were large scale encroachments and the State of Karnataka was required to give its response to the position indicated in the said Report. What is, however, important is that this court took note of the fact that survey was being conducted in Chikmagalur area by the Survey of India, and this Court by its order dated 7th May, 1999 directed the Survey of India to continue with the survey operations and to give a Report regarding encroachment in the Chikmagalur area of the forest.

The Survey of India then submitted its Report which has been placed on record here. The said Report describes the manner in which the actual survey of the Reserved Forest was carried out and alongwith the Report and a map of the area has been filed indicating the boundaries of the forest as well as the land therein which has been encroached upon. A list of the encroachers has also been included. I.A. No. 453 filed by Mr. B. L. Shankar was that he was the owner of a Coffee estate in Survey No. 3 and that land was not part of the Reserved Forest. This application alongwith the other applications were forwarded to the Central Empowered Committee for consideration and report.

After hearing the applications in I. A. Nos 413, 437, 453 & 454 on 12th July, 2002 and 5th August, 2002, the Empowered Committee submitted its Report on 5th September, 2002. The Empowered Committee accepted the survey and the Report of the Survey of India and came to the conclusion that as per the said Report as well as the Report of Shri Sahay, 611.23 acres of forest land had been encroached upon and came to the following conclusions:

- (1) the report given by the Survey of India about boundaries of Tatkola Reserve Forest and the extent of encroachment inside it should be accepted as the final report as the Survey of India is the apex survey organisation on survey matters in the country. The survey has been done by it using the latest equipments

in a scientific manner. The authenticity and reliability of the survey report cannot be challenged.

- (2) as reported by the Court Commissioner and confirmed by Survey of India report, 611.23 acres of forest land has been encroached inside Tatkola Reserve Forest. Out of this, 556.04 acres has been encroached for coffee cultivation and 55.19 acres for other purposes.
- (3) The encroachments which have taken place inside Tatkola Reserved Forest need to be immediately evicted specially as these encroachments are for commercial gains;
- (4) Adequate steps have not been taken by the State Government for removal of encroachments in the past. In spite of appointment of Court Commissioner and deep concern shown by this Court in the matter, the encroachments have been allowed to continue on one pretext or another such as pendency of joint survey report, Survey of India's report and pendency of the cases filed in various courts;
- (5) After removal of encroachments, it is necessary to rehabilitate the encroached area by afforestation and other conservation measures; and
- (6) Compensation for environmental losses caused due to encroachment should be recovered from the encroachers specially as these encroachments are for commercial gains. Similarly, compensation should also be recovered from the State Government if it does not take effective steps immediately for removal of encroachments.

The Empowered Committee then made the following recommendations:-

- (a) Shri R. M. N. Sahay, Court Commissioner's Report about the forest area under encroachment in Tatkola Reserve Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith.
- (b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number / survey number and the Forest Range from where the encroachments are to be removed in compliance of this order.
- (c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that Police protection and help needed for removal of encroachments is provided as and when required.
- (d) Compensation for environmental losses caused due to encroachments which have taken place in the instant case for commercial purposes, shall be recovered from the encroachers identified by the Court Commissioner @ Rs. 5 lakhs per hectare as an exemplary punishment. For any encroachments not removed by the State Government for any reason whatsoever within three months, compensation for continued environment losses shall also be used exclusively for forest protection and rehabilitation of encroached area within the concurrence of the Central Empowered Committee.
- (e) The Action Taken Report shall be filed by the Chief Secretary, Karnataka before the Central Empowered Committee every month till the encroachments are completely removed and all the compensation payable by the encroachers / State Government are recovered / deposited; and
- (f) The earlier orders made in the matter shall be read, modified wherever necessary to this extent. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any Court (including High Court) or Tribunal.

On behalf of Shri Shankar it was contended by Mr. Kapil Sibal that he was the owner of 32 acres and 26 guntas of land which is a part of Survey No. 3 which was not a part of the Reserved Forest. He drew our

attention to a Government notification issued by the Maharajah of Mysore dated 25th April, 1936 whereby Tatkola block was created. The boundaries of the forest were set out in the enclosure to the said notification and the Schedule described the boundaries in greater detail. The said notification also mentioned that the land mentioned in the Enclosure Nos. I, II, III and IV were not to form part of the forest. The case of Mr. Shankar was that enclosure No. III clearly stipulated that Survey No. 3 of Kanchegowda Coffee Estate was not to be regarded as a part of the forest. Mr. Kapil Sibal submitted that Mr. Shankar is entitled to retain 32 acres and 26 guntas of land in Survey No. 3 and the Report of the Survey of India does not indicate this area of land which belongs to him. Grievance was also sought to be made that his client had not been heard.

What has been done by the Survey of India is to identify the boundaries of Tatkola Reserved Forest. These boundaries have been identified in accordance with the terms of the notification of 1936. The said notification provided that in the north the supporting point of the boundary was from the south-west corner of Survey No. 181 of Kundur village of Chikmagalur Taluk. Report of the Survey of India states that it was not possible to identify this point at the time when the work of demarcation was commenced. It then describes the manner in which it commenced the work from the nearest available Survey of India geographical control point. This point was identified and on that basis it proceeded to determine the said south-west corner of Survey No. 181 of Kundur Village, the starting point of the Tatkola village boundary. The Report indicates that when this point was determined, embedded stone at that place was found. The correctness of this point was cross-checked and when it tallied the Survey of India then also found old pillars indicating the boundary of the forest. Some new pillars were also erected by the Survey of India and on this basis the boundary lines were drawn out, the encroachers identified and a plan was drawn up which has now been placed on record in this Court.

According to this plan of the Survey of India Survey No. 3 is clearly shown as not being included in the Tatkola Reserved Forest, but what this plan does indicate is that certain area of Survey No. 4 which forms part of the Reserved Forest has been encroached upon alongwith the boundary of Survey No. 4 and Survey No. 3. This seems to indicate that persons in possession of land in Survey No. 3 could be those who have encroached into the adjoining area forming part of Survey No. 4 which is included in the Tatkola Forest.

In our opinion, Report of the Survey of India and the map drawn by it is not open to challenge. The State of Karnataka has in its affidavit stated that it accepts the correctness of the Report. Survey of India is an organisation (the apex one), whose duty it is to prepare the plans after carrying out such surveys. It is on the basis of the aforesaid Survey of India Report that the Central Empowered Committee recommended that the encroachers should be removed from the forest. Keeping this Report in mind, the State of Karnataka in its affidavit of Smt. S. R. Vatsala dated 18th October 2002, has stated that the Survey boundary of the Reserved Forest and to indicate which portion of land fell in Survey No. 4 and which portion of the land in that area fell outside the said Reserved Forest including Survey No. 3. In the plan filed, this has been indicated and according to the said plan portions of Survey No. 4 have been shown to be encroached upon. The total area in occupation of the encroachers in the said forest is stated to be more than 611.2309 acres. It may also be noticed that though in the notification of 1936 it was stated that the total area of the forest area was 2312 acres and 38 guntas, but as per the Report of the Survey of India the survey which was conducted with the help of the latest scientific instruments show that the correct area of the forest was 2269.198 acres. This area of land stands identified in the plan now drawn up by the Survey of India.

From the aforesaid, it is quite clear that all encroachers into the Tatkola forest have to be evicted. It is no doubt true that according to Section 64A show cause notice has to be issued. But that can only be with a view to enable the person to whom notice is issued to show that his land does not fall within the boundaries of the forest as drawn up by the Survey of India. If the land is identified as falling within the Survey of India boundary then there could be no other defence open to the person concerned and the State would be under an obligation and duty to evict the encroacher, by force if necessary.

Mr. Ranjit Kumar, the learned senior counsel appearing on behalf of Mr. Seshagowda submitted that his

client is the owner of the land which formed part of Enclosure No. II and that was also excluded from the forest. As we have already indicated, the determination of the forest boundaries by the Survey of India is final and binding on all. An area which falls within the said forest is forest land and cannot be encroached upon. If the area which is in physical occupation of Seshagowda falls within that forest then the same has to be vacated by him and he has to be evicted.

We accept the Report of the Central Empowered Committee of September, 2002. Result of this is that the Report of Shri Sahay regarding encroachment in Tatkola Reserve Forest as confirmed by the Survey of India Report shall be treated as final and all encroachments reported therein shall be removed.

In conclusion:

- (a) Shri R. M. N. Sahay, Court Commissioner's Report about the forest area under encroachment in Tatkola Reserve Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith.
- (b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachments is undertaken identifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number / survey number and the Forest Range from where the encroachments are to be removed in compliance of this order.
- (c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that police protection and help needed for removal of encroachments is provided as and when required.
- (d) The encroachers are liable to compensate for the losses caused due to the encroachments especially when the land encroached upon has been utilised for commercial purposes. We, however, take a lenient view and direct that if the encroachers voluntarily vacated the encroached land and hand over the same to the Chief Conservator of Forest within three months from today i.e. on or before 31st January, 2003, they will not be liable to pay any compensation but if they continue to remain in occupation then they will have to pay Rs. 5 lakhs per hectare per month to the State Government. Money so recovered shall be kept in a separate account and shall be used exclusively for forest protection and rehabilitation of the encroached area with the concurrence of the Central Empowered Committee.
- (e) Action Taken Report shall be filed by the Chief Secretary, Karnataka before the Central Empowered Committee every month till the encroachments are completely removed and all the compensation payable by the encroachers has been deposited. Copy of the Action Taken Report also be filed in this Court.

Liberty is given to the Central Empowered Committee to seek further directions.

The Court records its appreciation of the commendable work done by Shri R. M. N. Sahay, presently the Chief Conservator of Forests, Karnataka.

This order will not prevent the Survey of India from carrying out any other survey as may be necessary.

I.A.s are, accordingly, disposed of.

(18)

ORDER

I.A. No. 780

(Dated: 26.9.2002)

(Order on painting of advertisement on rocks around Rohtang Pass, Himachal Pradesh)

Delay condoned in depositing the amount of Rs.1,00,000/- by Ms. Manjula Gupta, advocate on behalf of Judgal's.

A further report has been received from the Committee of M/s. Jivarajika and Mahendra Vyas. It appears that apart from the persons and companies mentioned in page 2 of the report there are a large number of small and big advertisers who have painted/damaged the rocks. In the third report of the Central Empowered Committee the advertisers identified are Malhotra Book Depot, Coca Cola, Pepsi Cola, Grasim, Fena, SBI, Sleepwell and Amaron. Apart from these, there are 34 other advertisements which have been put under the category of "others/miscellaneous". In addition thereto, there are 168 advertisements which because of unclear materials cannot be identifies.

It will be necessary to require payment from all advertisers to the extent identifiable and not merely from 8, mentioned here in above.

At this stage, therefore, till further identification takes place, only an interim order will be passed requiring payment of some amount our of rupees five crores which was estimated in this Court's order dated 23rd September, 2002 as being the likely expense for restoring the damage which has been done.

It is the suggestion of Mr. Harish Salve, learned Solicitor General, that the work of restoration should be undertaken by responsible organizations. Central Empowered Committee headed by Shri P.V. Jai Krishnan, who is at present Secretary in Ministry of Environment and Forests, has been established under Sec.3 of the Environment (Protection) Act, 1986. In our opinion, it will be appropriate for this Committee to take the responsibility of over-seeing repairing work of the damage which has been done. It will be open to this Committee to associate such individuals or organisations which can assist or do the needful. In the report of M/s. Jivarajika and Mahendra Vyas Committee it has been mentioned that INTACH is an organisation which will be able to carry out the work in association with its collaborator ICCI which works under Dr. O.P. Aggarwal. This is a suggestion which can be considered by the Jai Krishnan Committee (Central Empowered Committee). Further requirement is that urgent steps should be taken for the purpose of identifying an agency which will go into the repair of damage and then the work on that behalf must commence as early as possible.

We further direct that copies of the report filed in this Court by M/s. Jivarajika and Mahendra Vyas Committee along with annexures be forwarded immediately to Jai Krishnan Committee (Central Empowered Committee)

who will, there upon go into the matter, identify other advertisers and determine as to what should be the percentage of expense to be contributed by them. The contribution towards the expense would, appropriately, be on the basis of the size of the total advertisements of the Companies. Till this exercise is completed, we direct rupees two crores out of the estimated amount of rupees five crores to be deposited with the Jai Krishnan Committee (Central Empowered Committee) within ten days from today, of which rupees one crore will be deposited by the State of Himachal Pradesh, and the balance of rupees one crore will be deposited as follows:

MBD – 30 lakhs, Coca Cola – 30 lakhs, Pepsi Cola – 15 lakhs, GRASIM – 10 lakhs, FENA – 10 lakhs, SBI – 1.25 lakhs, SLEEPWELL – 1.25 lakhs and AMARON – 2.5 lakhs.

These organizations are directed to make the deposit as aforesaid within ten days from today and report compliance. This is in modification of the earlier order where the deposit was to be made by State of Himachal Pradesh with the Registrar of this Court, and the deposit has now to be made with Jai Krishnan Committee (Central Empowered Committee).

It will be open to the parties or organisations to give information to the Jai Krishnan Committee (Central Empowered Committee) within ten days from today, names of such other advertisers whose advertisements are there on the face of the rocks in this region of Manali.

Further order with regard to the deposit of the balance amount of rupees 3 crores towards cost will be passed on the next date of hearing. Notice is also given to the concerned organisations and advertisers to show cause as to why punitive/ damages should not be levied on them if the court comes to conclusion that punitive/ exemplary damages are called for in order to determine, what should be the amount of damages, it will be of assistance to get some further information from these organisations. Keeping in mind the fact that the rocks have been defaced within the idea of advertising the products it shall be considered as to what shall be the measure of determining the punitive/exemplary damages. It shall be necessary to find out as to what is the

expense on the advertisements of the organisations concerned. Yet another principle which has been followed by the courts in India is to levy damages of a certain percentage of the total turnover or of the revenue income. What the measure should be will be determined after hearing the parties, but all the parties to whom notices have been issued shall file affidavits before the next date of hearing informing the court as to the extent of their expense on advertisements in India and also the gross turnover and the revenue income with regard to the operations in India for the last three years. These affidavits should be filed on or before 11.10.2002 and the case to come up for hearing on 22.10.2002.

Out of the money which has already been deposited in Court, rupees three lakhs shall be given to Central Empowered Committee against the bill given by them.

(19)

ORDER

(Dated: 29.10.2002)

(Order imposing ban for setting new saw-mills in North-eastern States for five years and all unlicensed saw mills operating in the States of Maharashtra and Uttar Pradesh were ordered to be closed down on the basis of the Report / Recommendations of the CEC)

MONITORING REPORT (FIRST) OF THE CENTRAL EMPOWERED COMMITTEE

We have perused the First Monitoring Report of the Central Empowered Committee. Three suggestions have been made in the said Report. First is that the ban with regard to issue of license for establishment of new saw-mills or establishment of new wood-based industries in the north-eastern states should be extended by a further period of five years. The second prayer is that the High Powered Committee may be allowed to dispose of all the assets of the defaulting units who have not paid the penalty imposed by the said Committee on the wood-based units in north-eastern states. It is stated that only a small fraction of the penalty imposed has so far been realized. The other recommendation is that the ban of issuing further permission or license to all unlicensed saw-mills, veneer any plywood industries now imposed in the State of Maharashtra and in the State of Uttar Pradesh should be extended to all other states in India.

Despite notice, there is no opposition to this Report. Affidavit has been filed by the Union of India accepting this Report.

We, accordingly, direct as follows:

- (1) The ban imposed with regard to the opening of the new saw-mills and other wood-based industries by this Court's order dated 15th January, 1998 in the State of Nagaland is extended by a further period of five years.
- (2) The High Powered Committee is allowed to dispose of the assets on such defaulting units, including plants, machinery, land, shed, timber and timber products who have not paid the penalty imposed by the High Powered Committee of the wood-based units of north-eastern states. This will be subject to such orders which may be passed by the Central Empowered Committee.

No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of

or grant of licences.

(20)

ORDER

I.A. No. 828

(Dated: 29.10.2002)

(Order on the Second Monitoring report of the CEC on indiscriminate mining in the Aravalli hills)

ILLEGAL MINING IN ARAVALLIS

Second Monitoring Report of the Central Empowered Committee dated 28th October, 2002, has been received from the Central Empowered Committee. This Report deals with the mining which is termed as illegal in the Aravalli hills. It is stated in this Report that the members of the Central Empowered Committee visited the affected areas on 27th October, 2002, namely the forest area in the Aravalli Hills – Kote and Alampur village. Report states that mining operations are being carried out in this area which is a forest area which was being recreated by plantations under the Aravalli Greening Programme funded by the Japanese Government in the early 90s. We, prohibit and ban all mining activity in the entire Aravalli hills. This ban is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Dholpur to Rajasthan. The Chief Secretary, State of Haryana and Chief Secretary, State of Rajasthan are directed to ensure that no mining activity in the Aravalli hills is carried out, especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act.

(21)

ORDER

I.A. No. 566

(Dated: 29.10.2002)

(Regarding Compensatory Afforestation, setting up of Compensatory Afforestation Fund, charging of Net Present Value of forest land diverted for non-forest use under Forest (Conservation) Act, 1980)

On 23rd November, 2001, Mr. Kirit N. Raval, the learned Additional Solicitor General during the hearing of the IA Nos. 419 and 420 had placed on record a statement showing the position of the cases approved for diverting forest area for non-forest purposes, compensatory afforestation stipulated and what was actually done, funds to be received and were actually received and utilised. This Court then issued notices to the defaulting States which had recorded poor progress in utilization of the said funds and had not submitted quarterly progress reports.

The order of 23rd November, 2001 envisaged a scheme being formulated by the Ministry of Environment & Forest, inter alia, for ensuring proper utilization of the funds for compensatory afforestation in respect of permission granted for user –agency of forest land.

The Central Empowered Committee examined this question while dealing with I.A. No. 566 and after notice of all State Governments and hearing the learned counsel has submitted a Report dated 5th September 2002. The Report, inter alia, provides that there should be a change in the manner in which the funds are released by the State Government relating to compensatory afforestation. It has, therefore, been observed in this Report by the Central Empowered Committee that it is desirable to create a separate fund for compensatory afforestation wherein all the monies received from the user-agencies are to be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular state would be utilised in the same State.

There was also consensus amongst the States and the Union Territories that the funds for compensatory afforestation which were to be recovered from the user-agencies as well as the unutilized funds lying with the States should be transferred to such a fund. This fund will not be part of general revenues of the Union, of the States or part of the Consolidated Fund of India.

The said Report of the Central Empowered Committee contemplates the involvement of user-agencies for compensatory afforestation. The report also refers to the permissible activities under compensatory afforestation, adequate compensation to be received for loss of forest land and funds for catchment area treatment plant. The Committee has also made eight recommendations. Copy of the Report of September, 2002 of the Central Empowered Committee was given to the counsel for the parties. An affidavit on behalf of Union of India in response to the said Report has been filed. In paragraph 5 of the same, it is being submitted by the Ministry of Environment & Forest that it accepts the recommendations of the Central Empowered Committee in principle. It

is, further, mentioned in this affidavit that major institutional reorganization of the present mechanism has to be undertaken and that it was proposed that comprehensive rules would be framed which will inter alia also relate to the procedure and compensation. It is also proposed that there will be a body for the management of the Compensatory Afforestation Funds (CAF). The proposal in this affidavit of the Union of India is that the said body of management would be composed of a Director General and Special Secretary who will be the ex-officio Chairman and Inspector General of Forest who will be the ex-officio Member Secretary. Comprehensive rules etc will be placed before this Court for examination.

No other States has filed any response to the said Report of the Central Empowered Committee, It is, therefore, presumed that the State Governments are not opposed to the said Report and like Union of India, they have accepted the same.

We have examined the said Report and are of the opinion that it merits acceptance by us as well. As recommended by the Central Empowered Committee we direct as follows:

- (a) The Union of India shall within eight weeks from today frame comprehensive rules with regard to the Constitution of a body and management of the compensatory afforestation funds in concurrence with the Central Empowered Committee. These rules shall be filed in this Court within eight weeks from today. Necessary notification constituting this body will be issued simultaneously.
- (b) Compensatory Afforestation Funds which have not yet been realized as well as the unspent funds already realized by the States shall be transferred to the said body within six months of its constitution by the respective states and the user-agencies.
- (c) In addition to above, while according transfer under Forest Conservation Act, 1980 for change in user-agency from all non-forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment & Forest in consultation with Central Empowered Committee as and when necessary.
- (d) A 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan Funds, etc shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month.
- (f) The funds received from the user – agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26A or 35 of the Wild Life (Protection) Act, 1972 for undertaking activities related to protection of bio-diversity, wildlife etc. shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States / Union Territories.
- (g) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States/Union Territories or any amount that is yet to be recovered from the user-agency shall also be deposited in this Fund.
- (h) Besides artificial regeneration (plantations), the fund shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner.
- (i) The user agencies especially the large public sector undertaking such as Power Grid Corporation, N. T. P. C., etc which frequently require forest land for their projects should also be involve in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas

the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the Ministry of Environment & Forests with the concurrence of the Central Empowered Committee.

- (j) Plantations must use local and indigenous species since exotics have long term negative impacts on the environment.
- (k) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilization of funds.

Place it before a Bench of which Hon'ble Mr. Justice Y. K. Sabharwal and Hon'ble Mr. Arijit Pasayat are members for examination of the Rule

(22)

JUDGMENT

I.A. NO. 670 OF 2001

(Dated: 30.10.2002)

(KUDREMUKH JUDGEMENT)

ARIJIT PASAYAT, J.

By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern foresight have contributed in large measures to the alarming position. In the case at hand, the alleged victim is the flora and fauna in an around Kudremukh National Park, a part of the Western Ghats. The forests in the area are among 18 internationally recognized "Hotspots" for bio-diversity conservation in the world. The I.A. 670 of 2001 was filed by Sri. K.M. Chinnappa describing himself as trustee, Wildlife First.

The said I.A. 670 of 2001 is an offshoot of I.A. 548 filed by learned Amicus Curiae questioning the correctness of orders issued by the States of Karnataka and Uttar Pradesh respectively which according to him were in violation of the provisions contained in the Wildlife (Protection) Act, 1972 (in short the 'Act'). By order dated 14-2-2000, operation of any order permitting removal of certain trees from National Parks, Game Sanctuaries and Forests was enjoined. Subsequently, the word 'forests' was deleted.

In the present I.A. learned Amicus Curiae has pointed out that notwithstanding orders passed by this Court on 12-12-1996 and 14-2-2000 mining activities were being conducted by Kudremukh Iron Ore Co. Ltd. (hereinafter referred to as a 'company') which were in clear violation of orders passed by this Court. The main reliefs sought are:

- “(a) to direct the MoEF to withdraw the illegal “temporary working permission” issued by it and stop mining activities;
- (b) direct KIOCL to stop polluting the Bhadra river due to open cast mining;
- (c) take action against KIOCL for illegal encroachment in the forests and for destruction of forests in the Kudremukh National Park; and
- (d) to stop KIOCL from laying new slurry pipe line in the forests of the National Park.”

On 10-5-2001, this Court passed an order to the following effect:

“Issue notice returnable in the second week of July, 2001, Mr. A.D.N. Rao, Advocate accepts notice

on behalf of the Union of India. Service be effected on respondent No. 2 through Mr. S. R. Hedge, Advocate and on respondent No. 3 by ordinary process and by registered post.

Union of India will file an affidavit within eight weeks and in the affidavit they will also state the reason as to why the Government of India having once notified the area as a National park then permit mining activity to be carried out notwithstanding this Court's order of 12th December, 1996."

It was noted that Kudremukh National Park in which mining activities were being carried out was declared to be a National park in terms of Section 35(1) of the Act. The matter was referred to the Central Empowered Committee (in short the 'Committee') constituted under Section 3 of the Environment (Protection) Act, 1986 (in short the 'Environment Act'). After hearing the parties and taking note of the materials placed before it the Committee has recommended as follows:

"After carefully considering all the views and suggestions, the exceedingly rich biodiversity of the area and investment made by the KIOCL, suggestion made by the learned Amicus Curiae, the Committee is of the view that the KIOCL be asked to wind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, whichever is earlier, in the already broken up area. It is clarified that the period of 5 years would commence from 25-7-1999, when its lease had expired.

The winding up period of five years shall be subject to the following conditions:

- (i) the MoEF should prepare or get a rehabilitation and reclamation and a proper eco-restoration plan prepared for the mined area and project impact area through appropriate agency at the cost of KIOCL;
- (ii) KIOCL shall undertake to make available funds necessary for implementing for the aforesaid plans. The plans would be implemented by the agencies selected by the MoEF and under the supervision of the MoEF;
- (iii) A monetary compensation of Rs. 25 crores @ Rs. 5 crores per year will have to be deposited by KIOCL with MoEF in a separate bank account which would be utilized for the purpose of research, monitoring and strengthening protection of the Kudremukh National Park and for other protected areas in the State of Karnataka;
- (iv) A Monitoring Committee shall be constituted by the MoEF comprising representative of MoEF, representative of the State of Karnataka, two NGO experts preferably from Karnataka, which shall monitor the implementation of the rehabilitation plans;
- (v) After the winding up operations are complete, the KIOCL will transfer all the buildings and other infrastructure to the Forest Department of the State of Karnataka at book value.

Transparent guidelines for dealing with development projects in protected areas as recommended by Learned Amicus Curiae and agreed to by the MoEF in its affidavit filed by Shri. S.C. Sharma, Additional Director General of Forests shall be notified within 30 days with the concurrence of the Central Empowered Committee."

One of the members of the Committee Shri. Valmik Thapar gave a dissenting note. According to him all mining operations must stop immediately and the five years' period starting on 25th July, 1999 (on which the original lease period expired) must be treated as a "Restoration and Winding up period" so that the company can restore all mined lands, plant indigenous species and protect the region and give back to one of the world's finest forests what has been taken from it. All costs will be met by the project proponent. When the matter was taken up, Shri Thapar was requested to submit further materials, if any, to justify his dissenting note. A photographic Report has been submitted. The Company has filed its response in relation to the Committee's recommendation and connected reports.

While contending that there was no violation of any law relating to forests and environment certain legal issues were raised by the Company which need to be dealt with first. With reference to Rule 24 (B) of the mineral Concession Rules, 1960 (in short the 'Concession Rules') framed under the Mines and Minerals (Regulation and Development) Act, 1957 (in short the 'Mines Act'). Conservation Act or the Environment Act, on an application being made the lease was to be renewed for twenty years and therefore, the recommendations made at a point of time for such period were in order. Further, the draft Notification under Section 35(1) of the Act was issued on 2-9- 1987 and the final Notification was published on 16th June, 2001 under Section 35(4) of the Act, whereby the land under mining was specifically excluded. In any event, 900 hectares of land was outside the land covered by the Notification. The Notification dated 29-5-1982 issued under Section 349 of the Karnataka Municipalities Act, 1964 (in short 'Municipalities Act') was also relevant. All these, according to Shri Venugopal, took the land in question outside the purview of the operations of the Act, Conservation Act and the Environment Act.

With reference to the order dated 14-11-2000 passed in W.P. 337/2000, it was submitted that the same was relatable to a stage under Section 35(5) of the Act. Since there was an existing legal right to get a renewal, which had already accrued, there was no question of any embargo on the renewal of the mining lease. In this background, it was submitted that the State and the Central Governments at earlier points of time had acceded to the request of the company for renewing the lease for twenty years. Reference in this context was made to a letter dated 6-7-1999 issued by the State Government. It was pointed out that the company had subsisting contracts with foreign buyers, and if the lease is not renewed or the mining activities are required to be abandoned, there shall be large financial implications on account of impossibility to perform the contracts. It was submitted that for the purpose of renewal, no consent is necessary as an existing right is only to be extended further. In any event, the period as suggested by the Committee should be reckoned prospectively and not retrospectively and the two years' period already covered by temporary working permit should be reckoned while computing the period. It was pointed out that subsisting contracts with some foreign countries are operative till 2005 and 2006 and at least adequate time could be given to fulfill these contracts. Learned counsel for the State of Karnataka has submitted that originally it had accepted the proposal for the longer period, but taking into account the various circumstances, its final stand is that five years period from 24-10-2001 would be adequate, equitable and fair.

The company has taken a stand that it is earning valuable foreign exchange and discontinuous of its business activities would stop earning of valuable foreign exchange in addition to rendering large number of employers jobless. It is pointed out that some subsisting contracts are there and in fact there is possibility of extracting 342 million tons of primary ores, in addition to 119 million tons of secondary weathered ores. In fact, the company's request is for permitting activities in some additional areas so that the primary ores can be extracted and exported in addition to the secondary weathered ores.

The main thrust of the Company's plea relating to environmental issues which was highlighted by Shri. Venugopal during hearing of the application was that the Company has taken all possible steps to preserve and conserve nature in its pristine glory. It is eco-friendly as would be evident from the various activities undertaken by it and vast sums of money spent for preservation of nature and environment in addition to efforts to prevent pollution. It has received several awards for its admirable achievements in the field of environmental protection. It was submitted that sustainable development is permissible and is universally accepted phenomenon. At the time the company was incorporated environment impact assessment was conducted and detailed guidelines were formulated to see that there was least degradation of the environment. The approach was clearly environmental friendly. The approach in such matters is to see as to what prevailed when the project was commenced. There has been a substantial change in the approach and if the contemporaneous factual backdrop is considered, it will be seen that the company's anxiety was to protect nature and environment. Further, the various reports submitted by expert bodies give a lie to the impressions created before the Committee that there was continued destruction of nature of the flora and fauna by the mining activities undertaken by the company. The reality is otherwise. With reference to a Notification dated 29-5-1982 issued under Section 349 of the Municipalities Act, it is submitted that the concerned area cannot be treated to be a forest land. A reference was also made to a decision in State of Bihar V. Banshi Ram Modi

and Ors. (1985 (3) SCC 643) to contend that the Act has no application.

Learned Amicus Curiae has pointed out that stands of the company are per se not acceptable. The Committee has granted to the company much more than what it deserves. With reference to the report of Shri. Valmik, it is pointed out that the situation is so grave that “hands off situation” has come to play. It is pointed out that the role of the Karnataka State Government and the Central Government in the Ministry of Environment and Forest is far from satisfactory. Even without any Environment Impact Assessment report, stand was taken for granting 20 years renewal period. There is no consistency in the stand of the State and the Central Governments because at one point of time they agreed to renewal period of 20 years and subsequently turned around to five years period, and then again took inconsistent stands. All these go to show that there is no proper application of mind and without realizing the serious consequences involved, recommendations are being made. In W.P. 337/2000 by order dated 14-11-2000, it was, inter-alia, directed as follows:

“.....Pending further orders, no de-reservation of forests/sanctuaries/national parks shall be affected.

Action of the State Government in excluding land while issuing Notification under Section 35(4) of the Act is in clear violation of this Courts’ Order.

Banshi Ram’s case on which emphasis was laid by the company is not good law in view of the subsequent decisions of this Court in *Ambica Quarry Works V. State of Gujarat and Ors.* (1987 (1) SCC 213). Reference may also be made to the decisions in *Tarun Bharat Sangh, Alwar V. Union of India and Ors.* (1992 Supp. (2) SCC 448), *Tarun Bharat Sangh, Alwar V. Union of India and Ors.* (1993 Supp. (3) SCC 115) and two reported orders in *T.N. Godavarman Thirumulpad V. Union of India and ors.* (1997 (3) SCC 312). The stand of the company that Notification dated 29-5-1982 excluded the land in question from being forest land is clearly untenable in view of the Section 2(ii) of the Forest (Conservation) Act, 1980 (in short the ‘Conservation Act’).

The seminal issue involved is whether the approach should be “dollar friendly” or “eco friendly”.

‘Environment’ is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded. Einstein had once observed, “The environment is everything that isn’t me”. About one and half century ago, in 1854, as the famous story goes the wise Indian Chief of Seattle replied to the offer of the great White Chief in Washington to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. The whole of it is worth quoting as any extract from it is to destroy its beauty.

“How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

“the white man’s dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man – all belong to the same family.”

So, when the Great Chief in Washington sends word and he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If

we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be brought plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there in life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a mid-day rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath—the beast, the tree, the man, they all share the same breath. The white man lying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sign. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will one condition. The white man must treat the beasts of this land as his brothers.

I am a savage and I do not understand any other way. I have seen thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers, so that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground, they spit upon themselves.

This we know: The earth does not belong to man, man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a stand in it. Whatever he does to the web he does to himself.

Even the white man, whose God walks and talks with him as friend to friend cannot be exempt from the common destiny. We may be brothers after all. We shall see. One thing we know, which the white man may one day discover – our God is the same God. You may think now that you own him as you

wish to own our land; but you cannot. He is the God of man, and his compassion is equal for the red man and the white. This earth is precious to him, and to harm the earth is to heap contempt on the creator. The white too shall pass perhaps sooner than all the tribes. Contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly, fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffaloes are slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone, where is the eagle? Gone. The end of living and the beginning of survival”.

It would be hard to find out such dawn to earth description of nature. “Nature hates monopolies and knows no exception. It has always some leveling agency that puts the overbearing, the strong, the rich, the fortunate substantially on the same ground with all others” said Zarathustra. Environment is polycentric and multi-facet problem affecting the human existence. The Stockholm Declaration of United Nations on Human Environment, 1972, reads its principle No. 3, inter-alia, thus:

“Man has the fundamental right to freedom, equality, and adequate conditions of life. In an environment of equality that permits a life of dignity and well being and bears a solemn responsibility to protect and improve the environment for present and future generations”.

The Declaration, ‘therefore, says that’ in the developing countries, most of the environmental problems are caused by underdevelopments. The Declaration suggests to safe actions with prudent care for ecological balance. It is necessary to avoid massive and irreversible harm to the earthly environment and strife for achieving present generation and the posterity a better life in an environment more in keeping with the needs and hopes. In this context immediately comes to mind the words of Pythagoras who said:

“For so long as man continues to be the ruthless destroyer of lower living beings, he will never know health or peace. For so long as men massacre animals, they will kill each other. Indeed, they who sow the seeds of murder and pain cannot reap joy and love.”

Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (42nd Amendment) Act, 1976, enjoins that “State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes “a fundamental duty” on 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. The word “environment” is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance.” It is therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment man-made and natural environment.

Industrialization, urbanization, explosion of population, overexploitation of resources, depletion of traditional sources of energy and raw materials, and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oasis, he is also leaving behind deserts in the place of oasis. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves over much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first. Ecologists are of the opinion that the most important ecological and social problem is the wide spread disappearance all over the world of certain species of living organisms. Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2000 years did so after 190. The International Association for the Protection of Nature and natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 birds and animal species are facing extinction at present. It is for this that the environmental questions have become urgent and they have to be properly understood and squarely met by man. Nature and history are two components of the environment in which we live, move and prove ourselves. This Court in *Sachindanand Pandey and Anr. V. State of West Bengal and Ors.* (AIR 1987 SC 1109) and *Virender Gaur V. State of Haryana*, (1995 AIR SCW 306) has highlighted these aspects.

Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodeling the environmental law. The others have moved their law making machineries in this direction except the under-developed States who have yet to come in this wave length. India was one of those few countries which paid attention right from the ancient time down to the present age and till date, the tailoring of the existing law to suit the changing conditions is going on. The problem of law-making and amending is a difficult task in this area. There are a variety of colours of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of the humanity and the rural and urban area developments in agricultural technology, waste, barren or industrial belts; developed, developing and under-developed parts of the lands; the rich and poor Indians; the population explosion and the industrial implosion; the people's increasing awareness and the decreasing State Exchequer; the promises in the political manifestos and the State's development action. In this whole gamut of the problems the Tiwari Committee came out with the date that we have in India "nearly five hundred environmental laws" and the Committee pointed out that no systematic study had been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislatures in the field of Indian Environmental Laws. Different legislative controls rights from the ancient time, down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the legislature; the techniques adopted to solve those problems; the pollutants which required continuous exercises; the role of legislature and people's participation outside. These are some of many areas which attract the attention in the study of history of the Indian Environmental Law.

Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, outcasting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient time. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. The "dharma"

of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the eco-systems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a learned author C.M. Jariwala in his article “Changing Dimensions of the Indian Environmental Law” in the book “Law and Environment” by P. Leelakrishnan.

The Economic and Social Council of the United Nations passed a resolution on 30th July, 1968 on the question of convening an International Conference on problems of human environment. In the United Nations Conference on problems of human environment. In the United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972, proclamation was made on United Nations on Human Environment. It was stated in the proclamation in these profound words:

“Man is both creature and moulder of his environment which gives his physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and the man made, are essential, to his well being and to the enjoyment of basic human rights even the right to life itself.

The protection and improvement of the human environment is a major issue which affects the well being of people and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments.”

When the necessity to promote the environment turned grave, doubt was expressed by some commentators whether the issue of the environment would last. They have been proved wrong, since it is clearly one of the big issues, perhaps the biggest issue of the 1990s. It is big issue in political terms, since protection of the environment is high on most people’s priorities for the 1990s. As a result political parties and Governments are falling over each other in their eagerness to appear green, even if as yet their actions rarely match their rhetoric. It is big in terms of the size of the problem faced and the solutions required; global warming, the destruction of the ozone layer, acid rain, deforestation, overpopulation and toxic waste are all global issue which require an appropriately global response. It is big in terms of the range of problems and issues – air pollution, water pollution, noise pollution, waste disposal radioactivity, pesticides, countryside protection, conservation of wildlife – the list is virtually endless. As observed by Simon Bell in ‘Environmental Law’:

“.....In the words of the White Paper on the Environment. This Common Inheritance (cm. 1200, 1990) the issues range ‘from the street corner to the stratosphere.’ Finally, it is big in terms of the knowledge and skills required to understand a particular issue. Law is only one element in what is a major cross-disciplinary topic. Lawyers need sine understanding of the scientific, political and economic processes involved in environmental degradation. Equally all those whose activities and interests relate to the environment need to acquire an understanding of the structure and content of environmental law, since it has a large and increasing role to play in environmental protection.”

Apart from the direct cost to business of complying with stricter regulatory controls, the potential liabilities for non-compliance are also increasing. These liabilities fall into five general categories:

(a) Criminal liabilities;

The number of criminal offences for non-compliance with environmental legislation is immense, and in recent years the regulation agencies have shown an increased willingness to resort to prosecution. Private prosecution is also a possibility. Fines will be the normal penalty; though in a number of cases sentences of imprisonment have been imposed (there is normally a potential personal liability for directors and senior managers). Maximum fine levels have risen in recent years, as have actual levels of

finer imposed.

(b) Administrative sanctions:

In most regulatory systems there is a range of options available to the regulator, including variation, suspension or revocation of a license. Since these steps may lead to the closure of a plant, they are obviously of great importance.

(c) Clean up costs:

In most environmental legislation there is a power to clean up after a pollution incident and receive the cost from the polluter or (in some cases) the occupier.

(d) Civil liability:

There is growing interest in the toxic torts, although many of the actions have in fact been around for a long time. Many environmental actions rest upon strict liability. Although liability may often be difficult to establish, the size of claims may be very high indeed.

(e) Adverse publicity:

In practice the publicity attracted as a result of infringements of the law may be as costly as any direct costs.

The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of Courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well being of human beings. (See World Commission on Environment and Development – Our Common Future (1987). To commemorate the tenth anniversary of the Stockholm Conference, the World Community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement Stockholm Declaration. It expressed serious concern about the state of environment world wide and recognised the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it.

Progress and pollution go together. As this Court observed in *M.C. Mehta and Anr. V. Union of India and Ors.* (AIR 1987 SC 965), when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements. As observed in the United Nations Conference held at Stockholm in June, 1972, economic and social development was essential for ensuring a favourable living and working environment for man and for creating condition on earth that were necessary for the improvement of the quality of life.

The tragedy of the predicament of the civilized man is that 'Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee'. There is increase in awareness of the compelling need to restore the serious ecological imbalance introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. In his foreward to International Wild Life Law, H.R.H. Prince Philip the Duke of Edinburgh said:

“Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the country-side. Sadly, perhaps, it is a great deal more complicated than

that As usual with all legal systems, the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented Regretfully progress in this direction is proving disastrously slow.” (See International Wildlife Law by Simon Lyster, Cambridge, Grotius Publications Ltd. 1985 Edn.)

The United National General Assembly adopted on October 29, 1982, ‘The World Charter for Nature’. The Chapter declares the Awareness that:

- “(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.
- (b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.”

Towards the end of his reign, King Asoka in the third century B.C. issued a decree that it has a particularly contemporary ring in the matter of preservation of wild life and environment. He had written:

“Twenty-six years after my coronation, I declare that the following animals were not to be killed, parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen, ants, terrapins, boneless fish, rhinoceroses.... And all quadrupeds which are not useful or edible Forest must not be burned.”

To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud. In view of enormous challenges thrown by the Industrial revolution the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect the nature. People worship the objects of nature. The trees, water, land and animals had gained important positions in the ancient times. As Manu VIII, Page 282 says different punishments were prescribed for causing injuries to plants. Kautilya went a step further and fixed the punishment on the basis of importance of the part of the tree. (See Kautilya III, XIX, 197)

As observed by this Court in Rural Litigation and Entitlement Kendra V. State of Uttar Pradesh (AIR 1987 SC 359), natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.

The Academy Law Review at pages 137-138 says that a recent survey reveals that every day millions of gallons of trade wastes and effluents are discharged into the rivers, streams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this. Air pollution has further added to the intensity and extent of the problem. Every year millions of tons of gaseous and particulate pollutants are injected into the atmosphere, both through natural processes and as a direct result of human activity, Scientists have pointed out that earth’s atmosphere cannot absorb such unlimited amount of pollutant materials without undergoing changes which may be of an adverse nature with respect to human welfare. Man in order to survive in his planetary home will have to strike the harmonious balance with nature. There may be boundless progress scientifically which may ultimately lead to destruction of man’s valued position in life. The Constitution has laid the foundation of Articles 48-A and 51-A for a jurisprudence of environmental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.

A learned Jurist has said, the Rig Veda praises the beauty of the dawn (usha) and worships Nature in all its glory. And yet today a bath in the Yamuna and Ganga is a sin against bodily health, not a salvation for the soul – so polluted and noxious are these ‘Holy’ waters now. “One hospital bed out of four in the world is occupied

by a patient who is ill because of polluted water.... Provision of a safe and convenient water supply is the most important activity that could be undertaken to improve the health of people living in rural areas of the developing world.” (W.H.O.) “Nature never did betray. That heart that loved her.” (Wordsworth). The anxiety to save the environment manifested in the Constitution (Forty-Second Amendment) Act, 1976 by the introduction of a specific provision for the first time of :”protect and improve” the environment. Man is Nature’s best promise and worst enemy. If industry is necessary, pollution inevitable. Since progress and pollution go together, there can be no end of progress, and consequently, no escape from pollution. If industry is necessary evil, pollution surest sufferance. Several enactments have been made to combat pollution. “Pollution” is noun derived from the transitive verb “pollute” which means to make foul or unclean, dirty, to make impure or morally unclean. In Halsbury’s Laws of England (Forth Edition, Volume 38, para 66) “pollution” means the direct or indirect discharge by man of substance or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities on interference with other legitimate use of water.

In Divisional Forest Officer and Ors. Vs.. S. Nageswaramma (1996 (6) SCC 442) it was observed that the renewal of lease is not a vested right of the lessee. There is a total prohibition against the grant of mining lease in a forest area without concurrence of the Central Government. As was observed b6y this Court in M.C. Mehta V. Kamal Nath & Ors. (1997 (1) SCC 388), our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

The aesthetic use and the pristine glory cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for public good and in public interest to encroach upon the said resources.

It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests. Where the commercial venture of enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be by passed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.

In this background, the Environment Impact Assessment reports are of great importance. The Council on European Economic Committee in their directive to the member State highlighted objectives of such assessments as follows:

“The effect of a project on the environment must be assessed in order to take action of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the eco-system as a basic resource of life.”

A few decisions taken at the Convention on Biological Diversity dated 5th June, 1992 would be relevant.

The preamble, inter-alia, contains the following:

“Concerned that biological diversity is being significantly reduced by certain human activities. Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures. Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source. Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystem and natural habitats and the

maintenance and recovery of viable populations of species in their natural surroundings.”

Articles 1,6,7 and 14(a) are also important.

Article 1: Objectives-

The objectives of this Convention to be pursued in accordance with its relevant provisions are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources including appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate finding.

Article 6: General measures for conservation and sustainable use-

Each contracting party shall, in accordance with its particular conditions and capabilities:

- (a) develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adopt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the contracting party concerned; and
- (b) integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7: Identification and Monitoring

Each contracting party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annexure 1;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to sub-paragraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse effects on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to sub-paragraphs (a), (b) and (c) above.

Article 14(a): Impact Assessment and Minimizing Adverse Impacts-

Each contracting party, as far as possible and as appropriate, shall:

- (a) introduce appropriate procedures requiring environment impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedure.”

Sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Therefore, while thinking of the developmental measures the needs of the present and the ability of the future to meet its own needs and requirements have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generations and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both the

present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It cannot be lost sight of that while today is yesterday's tomorrow, it is tomorrow's yesterday.

The greenery of India should not be allowed to be perished, to be replaced by deserts. Ethiopia which at a point of time was considered to be one of the greenest countries, is virtually a vast desert today.

The Union Government framed National Forest Policy in 1988. Though the basic objectives are very laudable, it is sad to note that it has virtually been confined in papers containing it, and not much has been done to translate them into reality. Nevertheless, it reflects anxiety of the Union Government to protect and preserve natural forests with vast variety of flora and fauna, representing biological diversity and genetic resources of the country.

Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of environment are: (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and, therefore, it has to implement the same. As was observed by this Court in Vishaka and Ors. Vs. State of Rajasthan and Ors. (1997 (6) SCC 241), in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international convention and norms even in construing the domestic law. It is, therefore, necessary for the Government to keep in view the international obligations while exercising discretionary powers under the Conservation Act unless there are compelling reasons to depart therefrom.

The United Nations Conference on Human Environment held in Stockholm during June 1972 brought into focus several alarming situations and highlighted the immediate need to take steps to control menace of pollution to the Mother Earth, air and of space failing which, the Conference cautioned the mankind, it should be ready to face the disastrous consequences. The suggestions noted in this Conference were reaffirmed in successive Conference followed by Earth Summit held at Rio-de Janeiro (Brazil) in 1992.

So far as the effect of Rule 24B of the Minerals Rules is concerned, it is to be noted that Section 2 (ii) of the Conservation Act rules out non-forest activities. The Section begins with a non-obstante clause providing that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government any order of the nature enumerated in the provision. Section 3 of the Conservation Act deals with constitution of Advisory Committee and Section 4 deals with power to make rules. Rules 4 5 and 6 of the Forest Conservation Rules, 1981 (in short 'Conservation Rules') are relevant. Rule 4 deals with procedure to make proposal by a State Government or their authority. Rule 5 deals with the powers of the Committee to advise on proposals received by the Central Government. The Committee referred to therein is the one constituted under Section 3 of the Act. Rule 6 deals with action of the Central Government has not accorded the approval for use of any forest land or any portion thereof for being used for any non forest purpose. That being so, Rule 29(b) of the Mineral Rules cannot be of any assistance to the company, it is clear therefrom that de-reservation of forests, sanctuaries and national parks was prohibited.

Therefore, exclusion of company's land in terms of the Notification under Section 35(4) of the Act though same was being used for mining by the company, was not in order to that extent.

So far as the letter dated 6th July, 1999 of the Government of Karnataka is concerned, it does not in any way help the company and on the contrary makes its case more brittle. A few paragraphs of the said letter need to be noted here:

X X X X X X X X X

“Considering the above and as the present lease will expire on 24-7-99, the P.C.C.F. has recommended for grant of temporary working permission to the above company to carry out the mining activities for a period of 2 years so as to avoid hardship to it, which is a Government of India Undertaking. Further, Environment Impact Assessment and studies on impact of mining on flora and fauna in this sensitive area is to be carried out

by the reputed Environmental Institute and Wildlife Institute respectively that is by Environmental Research Institute, Nehrunagar, Nagpur (Maharashtra) and Wild Life Institute, Dehradun (Uttar Pradesh). After these studies are conducted and based on the recommendations to be made by these Institutes to Minimize the environmental damage it can be decided whether to allow the mining and renew the lease or otherwise in favour of M/s Kudremukh Iron Ore Company Ltd., in this sensitive area of Western Ghat Region.

X X X X X X X X X

Under the circumstances explained above, I am directed to request you to kindly communicate the approval of Government of India on the following proposals:

- (i) for renewal of lease of 1452.74 hectares of forest land which is already broken up in favour of M/s Kudremukh Iron Ore Company Ltd. for a period of 20 years with effect from 25-7-1999.
- (ii) to grant temporary working permission in the already broken up area of 1452.74 hectares forest land to the above company to carry out mining activities for a period of 2 years since the lease of forest land will expire on 24-7-1999.”

X X X X X X X X X

It is an accepted fact that the Environment Impact Assessment Reports of the two named institutes have not been obtained. Therefore, in reality there was no Environment Impact Assessment report either before the State or the Central Government. Further, the request of the State Government was to grant temporary working permission in respect of already broken up area, pending fulfillment of conditions enumerated.

Coming to plea that in case of renewal there is no requirement of compliance of Section 2 of the Conservation Act, the stand is clearly untenable in view of decisions in Ambica Quarry's case (supra) and Rural Litigation and Entitlement Kendra Vs. State of U.P. (AIR 1988 SC 2187) where at page 2201 it was observed that ‘whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of Section 2 of the Conservation Act is necessary as a condition precedent.’ It may be noted here that the area in question was declared to be a reserved area in 1960 and in 1987 the Notification under Section 35(1) was issued.

It is significance that in the present case the Forest Advisory Committee under the Conservation Act on 11-7-2001 examined the renewal proposal in respect of the company’s mining lease. It recommended that the mining may be allowed for a period of four years i.e. upto the year 2005 by which time the weathered secondary ore available in the already broken up area would be exhausted. The Ministry of Environment and Forests deferred a formal decision on the said recommendation as the matter was pending before this Court.

On consideration of the materials on record we find no reason to vary the majority view of the Committee, a statutory one when its findings and conclusions are based on assessments of the factual aspects and after duly considering the materials and Reports placed before it by the parties. We have also taken note of the period indicated by the Forest Advisory Committee, which is also a statutory Committee.

Taking note of the factual background and the legal position highlighted above, we think it proper to accept the time period fixed by the forest Advisory Committee constituted under Section 3 of the Conservation Act. That means mining should be allowed till the end of 2005 by which time the weathered secondary ore available in the already broken area should be exhausted. This is, however, subject to fulfillment of the recommendations made by the Committee on eco-logical and other aspects.

The modalities as to how these have to be worked out shall be done in the manner recommended by the Committee. It was submitted by the learned counsel for the State of Karnataka that the recommendation made about transfer of buildings and other infrastructure to the Forest Department of the State Government at book value is not acceptable to it. This is a matter which can be considered by the Committee on an appropriate motion being made by the State before it. The modalities to be adopted to effectuate the order passed by this Court and recommendations of the

Committee shall be worked out by the Ministry of Environment and Forests, the State Government and the company under the supervision and guidance and monitoring of the Committee.

Before we part with the case, we note with concern that the State and the Central Government were not very consistent in their approach about the period for which the activities can be permitted. Reasons have been highlighted to justify the somersault. Whatever be the justification, it was but imperative that due application of mind should have been made before taking a particular stand and not to change colour like a Chameleon, and that too not infrequently.

Certain proceedings have been initiated against the company for alleged violation of various statutes. These proceedings shall be considered by the respective forums/Courts in their proper perspective, uninfluenced by any observation made hereinbefore in this judgment.

The Interlocutory application is disposed of accordingly.

CJI
J
(Y.K.SABHARWAL)
J
(ARIJIT PASAYAT)

(23)

ORDER

I.A. Nos. 634-635, 697 and 698

(Dated 29-10-2002)

(Order on felling of 14,739 trees as against originally 67,500 trees required in Rajaji National Park for laying transmission lines by the Power Grid Corporation Ltd. on payment of compensation of Rs. 50 Crore)

These applications have been filed for permission to erect transmission lines by Power Grid Corporation, which lines are to pass through the Rajaji National Park.

Since the filing of these applications lot of discussion has take place, ground situation examined and now it is reported by the learned counsel for the applicant that through the proposed corridor where the transmission lines will be erected 14,739 trees will have to be cut. Permission for erecting the lines through the Rajaji National Park and cutting these trees had been accorded by the Union of India as well as the State of Uttaranchal. Permission was not made operative because of the earlier order of this Court.

Taking all the circumstances into consideration, these applications are allowed. Permission is granted to the Power Grid Corporation to erect the transmission lines through the Rajaji National Park. Aforesaid 14739 trees will be cut by the Forest Department of the State of Uttaranchal under the supervision of the Central Empowered Committee. Trees so cut shall be sold by the Forest Department under the Supervision of the Central Empowered Committee by public auction. The amount so realized as well as the sums payable so payable by Power Grid Corporation for afforestation etc. will be kept by the Central Empowered in a fixed

deposit initially for a period of three months with and with the constitution of the body for the management of Compensatory Afforestation Funds, the principal amount so realized shall be transferred to the said body. This permission which is granted will be operation on Rs. 50 crores being deposited with the Central Empowered Committee who shall deposit the same in a fixed deposit and after twelve weeks will twelve seeks transfer the same to the body constituted for the purpose of Compensatory Afforestation Funds.

(24)

ORDER

I. A. No. 703

(Orders/ directions on encroachments in I.A. No. 703 filed by Amicus Curiae Mr. Harish Salve, Senior Advocate Supreme Court and ban imposed the concerned states on regularisation of encroachments till further orders)

The Chief Secretaries of Orissa, West Bengal, Karnataka, Tamilnadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh and Kerala are directed to file a reply to this I.A., in so far as it concerns the said States in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular land in the hilly terrains, national parks and sanctuaries, etc. It should also be indicated as to what steps have been taken to clear encroachments from the forest which have taken place at an earlier point of time. Affidavits be filed by the said States and the Union of India within four weeks.

(25)

ORDER

I.As 828, 833, 834-835, 837-838, 839, 840, 846 & 847

(Dated 16.12.2002)

(Order on regulating mining activity in Aravalli Hills in Haryana and Rajasthan)

One of the aforesaid applications has been filed by the State of Rajasthan seeking modification or clarification to the effect that the order dated 29/30th October 2002 would be applicable only to illegal mines in the Aravalli hills. IA 840 has been filed by M/s. Gurgaon Sohna Mineral and Anr. seeking similar relief. Applications have also been filed by State of Haryana and other parties.

We have heard learned counsel. On 29th/30th October, 2002 this Court prohibited and banned the mining activities in the entire Aravalli hills. This ban, it was directed, is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Haryana to Rajasthan. The Chief Secretary, State of Haryana and State of Rajasthan were directed to ensure that no mining activity in the Aravalli hills is carried out, especially in that part which has been regarded as Forest Area or protected under the Environment (Protection) Act.

On consideration of the report of Central Empowered Committee dated December 14, 2002, we issue the following further directions:

- (1) Mining may be permitted in Forest Areas where specific prior approval under Section 2 of the Forest (Conservation) Act, 1980 has been accorded by the Ministry of Environment and Forest, Government of India. However, in view of this Court's order dated 14.2.2000 passed in I.A. No. 548 no mining activity is permitted within areas which are notified as Sanctuary, National Park under Section 18, 35 of the Wild Life (Protection) Act, 1972 or any Sanctuary, National Park or Game Reserve declared under any other Act or Rules made thereunder even if prior approval have been obtained from the MoEF under the F.C. Act in such an area.
- (2) Under Notification dated 29th November 1999 issued under Section 23 of the Environment (Protection) Act for certain Districts including Gurgaon District in the State of Haryana, the

Ministry has delegated power to grant approval for mining purposes to the State. The mining activities are being regulated under the Notification dated 7th May, 1992 issued by the Ministry of Environment and Forest (Annexure A-1 in IA No.833). We direct that, for the time being, no mining shall be permitted within the areas of Gurgaon District in the State of Haryana where mining is regulated under the Notification dated 7.5.1992 issued under Section 3 of the Environment (Protection) Act, pursuant to permission granted after 29th November, 1999.

Meanwhile, the Central Empowered Committee which is examining the matter will give its suggestions within a period of six weeks. On the receipt of those suggestions, the prayers made by the applicants for modification of the order dated 29/30.10.2002 insofar as the Gurgaon District is concerned will be considered.

- (3) No mining activity would be permitted in respect of areas where there is a dispute of a p p l i c a b i l i t y of F.C. Act, till such time the dispute is resolved or approval under the FC Act is accorded, in addition to order already passed in Writ Petition No.4677/1985.

For the present, no mining will be permitted in the areas for which notification under Sections 4 and 5 of the Punjab Land Preservations Act 1900 have been issued for regulating the breaking up of the land etc. and such lands are or were recorded as “Forest” in Government records even if the notification period has expired, unless there is approval under the FC Act.

Learned Attorney General and Solicitor General will assist the Court on the aforesaid aspects on the next date of hearing.

In respect of suggestion 7 and 8. the Union of India will respond on the next date of hearing.

The order dated 29/30th October, prohibiting and banning the mining activity in Aravalli hills from Haryana to Rajasthan is modified insofar as the State of Rajasthan is concerned to the following effect:

Wherever requisite approval/sanctions in the said State have been obtained under F.C. Act and E.P. Act, and the mining is not prohibited under the applicable Acts or notifications or orders of the Court, mining can continue and to such mining the order aforesaid will not apply.

This order will be applicable to non-forest land covered for the period prior to the date of modification of the order dated 29th November 1999 in the State of Haryana.

This variation will not apply to the area in the Alampur District in the State of Haryana.

**ORDERS AND DIRECTIONS ISSUED BY
THE CENTRAL EMPOWERED COMMITTEE**

**THE GAZETTE OF INDIA
EXTRAORDINARY**

**PART - II - Section 3 - Sub-section (ii)
PUBLISHED BY AUTHORITY**

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NEW DELHI, WEDNESDAY, SEPTEMBER 18, 2002

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MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 17th September, 2002

S.O.1008 (E). -In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) (hereinafter referred to as the said Act), the Central Government hereby constitutes an authority to be known as the Central Empowered Committee, (hereinafter referred to as the Committee), consisting of the following members appointed in pursuance of the Hon'ble Supreme Court's orders dated the 9th May 2002 and 9th September 2002 in Writ Petition (Civil) No. 202/95 and 171/96, for a period of five years with effect from the date of publication of this notification in the official gazette, for the purposes of monitoring and ensuring compliance of the orders of the Hon'ble Supreme Court covering the subject matter of forests and wildlife, and related issues arising out of the said orders:-

- | | | |
|-------|--|------------------|
| (i) | Shri P.V.Jayakrishnan,
[presently Secretary to the Government of India,
Ministry of Environment & Forests] | Chairman |
| (ii) | Shri N.K.Joshi,
[presently Additional Director General of Forests,
Ministry of Environment & Forests] | Member |
| (iii) | Shri Valmik Thapar, Ranthambore Foundation | Member |
| (iv) | Shri Mahendra Vyas, Advocate, Supreme Court of India | Member |
| (v) | Shri M.K. Jiwrajka,
[presently Inspector General of Forests,
Ministry of Environment & Forests] | Member Secretary |

2. The Committee shall exercise the following powers and perform the following functions :-
- I. powers and functions conferred upon the Committee by the Hon'ble Supreme Court of India by its order dated 9th May, 2002, in Writ Petitions (Civil) No. 202/95 and 171/96 in the case of T. N. Godavarman Thirumalpad Vs. Union of India and others and Environment Awareness Forum Vs. State of J and K & others, respectively, namely :-
 - (i) to monitor the implementation of the Hon'ble Court's orders and place reports of non - compliance before the Court including in respect of encroachments removals, working plans, compensatory afforestation, plantations and other conservation issues;

- (ii) to examine pending Interlocutory Applications in the said Writ Petitions (as may be referred to it by the Hon'ble Court) as well as the reports and affidavits filed by the States in response to the orders passed by the Hon'ble Court and place its recommendations before the Hon'ble Court for orders;
 - (iii) to hear applications filed by any aggrieved person seeking relief against any action taken by the Government or any other authority purportedly in compliance of the orders passed by the Hon'ble Supreme Court or against any action of any person or body or agency in violation of such orders, and to dispose of such applications in conformity with the orders of the Hon'ble Court and to refer to the Hon'ble Court any application which cannot be appropriately disposed off ;
 - (iv) without prejudice to the generality of the powers conferred upon the Committee under the provisions of the said Act, for the purpose of effective discharge of its functions, the Committee shall have the powers to:
 - (a) call for any documents from any person or the government of the Union or the State or any other official;
 - (b) summon any person and receive evidence from such person on oath either on affidavit or otherwise;
 - (c) seek assistance or presence of any persons(s) or official(s) required by it in relation to its work;
 - (d) decide its own procedure for dealing with applications and other issues;
 - (e) co-opt one or more persons as its members or as special invitees for dealing with specific issues;
 - (f) co-opt, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular state
 - II. Powers under section 5 of the said Act, for issuing directions and taking such measures in respect of all the matters referred to in sub-section (2) of section 3 of the said Act;
 - III. Powers to take resort to the provisions contained in sections 15 to 21 of the said Act;
 - IV. Powers under Section 4 of the said Act, for appointment of officers.
 - V. Powers to issue guidelines and or directions with regard to location, functioning and monitoring of the saw mills and other wood based industries and also regulate their numbers and capacity for ensuring sustainability;
 - VI. Functions and powers in respect of protection and management of forests and wildlife including in respect of deforestation, encroachments, working plans, compensatory afforestation, plantations, regeneration, illegal felling, transportation of timber and timber products and other forest produce, mining in forest area, illegal diversion of forest land for non forest purposes and other matters relating to the implementation of the Forest (Conservation) Act, 1980, Indian Forest Act, 1927, Wildlife (Protection) Act, 1972 and the rules, regulations and guidelines framed thereunder;
 - VII. Powers to examine and deal with any issue referred to the Committee by the Hon'ble Supreme Court or the Central Government.
3. The Members of the Committee are appointed in their personal capacity and shall not be removed without leave of the Hon'ble Supreme Court.
 4. Subject to the orders of the Hon'ble Supreme Court, the Committee shall function under the administrative control of the Central Government in the Ministry of Environment & Forests with

Headquarters at Delhi.

5. The Ministry of Environment & Forests shall provide suitable and adequate office accommodation for the Committee. The expenditure incurred on the working of the Committee including salary or remuneration to the members and supporting staff, (to the extent not payable by the Government) may be met out of income accruing to the Special Investigation Team (SIT). Necessary procedure for this may be formulated by the Committee in consultation with the Special Investigation Team.
6. The jurisdiction of the Committee shall extend to the whole of India.
7. The Committee shall submit quarterly reports to the Hon'ble Court. It will be liberty to seek clarifications or modifications needed by it from the Hon'ble Court.

[No. 13-21/98-SU-PT. III]

R. CHANDRA MOHAN, Jt. Secy.

(1)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
I.A. No. 703 of 2001**

(Dated: 5.8.2002)

(The I.A. was filed by Amicus Curiae Mr. Harish N. Salve, Senior Advocate, Supreme Court highlighting the serious problem of encroachments on forest lands).

1. Notices for fixing the hearing of the above mentioned Interlocutory Application (I.A.) were served upon all the concerned parties through their Advocates and the present I.A. filed by the learned Amicus Curiae raises an important issue of decimation of forest taking place on account of large scale encroachments forest land particularly in the states of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh, Kerala and the Union Territory of Andaman & Nicobar Islands (A & N).
2. The Committee had co-opted the Chief Secretaries of all the Respondent States as Special Invitees, however, due to some reason or the other, only Chief Secretary, A & N attended the hearing.
3. The application points out that encroachments are still continuing even in national parks and sanctuaries and also in ecologically sensitive areas such as the Andaman & Nicobar Islands, evergreen forests in the North East and the Western Ghats regions. This is so even after the Hon'ble Supreme Court's order dated 12-12-1996 prohibiting any non-forest activity on forest land without obtaining prior approval of the Central Government under the Forest (Conservation) Act, 1980.
4. It is further stated in the application that the States are not taking adequate steps to removal post 1980 encroachments - possibly in the hope that these would be regularised by treating them as pre 1980 encroachments. This would make a complete mockery of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988.
5. The relief's claimed in the I.A. are that no encroachments should be regularised by the Union of India, further encroachments should be prevented, all post 1980 encroachments should be evicted, and state-wise committee's should be constituted to deal with this issue and report to the Hon'ble Supreme Court.
6. In the beginning of the hearing Shri A.D.N. Rao, Advocate representing the Ministry of Environment & Forests (MoEF) circulated a copy of the letter dated 3rd May, 2002 issued by the MoEF regarding removal of encroachments from forest land, a copy of the same is annexed hereto as ANNEXURE-A. The Ministry in the said letter estimated the forest area under encroachment to be around 12.5 Lakh ha. and has asked the States to :
 - (i) remove all encroachments, which are ineligible for regularisation in a time bound manner by 30th Sept. 2002;
 - (ii) prepare comprehensive list of encroachments with current status of eviction process;
 - (iii) constitute a cell in office of the Principal Chief Conservator of Forests (PCCF) to prepare plans and monitor eviction of encroachments on continuous basis;
 - (iv) delegate powers to the Forest Officers to hear encroachment cases and take adequate steps through summary trails; and

- (v) constitute a Committee under the Chairmanship of Chief Secretary for monitoring and fixing responsibility in case of failure to implement eviction plans and similar to set up committees at Circle level.

7. During the course of hearing the representatives of the States, Amicus Curiae and the Ministry of Environment & Forests expressed their views about the extent of encroachments, its main causes, difficulties faced by them, steps being taken for eviction, and also gave suggestions for effective and speedy removal.

8. The state-wise estimates of forest land under encroachments, as provided by the respondent States, are as under:

S.No.	Name of the State	Area under encroachment (in ha.)
1.	Orissa	47,300
2.	West Bengal	16,940
3.	Karnataka	91,000
4.	Tamil Nadu	18,600
5.	Assam *	2,54,711
5.	Maharashtra	73,000
6.	Madhya Pradesh	1,52,000
7.	Chattisgarh	62,270
8.	Kerala	10,040
	Total	7, 25, 861

* As per records of the Ministry of Environment & Forests

9. The Committee is of the view that the actual area under encroachment is much higher as:

(i) the above table does not show the encroachments which continue to be treated by the concerned State Governments as pre 1980 encroachments, inspite of these being not eligible for regularisation under the Forest (Conservation) Act, 1980.

(ii) there is a general tendency to under report the extent of encroachment at the field level.

(iii) the encroachment figures in terms of the area are not regularly being updated.

10. The environmental value of one hectare of fully stocked forest of 1.0 density is Rs. 126.74 lakhs over a period of 50 years as per the assessments made by the Ministry of Environment & Forests. The environmental loss due to encroachments on forest land is estimated a mind boggling figure of Rs. 4,59,978 crores. This has been worked out by taking average density of such area as 0.5 and by accepting figures of area under encroachment as provided by the States to be correct.

11. The Committee is of the considered view that although individual encroachments may appear to be on small areas scattered here and there but cumulatively they have a devastating effect on the environment, destroying the bio-diversity, the hydrology, food security and threatening the ecological security of the country also the food security. The encroachments act like cancer in the forests spreading without pausing and eating into the vitals of the of the life supporting systems of nature destroying all upon which the life, including the human life itself depends. Unless and until an effective drive to remove of existing encroachments and prevent further encroachments is under-taken, it will be come impossible to save the forests for posterity.

12. The main reasons identified by the States and others for continuing encroachments on forest land and extremely slow pace of their removals, are as under:
- (i) Lack of political will: This has been identified by almost all the States as one of the most important reason for the inability of the States to take effective steps for the removal of encroachments. Influential persons with political affiliations not only promote encroachment but also abet in the entire process. Encroachment removal drive invariably results in strong leads to backlash which hamper eviction. This coupled with the tendency of most of the officials to follow the path of the least resistance is not helping in removal of encroachments.
 - (ii) Victimisation of officials: The officers initiating encroachment removal drives earn the wrath of their political masters and suffer harassment, humiliation, threats and transfers. This completely demoralises the entire staff and officials.
 - (iii) Expectation of regularisations: Regularisation of encroachments has been a regular feature in the past, occurring at regular intervals. A large scale encroachments take place with the hope that some time in future, these would also be regularised, as has happened in the past. The promises made by the politicians to regularise encroachments cutting across the party lines further strengthen the hopes of such encroachers and the process continues unabated.
 - (iv) Totally inadequate punishments: The punishment meted out to the offenders is insignificant compared to the gravity of the offence committed. In most of the case, punishment for offence of encroachment varies from Rs. 5/- to a maximum of Rs. 500/-. Most of the encroachers feel rewarded by such convictions as it provides irrefutable proof of their occupation of the land which is then used to claim their eligibility for regularisation in future.
 - (v) Inadequate Provisions of Law: The existing provisions for removal of encroachments are time consuming and grossly ineffective. In respect of deemed forest area, unclassified forest and areas recorded as forest in Government records, which are not legally constituted forests, the provisions under which an offence can be booked are not clear. Thousands of cases remain pending in the Court's for years without any decision. Influential persons continue to prolong litigation for years and enjoy the illegal occupation and use the illegally occupied land for commercial gains and profits.
 - (vi) No punishment for abettors: There is no provision or mechanism to book and punish the abettors of encroachments. This encourages the highly organised land mafia, politicians and influential sections of the society to actively support and encourage large scale encroachments as they derive financial, political and social benefits from such activities.
 - (vii) Poor boundary demarcations: The forest boundaries are not properly demarcated either on the ground or in the maps. This helps the encroachers and the abettors to exploit the situation to their advantage. Many encroachment cases are lost in the Courts on this account alone.
 - (viii) Mutation in revenue records: In a very large number of cases the notified forest areas have not been recorded properly in the land records maintained by the revenue department and continue to be shown as non forest area. This gives an opportunity for unauthorised allotment by treating it as non forest land in violation of the Forest (Conservation) Act, 1980, this also encourages further encroachments.
 - (ix) No compensation for environmental losses: There is no provision for recovering environmental losses from the encroacher caused due to the damage to flora and fauna and for the loss of productivity of the forest land. This emboldens them to encroach more forest land.
 - (x) **Poor infrastructural facilities**:
 - (a) Inadequate staff: The sanctioned staff strength is grossly inadequate for effective

protection of forests.

- b
- a n
- (b) Vacancies : Large number of posts in the front line staff i.e. from Range Forest Officers down to the forest guards are lying vacant since last many years in view of imposed on recruitment, on account of poor financial position of most of the states. This is adversely affecting the protection work and provides opportunity to the encroachers to sneak in and encroach forest land.
- (c) Old age of the front lines staff : In view of the ban imposed on recruitment of the front line staff since last many years, the average age of the forest guards is around 45 years. The rigours of field duty requires young and energetic staff without which the protection work suffers.
- (d) Public Prosecutor: The services of able and effective public prosecutor is not available to prosecute encroachers. This is one of the reasons for poor rate of conviction against the encroachers.
- (e) Lack of communication, transport facility etc. : Vehicles, wireless, network, telephones, arms etc. are grossly inadequate for effective patrolling and protection over large tracts of land.
- (xi) **Diversion for miscellaneous activities** : The forest staff is being routinely diverted for miscellaneous activities such as polio drive, election, census etc. at the cost of forest protection. They also spend considerable time in attending meetings not directly concerned with forestry related work. This results in low priority given to the forest protection, which hampers effective protection work. The situation is rather critical in Madhya Pradesh where the system of Zila Sarkar is in vogue and the officials upto Assistant Conservator of Forests level work under administrative control of Zila Sarkar through revenue officials.
- (xii) **Law and order problem linked with encroachment removal** : Large scale encroachment removals result in serious law and order problem requiring a strong contingent of police force and presence of a magistrate. These are not made available to the forest department whenever needed, which results in abandoning such drives.
- (xiii) **Immunity under Section 197 of Cr.PC.** : There is general reluctance on the part of the staff to participate in encroachment removal drives as it invariably leads to confrontation with the encroachers. Use of arms even in self defense in such situations results in immediate arrest of the concerned staff / officials, as unlike police force there is no immunity from immediate arrest under Section 197 of Cr.PC is available to the forest officials except in the states of Karnataka and Tamil Nadu. The arrest of the officials using fire arms in self defense during discharge of their official duty and subsequent personal harassment for years together causes tremendous trauma and demoralisation of the staff. In most cases, they are required to defend themselves in Courts by spending out of their own salaries without any help from the State Government. This is also used as an effective way to harass dedicated officials by influential encroachers through misuse of state machinery.
- (xiv) **Misuse of the SC/ST Atrocities Act** : This Act is used in some cases to harass the forest staff, which is involved in removing encroachments. Since the offence under this Act is non bailable, any complaint made under this Act immediately invites arrest of the concerned staff. The officers and the staff are mortally scared of retaliatory and false complaints filed against them by the encroaching offenders.
- (xv) **No administrative control over notified, deemed forest etc.** :- In many states the forest

department has no administrative control over large tracts of excellent forest areas, including Reserved Forests. Bade Jhad Ka Jungle, Chote Jhad Ka Jungle in Madhya Pradesh and Chattisgarh, Jhudpi Jungle and unclassified forest in Maharashtra and protected forest in Orissa are some of the examples. This leads to ineffective control of the Forest Department over such areas.

(xvi) **Socio-economic causes** : Due to population pressure, poverty, lack of alternative livelihood opportunities, land hunger, social status attached with land ownership are some of the causes which lead to large scale encroachment on forest land by poor tribals and other weaker sections of the society.

(xvii) **Alienation of regularised lands** : The present system of allowing sale of encroached lands after they have been regularised has become a thriving commercial activity for many influential persons. If such lands are allowed to be transferred only by testamentary succession and not

b y
alienation, then it would curb illegal real estate business in regularised lands.

13. In view of the enormity and seriousness of the problem and severe operational constraints, the Committee is of the view that unless strong and effective mechanism is immediately set up for speedy removal of encroachments, vast tracts of forest land would be irretrievably lost and it may become impossible to manage and protect this valuable national resource. Based on the suggestions made by the State Governments through affidavits as well as by their representatives during the course of hearing, and considering the issue in its entirety, the following recommendations are being unanimously made by the Committee :

a) further regularisation of encroachments on forest land in any form including by issue of pattas, ownership certificate, certificate of possession, lease, renewal of lease, eligibility certificate or allotment / use for agricultural, horticultural or for plantation purposes, is strictly prohibited except encroachments which are eligible for regularisation in conformity with the guidelines dated 18-9-1990 issued by the Ministry of Environment & Forests;

b) the first offence report issued under the relevant Forest Act shall be the basis to decide whether the encroachment has taken place before 25.10.80;

c) all encroachment other than those eligible for regularisation shall be evicted forthwith from the forest land;

d) the Chief Secretary of the concerned state shall be personally responsible to ensure effective and timely compliance of this order;

e) a Committee shall be constituted under the Chairmanship of the Chief Secretary with Director General of Police, Principal Chief Conservator of Forests and Forest Secretary as its members in each State/ Union Territory for supervising and coordinating the removal of encroachments. The Chief Secretary shall be at liberty to co-opt any other State official and /or NGO's as member or special invitee in the Committee and also to constitute similar committees at Division, Circle and / or District level. The Chief Secretary shall file an affidavit before the Central Empowered Committee within one month and thereafter every month giving details of the action plan being implemented for removal of encroachments, progress of removal of encroachments, time frame for removals and other relevant details.

f) a notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying, to the extent feasible, the compartment number/survey no., the Forest Range, Forest Division and the district from where the encroachments are being removed in compliance of this order. Whether an area is

a
forest or not shall be determined on the basis of the Forest Department records and in its absence from the other relevant Government records;

- g) in case of failure of the State Government to expeditiously remove the encroachments, it shall be liable to pay compensation for environmental losses caused by the continuing encroachments at the rate of Rs. 1000/- per ha. per month which shall be deposited in a separate Bank Account. The amount of compensation shall be determined by the Central Empowered Committee after considering the total forest area under encroachments, progress of removals, efforts being made and other relevant factors;
- h) the Central Empowered Committee may in appropriate cases, impose a token fine of Rs. 100/- per month from the defaulting officer(s) if it is of the opinion that such official (s) is / are not taking adequate steps for speedy removal of encroachments. The fine shall continue to be recovered from the salary of such official till the Central Empowered Committee modifies its orders;
- i) the performance of the revenue, police and forest officials in removing encroachments shall be recorded in their Annual Confidential Reports;
- j) any person or authority aggrieved by any action taken during the course of removal of encroachments in compliance of the orders of this Court, including in respect of alleged excessive use of force, unprovoked firing, atrocities punishable under the SC/ST Atrocities Act, will be at liberty to approach this Court through the Central Empowered Committee for redressal of their grievances. The Committee after examining such complaints shall place its recommendations before this Court for passing appropriate orders;
- k) any forest land on which encroachments have taken regularised at any time, shall be eligible for transfer hereinafter only by testamentary succession and not by alienation;
- l) the concerned state Governments shall be at liberty to provide suitable rehabilitation package to the encroachers, particularly to the tribals;
- m) the State-wise Committees constituted under the Chairmanship of the Chief Secretary shall review the infrastructure available for protection of forest and prepare an action plan for making available the necessary infrastructure including filling up of the vacancies in the front line protection staff in a time bound manner. Necessary funds for the purpose shall be made available on priority by the State Government;
- n) compensation for environmental loss due to destruction of habitat and flora and fauna shall be recovered by the State Government from the encroachers involved in commercial gains;
- o) this order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any Government or any authority, Tribunal or Court, including the High Court ; and
- p) the earlier orders made in this matter shall be read, modified wherever necessary to this extent.
14. The Hon'ble Court may please consider the above recommendations and pass appropriate orders in the matter except for the Andaman & Nicobar Islands for which detailed orders have already been passed by the Hon'ble Court on 7.5.2000.
15. In view of the similar situation prevailing in other states, the committee is making a recommendation that the Hon'ble Court may also consider passing similar directions in respect of the remaining States / Union Territory, which are not arrayed as respondents in this application.

Dated : 5.8.2002

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

(2)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE

In
I.A. No. 22 of 1999

(Dated: 5.8.2002)

(Regarding use of funds deposited in J & K out of sale proceeds from on sale of timber pursuant to the Hon'ble Supreme Courts order dated 9.5.2000)

1. While permitting the Jammu & Kashmir State Forest Corporation to sell the excess quantity of timber out side the State, Hon'ble Supreme Court by its order dated 9.5.2000 has directed it to keep 50% of the sale proceeds, after excluding the transportation charges, in a separate bank account for to be utilised only for afforestation purpose. For this purpose the Central Government was asked to formulate a comprehensive scheme and place the same before Hon'ble Court. The Ministry of Environment & Forests has submitted a scheme along with an affidavit dated 30th July, 2002 before the Committee, a copy of which is annexed hereto as **Annexure-A**. The scheme provides for establishment of "Forest Development Agency" at district level for undertaking afforestation through Village Forest Committees to whom the funds would be made available directly through the Forest Development Agency instead of routing through the State Government. The scheme earlier called as "Samanvit Gram Vanikaran Samirddhi Yojana" (SGVSY), with minor modifications, has been re-christened as "National Afforestation Programme". It provides for involvement of credible NGOs and peoples participation in afforestation programme.
2. The State Forest Department represented through the Principal Chief Conservator of Forests and Forest Secretary Jammu & Kashmir are in agreement with the proposed scheme.
3. As per the information provided during the hearing, presently about Rs. 13 crores is presently lying in a bank account and an additional Rs. 2 to 3 crore is likely to be made available from the sale of the balance timber. Each of the Forest Development Agency would require about Rs. 2.5 crore for afforestation and maintenance works for undertaking plantation of 1300 to 1400 ha. area during the next five years. Taking into consideration total funds which are likely to be made available, the afforestation work could be undertaken immediately in Jammu, Udhampur, Nowshera, Sindh, J V Division, Shopian and Leh.
4. Based on above, the following recommendations are unanimously made by the Committee :
 - a) The funds available for afforestation in pursuant to the Hon'ble Court's order dated 9.5.2000 may be allowed to be utilised as per "National Afforestation Programme" Scheme prepared by the Ministry of Environment & Forests in Jammu, Udhampur, Nausai , Sindh, J V Division, Shopian and Leh.
 - b) Additional funds required, if any, required for undertaking afforestation as per the scheme in these districts shall be provided by the Ministry of Environment & Forests to bridge the shortfall , if any.
 - c) The amounts required for afforestation shall be released through a separate bank account maintained for this purpose on the basis of physical and financial sanctions issued by the Ministry of Environment & Forests from time to time.

- d) The Ministry of Environment & Forests will closely monitor the implementation of the scheme through an independent agency to ensure proper utilisation of funds and also other aspects such as survival rate of the plantation.

The Hon'ble Court may please consider the above recommendation and pass appropriate orders in the matter.

Dated : 5.8.2002

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 22.10.2002 and the money is directed to be used through FDA for afforestation.

(3)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
I.A. No. 670 of 2001

(Dated: 13.8.2002)

(Regarding closure of mining by KIOCL in violation of the Hon'ble Supreme Courts order inside Kudremukh National Park.)

1. Notices were issued to the Kudremukh Iron Ore Company Ltd. (hereinafter called the KIOCL), the State of Karnataka, the Ministry of Environment and Forests, the petitioner / applicant, fixing the hearing of the I.A. on 7th August, 2002. In response, all the parties attended the hearing. Further written submissions were filed by the KIOCL and also by the applicant, which are on record.
2. The facts leading to the filing of the present I. A. in brief are that an I. A. No. 548 was filed through learned *Amicus Curiae* against the orders issued by the States of Karnataka and Uttar Pradesh, respectively, for felling and removal of dead, dying, diseased trees and drift wood etc. from National Parks and Sanctuaries declared under the Wild Life (Protection) Act, 1972. The Hon'ble Court on 14.2.2002 passed an order the operational part of which is reproduced below :

“Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park or Game Sanctuary or Forest. If any order to this effect has already been passed by any of the respondent - States, the operation of the same shall stand immediately stayed.

Reply be filed within three weeks.”

Subsequently the said order was modified by the Hon'ble Supreme Court on 28-2-2000, and the word “forest“ appearing after national parks and sanctuaries was deleted.

3. The present I.A. was filed in I.A. No. 548 also through the learned *Amicus Curiae* in which it has been pointed out that in view of the orders dated 12-12-1996 and 14-2-2000, the mining activity being continued by the KIOCL in Kudremukh National Park declared under section 35(1) of the Wild Life (Protection) Act, 1972, is illegal and in violation of the orders of the Hon'ble Supreme Court of India. The main relief's sought in this I. A. briefly are;
 - (a) to direct the MoEF to withdraw the illegal “temporary working permission” issued by it and stop mining activities;
 - (b) direct KIOCL to stop polluting the Bhadra river due to open cast mining;
 - (c) take action against KIOCL for illegal encroachment in the forests and for destruction of forests in the Kudremukh National Park; and
 - (d) to stop KIOCL from laying new slurry pipe line in the forests of the National Park.
4. That in response to the said I. A. the Hon'ble Court on 10.5.2001 passed an order the operational part of which is reproduced as under :

“ Issue notice returnable in the second week of July, 2001. Mr. A. D. N. Rao, Advocate accepts notice on behalf of the Union of India. Service be effected on respondent No. 2

through Mr. S. R. Hedge, Advocate and on respondent No. 3 by ordinary process and by registered post.

Union of India will file an affidavit within eight weeks and in the affidavit they will also state the reason as to why the Government of India having once notified the area as a National Park then permit mining activity to be carried out notwithstanding this Court's order of 12th December, 1996.”

5. During the course of before the Committee, Shri A. D. N. Rao, learned counsel for the Ministry of Environment and Forests, Government of India submitted a list of dates showing chronology of the events to the Committee. The date-wise facts in detail is annexed hereto as an **ANNEXURE-A**

SUBMISSIONS BY THE APPLICANT ON LEGAL ASPECTS

6. Shri P. K. Manohar, learned counsel for the applicant addressed the Committee mainly on the legal aspect of the case. He submitted that the case of the KIOCL in their pleadings is that the Forest Conservation Act 1980 does not apply to open up areas and a renewal lease does not need clearance under the F.C. Act and in support thereof the company has relied upon State of Bihar Vs. Banshi Ram Modi - 1985 (3) SCC 643 . He submitted that the legal basis of the argument of the Company is flawed as Banshi Ram Modi's case has been expressly overruled and is no longer a good law in light of subsequent rulings in Ambica Quarry Works Vs. State of Gujarat & Ors. case - 1987 (1) SCC 213 and the Order dated 12-12-1996 in T. N. Godavarman Thirumulpad Vs. Union of India & Ors. - 1997 (2) SCC 267.
7. The second point addressed by the applicant's counsel is that the mining leases cannot be treated as a right in land for the purpose of settlement of rights under provisions of sections 19 to 25 of the Wild Life (Protection) Act, 1972. He relied upon the Judgment of the Supreme Court in Tarun Bharat Sangh Vs. Union of India and Ors. - 1992 Supp. (2) SCC 448, wherein the Hon'ble Supreme Court has held that mining leases do not confer any right on land.
8. The third contention of Shri P. K. Manohar, Advocate on behalf of the applicant is that in the event of a clash between economic interest and the environment the former should give way to the latter particularly in the light to the fact that the Kudremukh National Park lies in one of the 18 “Hot spots” regions of the World and lies in the heart of the Western Ghats having a very delicate and sensitive ecosystem and in support reliance was placed on the judgment of the Hon'ble Supreme Court in Rural Litigation and Entitlement Kendra Vs. State of U.P. - 1989 Supp. (1) SCC 504. He further submits that the F.C. Act does not authorise issuance of temporary working permits for more than 1 year. He sums up his argument by saying that though the mining is liable to be stopped forthwith since the Amicus Curiae, the Central government in its affidavit of Shri S. C. Sharma and the State of Karnataka feel a period of 5 year would be just and fair, he submits that the KIOCL may be directed to wind up its operation within 5 years.
9. The applicant has also submitted that since the KIOCL had no right over the land which was already a reserved forest where all the rights had already been settled, the subsequent lease is not a right on the basis of which any claimed could have been entertained by the Collector under section 22 of the Wild Life (Protection) Act, 1972, consequently, no such area could be excluded under section 24 of the said Act while issuing the second notification under section 35(4) of the said Act.

SUBMISSION OF THE APPLICANT ON ECOLOGICAL AND OTHER ASPECTS

10. The has filed rejoinder statements, additional statements before the Hon'ble Supreme Court and written submission along with documents before this committee stating that although KIOCL claims to be an environment friendly company, its track record has been extremely poor in view of the following serious violations for which it has been booked and fined on several occasions:

Violations by KIOCL:

- (i) for illegally raising height of Lakhya Tailings dam resulting in submergence 3.4 sq. kms. of pristine shola valley inside the National Park;
- (ii) for constructing 40 kms of roads in side the National Park;
- (iii) constructing an earthen bund in Lakhya Dam outside leased boundary by breaking open fresh forest land;
- (iv) damaging forest while laying fresh iron ore slurry pipeline for which it paid fine of Rs. 58,107/-;
- (v) breaking fresh forest land for construction of sheds while laying fresh pipeline and the offence was compounded by paying Rs. 1,41,893/-;
- (vi) fined of Rs. 10 lakhs imposed for extensive damage caused due to leakage of about 4,000 tonnes of iron ore slurry in pristine affecting 2 sq. kms of pristine forests in the National Park and the pipeline had leaked 5 times within three years.

Recent Violations

- (vii) In the additional note filed by the applicant, it has been pointed out that in March 2002 fresh areas of forest land has been cleared and broken up and in the process huge amounts of loose soil and boulders have been dumped into Bhadra river, severely clogging its natural flow. This has been supported by photographs and also extensively covered by the media and the Forest Department of Karnataka has also booked a case against KIOCL on 20th March, 2002 for this violation.

Report of the National Remote Sensing Agency on expansion of mining in broken up area

- (viii) The applicant has filed a recent report of the National Remote Sensing Agency commissioned by the Deputy Conservator of Forests, Kudremukh titled “ Kudremukh Iron Ore Mining change Assessment 1999-2002” dated 12th April, 2002 indicates through the analysis of the satellite imagery that mining has expanded by about 56.28 ha. resulting in opening up of unbroken forest land outside leased area of 1,452 ha. during the period 1999-2002 in violation of “Temporary Working Permission” issued under the Forest Conservation Act, 1980.

Comments on NEERI Report

- (ix) The applicant has also pointed out serious flaws in the NEERI report. In the name of plantations, trees of exotic species have been planted by the KIOCL in one of the finest evergreen shola forests thereby causing more damage to the sensitive ecosystem. The studies of especially of the NEERI did not consider serious erosion problems due to open cast mining in high rainfall area and consequent heavy siltation and pollution of the Bhadra river which is the direct impact of mining.

Recent studies of silt loads in Bhadra River

- (a) That the KIOCL has claimed that there is almost negligible amount of silt in the Bhadra river and the Reservoir downstream due to its mining activity whereas the recent analysis of previous reports and Rapid Impact Studies conducted by the hydrologist and an expert in Reservoir Sedimentation Dr. Jagdish Krishnaswamy, reveals starting and extremely disturbing trends in siltload flowing in Bhadra during the current monsoon. The report stated “The estimated contribution of this small sub-catchment (the mining area, which is less than 6 % of the total Bhadra Reservoir catchment) to the total load entering the reservoir in 1985 and 1986 is a staggering 53%and 67% respectively.” The steady silt wash from the mining area into Bhadra Reservoir has reduced the storage capacity and the designed life span of the Reservoir. The country will be ultimately loosing the huge irrigation potential of Bhadra Reservoir which is

currently irrigating a vast area of 1,05,570 ha. Of agricultural land with an agricultural output of Rs. 727 crores per year, which is almost nine times the short term profits of Rs. 69 crores earned from mining by KIOCL per year.

- (b) A preliminary sediment sampling at the end of the monsoon in 2001 which showed significant higher sediment concentration downstream even during low rainfall periods, a fully instrumented sediment sampling and stream gauging was undertaken in the monsoon of 2002. This is the first study that envisages sediment sample collection in the wet-season since neither NEERI nor the studies conducted by the Indian Institute of Science had addressed this issue. The study is still in progress and will continue until the end of the monsoon of 2002.
- (c) The data collected clearly indicates that the sediment loading of the Bhadra river is considerably enhanced by its passage through the mining area. The mean and maximum sediment concentration at the downstream site after the mining area are 189 and 3308 mg/l, approximately an order of magnitude or more higher than the corresponding figures for the upstream site which are 23 and 175 mg/l respectively. There are many samples exceeding 500 mg/l at the downstream site. These are very high sediment concentrations indicative of the serious negative effects of mining.
- (d) The available data on sediment loading from the 1980s, supplemented observations by governmental agencies and the more recently initiated sediment sampling in August 2001 suggests very strongly that:
 - (i) the mining operations have already led to very high sediment discharges in the Bhadra river and led to enhanced siltation of the Bhadra reservoir; and
 - (ii) the mining operations continue to impact the water quality of the Bhadra river. The impacts of KIOCL operations are likely to be felt throughout the Bhadra basin and extend far beyond the devastation within the Kudremukh National Park.

RECOMMENDATION OF THE FOREST ADVISORY COMMITTEE UNDER F. C. ACT 1980

- 11. The forest Advisory Committee constituted under section 3 of the F.C. Act on 11-7-2001 examined the renewal proposal in respect of KIOCL's mining lease for a period of 20 years based on the information furnished by the KIOCL about the availability of the secondary weathered ore in the already broken up area. It recommended that the mining should be allowed for a period of 4 years i.e. up to the year 2005 by which time the weathered secondary ore available in the already broken up area would be exhausted. The formal decision on the recommendation of this Committee was deferred by the MoEF in view of the matter being heard by the Hon'ble Supreme Court.

SUGGESTIONS GIVEN BY LEARNED AMICUS CURIAE

- 12. During the course of hearing the learned Amicus Curiae, Shri Harish Salve, Senior Advocate and Solicitor General for India made suggestions which included:
 - (a) examination of the legality of the exclusion of 3,703.55 ha. forest land from the National Park by the State of Karnataka by issue of final notification under section 35(4) of the Wild Life (Protection) Act, 1972, sought a report from the MoEF on :
 - (i) indicating the state of the flora and fauna and the biodiversity in the area;
 - (ii) examine whether the decision to exclude the aforesaid area is consistent with the National Forest Policy, the objects of preservation of bio-diversity as well as the provisions of the Wild Life (Protection) Act, 1972;
 - (iii) whether economic benefits to be derived from the exclusion of the aforesaid areas are

commensurate with the ecological costs thereof.

- (b) sought a clarification of the order of 14-2-2000 of the Hon'ble Supreme Court which prohibited removal of dead dying, diseased trees and drift wood and grasses from National Parks and Sanctuaries. Further, as per the mandate of the Wild Life (Protection) Act, 1972 there should be no felling of trees and also mining in such areas;
- (c) The prohibitory provisions of the Wild Life (Protection) Act, 1972 becomes applicable the moment the first notification is issued under Sections 18 and 35 of the Act, therefore, it is clarified that no non-forestry activity including mining shall also be permitted in any forest area included within the boundaries delineated in either the first notification or final notification) of national Park or sanctuary.
- (d) To prevent exclusion areas after the first notification or denotification of areas which have been finally notified has lead to controversy, therefore, it would be appropriate for the MoEF to lay down the principles on which areas are denotified or omitted from final notifications and also framing of transparent guidelines on which sanctions/permissions would be granted for projects of national importance under exceptional circumstances in such eco-sensitive areas.
- (e) In view of the affidavit dated 26-7-2001 filed by the MoEF, no blanket approval can be granted to KIOCL for continuing their mining operations. As per the suggestion of the MoEF at best they can be permitted to wrap up their operations in the already broken up area within a period of 5 years only on fulfilling the following conditions:
 - (i) MoEF should in the first instance prepare a plan for reclamation of the mined areas and a proper eco-restoration plan in the project impacted area;
 - (ii) MoEF should prepare a plan for compensatory afforestation over equivalent non-forest area as well as the double the degraded forest area under mining lease;
 - (iii) MoEF shall also survey the area and propose such other measure such as strengthening the Lakhya dam;
 - (iv) These plans prepared by the MoEF shall indicate the approximate cost and select the agency for executing these plans; and
 - (v) KIOCL shall undertake to make available funds necessary for implementing the aforesaid plans which shall be done by an agency selected by the MoEF itself which should work under its supervision;

Upon KIOCL filing an undertaking to comply with aforesaid directions including making available funds, they may be permitted to continue their operations in the already broken up mining areas for a period of 5 years, making it clear that no further extension of this period shall be granted.

13. Meanwhile the in Sept. 2001 the MoEF grants a second one year "Temporary Working Permission" w.e.f. 25-10-2001 to continue mining subject to the decision of the Hon'ble Court in the mater, and also files files a third affidavit informing the Hon'ble Court the decision of the Central Government to consider allowing KIOCL to renew mining lease for 20 years. In October, 2001 the State of Karnataka files its second affidavit informing the Hon'ble Court State Cabinet's decision to grant 5 year lease to KIOCL only in the already broken up area.

SUBMISSIONS OF THE KIOCL

Legal aspects

14. In its Counter Affidavit dated 6th July, 2001, the KIOCL has asserted that it is a Government of India

undertaking and its mining activities are lawfully done on obtaining the requisite permissions/licences, sanctions etc. as required under law. It has submitted that it has taken maximum care to ensure that environment, ecology, wildlife etc. are not affected due to the mining activity and is willing to carry out all such directions which the Hon'ble Court if the allows it to continue the mining activities. That it is continuing mining activity on the basis of two "Temporary Working Permissions" granted on 2-7-1999 and 29-7-2000 by the Government of India as per the guidelines framed under the Forest (Conservation) Act, 1980, even after the original mining lease had expired on 24-7-1999.

15. The thrust of the KIOCL argument is that the requirement of the prior approval of the Central Government under the F. C. Act is only in case where fresh area is to be broken up or cleared. Since, in the present case the area under mining is already broken up for the purpose of open cast mining in 2,834.21 ha. of which 1,452.74 were forest land. Therefore, in continuing to mine iron from the already broken up area approval under the F. C. Act from the Central Government would not be required and it would be required only with regard to 92.86 of forest land which is required by KIOCL for mineralized zone, slurry pipes and access to facilities. In its submissions made before this Committee even this permission is not required in view of the above mentioned decisions. Further reliance has been placed upon the Narmada Sarovar case reported in (2000) 10 SCC 664.
16. In support of its arguments reliance has been placed on the Judgment of the Hon'ble Supreme Court in State of Bihar Vs. Banshi Ram Modi & Ors. reported in (1985) 3 SCC 643, which according to the counter affidavit directly deals with similar situation which the KIOCL finds itself, had arisen in appeal before the Hon'ble Supreme Court. The Court in that matter had held that in an area which has already been dug up and for purposes of mining mica could remove felspar and quartz, which was permitted by the State Government, and the provisions of section 2 of the F.C. Act in such a case is not violated. Referring to the Ambica Quarry Works the counter affidavits states that the ratio of the Banshi Ram Modi's judgment has been accepted in the said case and they have been distinguished on facts, hence the decision in Ambica Quarry in no way affects the case of the KIOCL. The applicability of Banshi Ram Modi's case has been reiterated for the reason that no fresh area is being cleared or broken and the mining is continuing by the KIOCL in the already broken up area.
17. In its written and oral submissions made before the Committee, it has been stated that in view of the first notification issued by the State of Karnataka under section 35(1) the leased area is not a National Park as it is only a draft notification and the final notification for declaration of the National Park has been made only on 18-6-2001. It has also been stated that the original mining lease dated 25-6-1969 granted in favour of KIOC itself contemplates renewal for 30 years. Since the Mines and Minerals Development Regulation Act, 1957 has been subsequently amended limiting the maximum period of renewal up to 20 years, therefore KIOCL applied for renewal for 20 years. It is further stated that as per Rule 24(B) of the Mineral Concessions Rules, 1960 KIOCL is entitled to renewal for 20 years. It has been pointed out that the entire area of 4,605 hectares is not a forest land as a part of it has been notified under Section 349 of the Karnataka Municipalities Act, 1964 declaring it as a Notified Area and the Kudremukh Notified Area Committee is in charge of administration of these areas.

An IS 14001 Company

18. It has been submitted KIOCL being an ISO 9002 and IS 14001 Company, which are issued only when the Company meets strict standards of environment management and the environment as per the said certificates has been defined as "Surroundings in which an organisation operates, including air, water, land, natural resources, flora, fauna, humans and their interrelations". KIOCL has also been issued the requisite consent under the applicable laws relating to prevention of pollution of water, air and this would categorically show that there is no pollution of water as alleged by the applicant. It has been stated that the KIOCL has on its own initiative have been taking care of environmental and ecological aspects even before the F.C. Act, 1980 or the Environment (Protection) Act, 1986 were enacted. Vast areas have been afforested and pollution control measures have been taken on which Crores of rupees have been spent by the company.

19. The KIOCL has referred to the Australian experience at Bridge Hill Ridge which was subjected to mineral sand mining, after 18 years of stopping of mining operations and due to massive eco-restoration effort, the rehabilitated mined area has become an integral part of the Myall Lakes National Park. The area receives 125 mm rainfall and suffers from high saline levels in sand and inadequacy of topsoil and low moisture levels in the reformed dunes. The mined sand dunes were contoured to the original topography. In that case the topsoil was carefully recovered prior to mining was returned directly to the newly formed tailings after which the planting of vegetation was undertaken.
20. The KIOCL has filed the following voluminous reports of various institute and organisations in support of their submissions:
- (a) by NEERI of November 2001, titled “Comprehensive Environment Impact Assessment of Kudremukh Iron Ore Mines”; (see page no. 2.113 (para 2.4.4.1)
 - (b) by the Bombay Natural History Society, December, 1998 titled “Representative Sample filed Survey of Flora and Fauna in the Kudremukh Mine Area”;
 - (c) by the Department of Applied Botany, Mangalore University, October, 1996 titled “Studies on Conservation of Plant Biodiversity and Eco-restoration of Abandoned Mines of Kudremukh Iron Ore Company Ltd.”;
 - (d) by KIOCL titled Vision 2001- “A Road to Environment Management” with Chapters on Environmental Management, Action Plan, Glimpse of Afforestation.
 - (e) by KIOCL titled “Compliance Report on Environment Clearance of Kudremukh Iron Ore Project”
 - (f) by Forestry & Ecological Division, National Remote Sensing Agency, Hyderabad titled “Ecological Monitoring of Kudremukh Iron Ore Mining Area Using Multiple Satellite Data” June, 1997;
 - (g) by KIOCL a “Master Plan for Forestry and Ecology at Kudremukh and Mangalore” prepared by Shri Y.M.L. Yadav, IFS (Retd.)
- Certificates - ISO 14001: 1996 KIOCL conforms to the Environmental Management System Standards
 Management Systems Certificate - Det Norske Veritas (DNV)
 ES ISO 9002: 1994

Requirement of additional 374 ha. forest land for Safety Zone

21. The KIOCL in its submissions to the Committee has requested for additional area of 374 ha. which is required for Safety Zone to mine 350 million tones of primary ore for 20 years in addition to presently mined area of 1,452.74 ha.

REPORT OF INDIAN INSTITUTE OF SCIENCE

Fragmentation and loss of habitat due to mining

22. The applicant states that the report of the Indian Institute of Science in its report titled “Impact of Iron Ore Mining on the Flora and Fauna of Kudremukh National Park and Environs - A Rapid Assessment” published in January 2001 points out that habitat fragmentation has been identified as the single largest threat to biodiversity and biological integrity. Road building and laying of pipe lines as a result of the mining activity has further fragmented the forest which was earlier a single intact block of rain forest. It further states that open cast mining, by its very nature is a very destructive activity, that causes virtually irreparable damage over the time period of decades or even centuries to

a natural habitat.

23. It states that the overall impacts of mining and associated activities on the ecology of Kudremukh National Park can be summarised mainly as direct loss of habitat and fragmentation of an important tract of tropical rainforest/ grassland in the Western Ghats. Apart from the direct loss of habitat for a variety of plants and animals through open cast mining, the impact on the biodiversity of the Kudremukh region has to be considered through fragmentation effects. While Malleswara township and the mining area have made a deep intrusion into larger ecological region of Kudremukh, the associated effects of facilities such as roads, power transmission lines and slurry pipeline are visible. The report also questions the safety of the Lakhya Tailing dam which very nearly caused a disaster in 1992 when human settlements 45 kms downstream along Bhadra river had to be evacuated in emergency.

Montane Grassland - shola forest of Kudremukh a unique ecosystem

24. The report also reveals that the montane grasslands of the Western Ghats as also of the Kudremukh region are a natural climatic climax which have their unique complement of plant and animal life and need to be preserved. These in the areas adjoining the broken up areas up to 2000 acres have been planted with exotic species of trees such as the Eucalyptus and Acacia auriculiformes as compensatory afforestation, whereas large broken up area continue to remain in the same state where no effort to afforestation effort been made by KIOCL. The exotic species are hardy and resistant to climatic factors, which will gradually dominate over natural grasslands and perhaps even over the shola forest species.

Rich and incomparable biodiversity

25. The report states that the Kudremukh National Park has high levels of plant and animal diversity, being one of the richest of similar locations in the Western Ghats. The evergreen forests of Kudremukh have high levels of flowering plants (particularly woody) diversity comparable to or exceeding several other similarly-located sites in the Western Ghats, including the well known Silent Valley in Kerala. Besides, it has the largest breeding population of the Lion-tailed Macaque, highly endangered primate that is endemic to Western Ghats. The Park harbours 392 species of flowering plants, 42 species of mammals, 169 species of birds, 34 species of amphibians 54 species of reptiles, 149 species of butterflies of which 13 are endemic to the area, many among them are highly endangered and listed in Schedule I of the Wild Life (Protection) Act, 1972.

Availability of weathered secondary

26. As per KIOCL's 23rd Annual report for the year 1998-99 it is apparent that the respondent company does not even have the technology and the back up plant and machinery to grind the rock hard primary ore which is found in greater depths as compared to the weathered secondary ore which is soft and brittle and found on the surface. According to the companies own admission the weathered ore, which as on 1.1.2000 is estimated at 119 million tons and the current extraction @ 22.5 million tons per annum, it will not last beyond the year 5 years. Therefore the mineable weathered ore will last for 5 years from the year 1999 only up to the year 2004. However, as regards the position of the primary ore is concerned the relevant paragraph no. 19.9. at page 16 of the 23rd Annual Report of the company is reproduced as under :

“ Primary Ore

Section 19.9

Currently, mining is going on in the weathered ore formation only. By geological occurrence, Primary Ore exists below the weathered ore. The quantity of primary ore is estimated to be 342 million tons. In order to extend the mine life, the company is planning to exploit the primary ore. In order to establish the techno-economic feasibility of mining and beneficiating the primary ore, the company carries out an analysis of the primary ore. The ore samples

were also sent to laboratories at USA and Canada for metallurgical and grindability tests. Further tests are being carried out to establish the techno-economic viability of extraction of primary ore. Once this is established, the life of the current mine will get extended.”

Commitment to Foreign Buyers

27. For every 3 tonnes of ore mined, one tonne is recovered as iron ore concentrate enriched form iron content is 33% to 67 %, the remaining 2 tonnes of gangue material is dumped as tailings KIOCL has entered into agreements with supply of iron ore and pellets to buyers from Japan, Iran, China etc. on long term basis. The annual value of the supply is lies between 17.45 crore to 356.57 crores. The contracts are valid upto 2006.

Iron Ore Availability

28. As per the estimates made by the KIOCL 361.76 million tonne Oxidised core were available in the project area out of which 266.36 million tonne have so far been mined and 94.50 million tonne ore is available. Presently average consumption of oxidised ore is 16.0 million tonne p.a. At the present rate of consumption the oxidised ore would be sufficient for six years.
29. In addition 342 million tonnes primary ore is also available in the project area. After the oxidised ore is exhausted, mining of primary ore is will be undertaking for which necessary technical know how is available with the company. At marginal additional cost mining of primary ore can be under taken. The reserves would be sufficient for 21 years. Thus the existing reserves of oxidised ore and primary ore are sufficient for continuing mining for next 27 years.

AFFIDAVITS FILED BY MOEF

30. The MoEF had filed its first affidavit dated 11-7-2001 wherein it has been stated that the issuance of “Temporary Working permissions” over the broken up area up to a period of one year to the KIOCL is permissible as per the guidelines framed under the F. A. Act,1980. It has been conceded that guideline no. 4.17 provides for granting only one year “Temporary Working Permission” and the second one year permission has been granted to KIOCL only after imposing certain conditions and by taking a pragmatic and flexible view in public interest and under special circumstances. This was done in view of the assurance given by the State of Karnataka that while issuing the final notification under section 35(4), the area under mining would be excluded from the final notification of the Kudremukh National Park.

Mining operations by KIOCL

31. Subsequently, Shri S.C. Sharma, Additional Director General (Wildlife) in his additional affidavit dated 27-7-2001, clarified the stand of the MoEF, after considering the counter affidavit filed by the KIOCL, the rejoinder - statement of the petitioner/applicant and other relevant information. According to this additional affidavit the KIOCL was to allowed to mine in the already broken up area for a period of 5 years subject to satisfactory implementation of the conditions to be stipulated which included reclamation of mined area, air and water pollution control measure, strengthening Lakhya dam, planting indigenous species etc. and establishing suitable monitoring mechanism for ensuring implementation of the conditions imposed.

Areas excluded from the National Park

32. The additional affidavit of the MoEF questioned the exclusion of the 3,703.55 Ha, which includes 3,203.55 ha. leased to KIOCL and 55 ha submerged area of Lakhya dam, from the National Park while issuing the second notification under section 35(4) of the Wild Life (Protection) Act, 1972. The MoEF is of the view that any forest area including any area which is treated as forest as per the Hon’ble Supreme Court’s order dated 12-12-1996 in respect of which the first notification has been issued under Section 18 or 35 of the said Act, shall not be excluded while issuing the final notification,

except in exceptional circumstances. In the present case the area excluded was already a reserved forest where all the rights have been settled before it as included in the first notification, no rights could have accrued thereafter. Since the excluded area is deep inside the National Park and is integral part of the ecosystem, it is desirable to include this area in the National Park. In view of this stand the State of Karnataka as requested to reconsider the issue and include the excluded area in the National Park.

Clarification of the order of 14-2-2000 in I.A. No. 548

33. The additional affidavit refers to the Hon'ble Supreme Court's order dated 14-2-2000 in I.A. No. 548 prohibiting removal of dead, dying trees, drift wood and grasses etc, from any national park or sanctuaries. The MoEF is also of the view that any activity which alters, destroys or deprives the wildlife or its habitat is also prohibited by Section 29 of the Wild Life (Protection) Act, 1972.

Issue of transparent guidelines

34. The MoEF in this additional affidavit has also informed the Hon'ble Court to formulate comprehensive and transparent guidelines to deal with projects of national importance which involve diversion of forest land falling within any areas notified under section 18, 26-A and 35 of the Wild Life (Protection) Act, 1972 is to be considered under exceptional circumstances. These guidelines would spell out the procedure to be adopted, compensation related issues, alternatives feasible in view of advanced technologies, eligibility criteria, monitoring mechanism etc. These guidelines would be based on well considered principles to do away with ad hoc and arbitrary manner of dealing with such issues.
35. Subsequently, the MoEF filed the third affidavit (additional) affidavit dated 18-10-2001 modifying its earlier stand, after considering the request of the KIOCL to mine primary ore and careful examining the pros and cons, expressed the Government of India's view of approving the renewal of mining lease in favour of KIOCL over the already broken up area of 1,472.74 ha. and additional 92.86 ha. of unbroken area required for safety reasons for a period of 20 years.

Affidavits of the State of Karnataka

36. In its statement of objects the State of Karnataka has stated that the of one year "Temporary Working Permission" has been granted after following the due process of law. It has been stated that the decision to exclude the already broken up area from the second notification constituting the Kudremukh National Park under section 35(4) of the Wild Life (Protection) Act, 1972 is based on the report of the Assistant Collector who is the Settlement Officer appointed under the said Act. It states that no fresh area has been used for the construction of roads, for laying the slurry pipe line which had burst earlier on a number of occasions resulting in very serious environmental problems and damages were recovered from the KIOCL. It also mentions that KIOCL was fined for various forest offences and violations and fines were imposed and recovered from it on several occasions.
37. In compliance to the directions issued by the Hon'ble Supreme Court to file its response to the submissions made by the learned Amicus Curiae as well as on the additional affidavit filed by the MoEF on the question of limiting the mining activity by the KIOCL to the already broken up area for a period of 5 years. The State was also required to reconsider the final notification by which resulted in the exclusion of certain area from the first notification of the Kudremukh National Park. It has been stated that in view of the Government of India's stand that mining activity in a National Park would not be consistent with the provisions of the Wild Life (Protection) Act, 1972, therefore, the State was advised to exclude the mined area with a view to protect the National Park from the mining activity. This according the State of Karnataka could not be characterized as a surreptitious reduction of the notified area of the Park. It also stated that once the mining activity is brought to a complete halt, there would be difficulty or impediment to include the buffer zone as a part of the National Park. But including the area under mining activity within the boundary of the National Park would be inconsistent with the provisions of the Wild Life (Protection) Act, 1972.

38. The state is aware that the area falling under the National Park and its environs are identified as one of the 18 “hotspots” of global biodiversity and the tropical wet evergreen shola forests and grass lands is one of the very rare kind in the World. It has also not been denied that mining activity does effect the environment. On the question whether the economic benefits to be derived from the exclusion of the aforesaid area would be commensurate with the ecological costs is the larger question and in absence any mechanism to quantify it, no definite could not be given.
39. The State of Karnataka has decided that mining cannot go on indefinitely in the area and the KIOCL may be permitted to continue mining for a period of 5 years only in the broken up area with stringent conditions including strong monitoring mechanism, appropriate programmes for reclamation, pollution control, safety of Lakhya dam, and use of indigenous species of flora for eco-restoration and provision of additional funds for a continuous implementation of the above. The affidavit concludes by stating that State of Karnataka would leave it to the wisdom of the Hon’ble Court to find appropriate balance of the vexed issues are involved and the competing needs that are to be met in the national interest and that of the future generations.

RECOMMENDATIONS

After hearing all the concerned parties, considering the suggestion made by the learned Amicus Curiae before the Hon’ble Supreme Court, the following are the unanimous conclusions and recommendations of the Committee:

On law

1. On expiry of its lease on 25-7-1999, approval under the F.C. Act is required to obtained from the MoEF by the KIOCL even for seeking renewal of lease for the already broken up area. The decision in the case of Banshi Ram Modi has been expressly over ruled and is no longer a good law in the light of the rulings in *AMBICA QARRY WORKS V. STATE OF GUJARAT*, 1987 (1) SCC 213 and by order dated 12-12-1996 in *T. N. GODAVARMAN THIRUMALPAD V. UNION OF INDIA AND ORS.*, 1997 (2) SCC 267.
2. The mining leases cannot be treated as a right in land for the purpose of settlement of rights under provisions of sections 19 to 25 of the Wild Life (Protection) Act, 1972, in view the Judgment of the Hon’ble Supreme Court in *TARUN BHARAT SANGH VS. UNION OF INDIA AND ORS.* - 1992 Supp. (2) SCC 448, wherein it has held that mining leases do not confer any right on land.
3. Since the area being mined by the KIOCL formed part of the declared reserved forest where all the rights were already settled, no new rights could accrue to KICOL over the said forest land. In absence of any right, the Collector’s action to allow the claim of the KIOCL under section 22 of the Wild Life (Protection) Act, 1972 while settling / acquiring the rights in Kudremukh National Park, was without jurisdiction.
4. In absence of any right, the admission of such a right by the Collector under the provisions of section 24 (2) and the subsequent exclusion of such a land under 24(2) (a) which formed part of the area first notified issued under section 35(1) of the Wild Life (Protection) Act, 1972, was illegal and without any jurisdiction.
5. The reserved forests which was included in the first notification has been excluded from the Kudremukh National Park at the time of issuing the final notification under section 35(4) of the said Act was illegal and bad in law. Therefore, the second notification issued under section 35(4) under Wild Life (Protection) Act, 1972 by the Government of Karnataka is bad in law and deserves to be quashed, to that extent. Since the area excluded while issuing the second notification was illegal, the same will have to be included in the Kudremukh National Park, while issuing the fresh notification under section 35 (4) of the Wild Life (Protection) Act, 1972.

6. The issue of second “Temporary Working Permission” by the MoEF to the KIOCL is not contemplated by the guidelines framed under the Forest (Conservation) Act, 1980 and was in violation of the provision of the said Act.
7. The Central Government has no powers to enlarge or review any proposal made by the State Government for non-forestry use of any forest land. Since the State Government has now sought/decided to restrict the mining for five years, the Central Government has no powers under the Forest (Conservation) Act, 1980 to allow mining for more than five years. It has powers to either approve the proposal or reject the proposal.
8. The order of 14-2-2000 in I.A. No. 548 prohibiting removal of dead, dying diseased trees, drift wood grasses etc. as modified on 28-2-2000, from any area declared as national park or a sanctuary, would also cover mining activity in all such areas. The mining activity continued by the KIOCL inside Kudremukh National Park was in violation of the orders dated 12-12-96 and 14-2-2000 of the Hon’ble Supreme Court of India.

RECOMMENDATION ON ECOLOGICAL AND OTHER CONSIDERATION

9. After carefully considering all the views and suggestions, the exceedingly rich biodiversity of the area and investment made by the KIOCL, suggestion made by the learned Amicus Curiae, the Committee is of the view that the KIOCL be asked to wind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, whichever is earlier, in the already broken up area. It is clarified that the period of 5 years would commence from 25-7-1999, when its lease had expired.
10. The winding up period of five years would be subject to the following conditions:
 - (i) the MoEF should prepare or get a rehabilitation and reclamation and a proper eco-restoration plan prepared for the mined area and project impact through appropriate agency at the cost of the KIOCL;
 - (ii) KIOCL shall undertake to make available funds necessary for implementing for the aforesaid plans. The plans would be implemented by the agencies selected by the MoEF and under the supervision of the MoEF;
 - (iii) a monetary compensation of RS. 25 crores @ Rs. 5 crores per year will have to be deposited by KIOCL with MoEF in a separate bank account which would be utilised for the purposes of research, monitoring and strengthening protection of the Kudremukh National Park and for other protected areas in the State of Karnataka;
 - (iv) a Monitoring Committee shall be constituted by the MoEF comprising representative of MoEF, representative of the State of Karnataka, two NGO experts preferably from Karnataka, which shall monitor the implementation of the rehabilitation plans; and
 - (v) after the winding up operations are complete, the KIOCL will transfer all the buildings and other infrastructure to the Forest Department of the State of Karnataka at book value.
11. Transparent Guidelines for dealing with development projects in protected areas as recommended by the Learned Amicus Curiae and agreed to by the MoEF in its affidavit filed by Shri S. C. Sharma, Additional Director General of Forests shall be notified within 30 days with the concurrence of the Central Empowered Committee.

Dissenting Note of Shri Valmik Thapar

12. Shri Valmik Thapar, one of the members of the Committee has given a dissenting note which is reproduced as under:

“Enough exploitation has been done in Kudremukh since the lease expired in 1999. I have seen the plunder and the horrors of this entire area. Kudremukh is more important than the Taj Mahal. Would anyone decide to mine the compound of the Taj Mahal?”

The exploitation of Kudremukh for iron ore today follows no principles in law. Valuable rain forest can not be recreated. It has greater value to human life than iron ore. I therefore, can not agree with my colleagues, I take a dissenting stand while I agree with the principles on the basis of which the recommendations have been made by my colleagues – I am of the following opinion:

- (i) All mining operations must stop immediately,
- (ii) A five year period starting on 25th July, 1999 must be treated as the “Restoration and Winding up period” so that the Mining Company can restore all mined lands, plant indigenous species, protect the region and give back to one of the worlds finest forests what has been taken from it. All costs will be met by the project proponent.

The law of the land supports the National Park and not the continuance of mining. We must follow the law of the land especially since the value of the area is a million times more than the value of the ore.”

The Hon’ble Supreme Court may please consider these recommendations and please pass appropriate orders on the matter.

Dated : 13.8.2002

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

All the recommendations of the CEC have been accepted by the Hon’ble Supreme Court by order dated 30.10.2002 and the mining operations in Kudremukh National Park have been directed to be stopped w.e.f December, 2005. The KIOCL have been directed to pay Rs. 25 crore for conservation of the National Park. The Judgment in this case is included in this compilation.

(4)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In**

I.A. No. 276 of 1998

(Dated: 13.8.2002)

(Regarding removal of encroachments from Thatkola Reserve Forest in Chickmagalur District, Karnataka)

1. Hearing of I.A. No.276 filed through Amicus Curiae was held on 26.7.2002 and 5.8.2002 along with IA Nos, 413, 437, 453 and 454 for impleadment.
2. In IA No.276, it is stated that in blatant violation of the Supreme Court orders dated 12.12.96, Forest (Conservation) Act, 1980, Karnataka Forest Act 1963 and Karnataka Preservation Trees Act, 1976 large areas of reserved forests have been destroyed and encroached by influential and powerful people in Chikamagalur Forest Division, Karnataka. The forest area of Chikamagalur Division is part of the ecologically fragile Western Ghats and is rich in bio-diversity. These exceedingly rich forest are rapidly being destroyed and fragmented due to encroachment for growing coffee plantations, agriculture and mining activities. The people involved in this illegal activity are powerful and influential people who include Shri B.L. Shankar, President of the Janta Dal, his brother Shri B.L. Diwakar and others. In the application prayer has been made for investigation into the large-scale encroachment in reserved forest at Chikamagalur and to initiate contempt proceedings against the offenders/violators of Hon'ble Supreme Court orders.

Appointment of Court Commissioner

3. After hearing the matter on 29.7.98, Hon'ble Supreme Court appointed Shri R.M.N. Sahai, Conservator of Forests, Karnataka as the Commissioner of the Court. Relevant portion of the order of 29.7.98 of Hon'ble Supreme Court is reproduced below:-

“The learned Amicus-Curiae has brought to our notice that so far as Thatkola Reserve Forest is concerned, in District Chickmagalur, there has been large scale deforestation even after the orders of this court prohibiting the felling of trees were made.

We appoint Mr. R.M.N. Sahai, Conservator of Forests, as the Commissioner of the Court, and direct that Mr. Sahai shall immediately go to Thatkola Reserve Forest and give a report about the present state of affairs in that forest. The needful shall be done by him within two weeks. Learned counsel for the State of Karnataka undertakes to apprise Mr. Sahai of this order and offer all possible assistance to him to undertake the task assigned by us to enable him to file the status report.”

4. Shri R.M.N. Sahai submitted his enquiry report on 5.9.98. Supplementary enquiry report was given by him on 14.1.99. As per the decision taken by Central Empowered Committee on 26.7.02, the updated status report was given by him on 2.8.02.
5. During the hearing held on 26.7.02, Shri RMN Sahai, Court Commissioner explained the important

issues dealt with in his Report. The State Government sought time for filing of additional affidavits explaining the stand of the State Government on the Survey of India's report. As the earlier report of the Court Commissioner was given during 1998, he was requested to update the Report, giving present status of the existing encroachments, projects of encroachments removals, action taken on Survey of India's report and other related issues. On the request of the State Government and also the interveners, the hearing was postponed to 5th August, 2002.

The hearing held on 5th August, 2002 was attending to Chief Secretary, Karnataka as a special invitee.

Findings of Commissioner of the Court

The findings of Shri RMN Sahai, Court Commissioner as given in the Executive Summary of his Report dated 5.9.98 is reproduced below:-

“Thatkola Reserved Forest was constituted by an order of the then Government of the Maharaja of Mysore in 1936. The forest has an area of 2313 acres 38 guntas encompassing portions of Six villages, namely Kenjige, Kenjigegudda Coffee Estate, Bidarhalli Thatkola, Hesgal and Phalguni which are in Mudigere Taluk of Chickamagalur District.

The area is located in Western Ghats region and receives high rainfall of about 2500 mm annually. It supports rich tropical moist deciduous forests and a relatively undisturbed patch of forest is a veritable store house of bio-diversity. The commercially important species like Sandal wood, Teak Rose wood, Honne, Mathi, etc., are found the area. It is also a habitat of endangered species of fauna, viz., Tiger, Panther, Bison, Malabar, Civet, King cobra and several other mammals, reptiles, birds and insects. The micro organism present in the forests is yet to be fully explored.

In last twenty years, the forests of the area has come under serious threat because of encroachment of forest land for coffee cultivation, application of insecticides, fungicides and chemical manure and illicit fellings. An area of 604 acres 30 guntas of forest land is reported to be under encroachment. For this 55 cases are already registered by the Chikmagalur Forest Division covering 488 acres 4 guntas. Another 98 cases covering 116 acres 26 guntas are yet to be registered. On analysis it is seen that 73% of the encroached land has been encroached by 18% encroachers while 73% encroachers have encroached 18% of land. Among the encroachers, 40 persons belong to SC/ST who have encroached 32 acres 7 guntas while 1143 people belonging to other communities have encroached 572 acres 23 guntas. Besides Coffee and other cultivation, several encroachers have constructed houses and at times have put strong fence around their plantation on encroached land. 65 cases of illicit felling in the area have also been registered since 1976.

It was observed that the Revenue Department has granted land to six persons in the forest and have levied fine under Sec. 94 of Karnataka Land Revenue Act to another six persons for unauthorised cultivation. Fifty-three Ashraya sites of 30' x 40' has been granted to homeless people in the Forest. A road has also been constructed through reserved forest. Failure of the forest department in preventing this is obvious. All this is leading to serious degradation of the Forest.

It is, therefore, necessary that this trend of Forest degradation is immediately reversed and suitable measures initiated to bring the forest back to its original condition. If this is not done immediately, the Reserved Forest is sure to meet destruction.”

The supplementary enquiry report dated 14.1.99 deals with the joint survey done by the team headed by the Joint Director, Land Records, allegation of changing nature of encroachment, survey of the area by Survey of India, one case of eviction of encroachment that has taken place in Thatkola Reserved Forest and action taken by Chikmagalur Forest Division. Copy of the letter dated 7.9.98 written to the Court Commissioner by Shri B.L. Shankar, one of the persons whose

case was dealt in his report was also included in the supplementary enquiry report.

Updated Status Report of the Court Commissioner

On the request made by the Central Empowered Committee the area was again visited by Shri Sahai and updated Status Report of Thatkola Reserved Forest was submitted by him on 2.8.02.

The main issues mentioned in the report are:-

- (i) there are 147 cases of encroachments consisting of 611.23 acres in Thatkola Reserved Forest, out of which 556.04 acres is under coffee cultivation. Three per cent of the encroachments are by Scheduled Castes, 8.6% by Scheduled Tribes whereas 88.4% of the encroachments have been done by others. No serious attempt of fresh encroachment was noticed. The encroachers continue to maintain their plantations [in violation of Forest (Conservation) Act, 1980];
- (ii) Fifty-three Ashraya sites have been granted in Hesgal Survey No.39, a school building has been constructed and water supply facility for the colony has been created.
- (iii) Offence case no.55/97-98 was registered against Shri B.L. Shankar, the then Janta Dal President and now Speaker of Karnataka Vidhan Parishad and others for encroachment of forests. In the report, the Joint Director, Land Records, Mysore who had surveyed the area has reported that a single report as to the nature of encroachment cannot be given without correcting one of the village boundary as the village boundaries of two villages overlap one another. When survey is conducted by taking Kundur village boundary into consideration then the holders of Survey No.3 (Shri B.L. Shankar and others) are not found to have encroached any forest land whereas if survey is conducted by taking KGCEV boundary into consideration they appear to have encroached 32 acres and 3 guntas forest land. The charge-sheet filed in the Court of JMFC Mudigeri on 9.4.99, which was registered under CC No.613/99 has been quashed by Hon'ble High Court in Criminal Revision Petition No.1303/99. No appeal against the High Court orders have been made by the State Government. The Survey of India report confirms the encroachment to an extent of 27.67 acres by Shri B.L. Shankar and others(at serial no.121 of annexure B of the report);
- (iv) As against 147 cases (611.23 acres) registered for encroachment of forest land, in respect of 116 cases (552.99 acres) orders have been passed under Section 64 (A) of Karnataka Forest Act by the Deputy Conservator of Forests/Assistant Conservator of Forests. However, actual eviction has taken place only in one case so far; and
- (v) Deputy Commissioner, Chickamagalur had transferred about 60,000 ha thickly wooded forest area to Forest Department vide his order dated 5.6.62002 in pursuance of Supreme Court orders (dated 12.12.96) and declared it as reserved forest. The order has been stayed for 3 months vide State Government's order dated 3.7.02

Survey of India Report

The survey of Thatkola Reserved Forest was undertaken by Survey of India as per decision taken by the Karnataka Forest Department. Subsequently, Hon'ble Supreme Court of India by their order dated 7.5.99 directed the Survey of India to continue with the survey which it was carrying on in the said area and to submit its report, if possible, within 3 months to the Hon'ble Court. It was also directed that during the conduct of the Survey and till the submission of the report, there shall be no administrative interference.

After completing the survey, Survey of India has filed its report vide affidavit dated 4.4.00 before Hon'ble Supreme Court. As per the Survey of India report:-

- (a) the survey has been done by starting the work from nearest available Survey of India

geographical control point and conducting from the nearest identifiable point in the nearest forest boundary;

- (b) as against the recorded area of 2312 acres of 38 guntas, the forest area found during the survey comes to 226.9819 acres. The difference is attributable to (i) use of modern equipments as against old survey done using chains, use of Pheodolite measuring up to one inch, (ii) (earlier compass and course staff were used), (iii) the terrain being hilly and undulating (distances measured with chain were prone to more errors as the slope correctness to distance measure was given by approximation), and (iv) use of sophisticated instruments like digital Planimeter now used for calculating the area; and
- (c) 611.2390 acres of forest area has been found to be under encroachment. Details regarding the village survey number, type of encroachment and names of the encroachers (as indicated by local officers) have been given along with the report.

Stand Taken by the State Government

The State Government of Karnataka has filed affidavits on 4.2.98, 13.5.98, 24.7.98, 10.9.98, 6.10.98, 4.5.99, 23.1.00 and 25.4.00. The present stand of the State Government as given in the affidavit dated 3.8.02 filed before the Central Empowered Committee is that:-

- (a) Survey of India has carried out survey of Thatkola Reserved Forest as per decision taken by the State Forest Department. The survey was started on 27.5.98 to identify the demarcation line, encroachments, etc., and completed by the middle of February 2000. The survey done by the Survey of India is final since it is the apex organisation in survey matters. Therefore, the Government of Karnataka accepts the survey report. As per the report, there are 148 number of encroachments encompassing 611.23 acres (forest land);
- (b) no appeal against the High Court orders dated 15.11.99, vide which proceedings of the JMFC in CC No.613/99 regarding encroachments are against Shri B.L. Shankar and others has been quashed, has been made by the State Government as the encroachments have been confirmed by the report of the Survey of India and it is considered legally possible to set the law in motion again against the encroachers by lodging fresh complaints on the basis of the fresh evidence furnished by the Survey of India. The Forest Department has been requested to initiate penal action accordingly;
- (c) a State level committee under the chairmanship of Chief Secretary, Karnataka has been constituted on 30.7.02 to monitor the compliance and progress of the encroachment eviction measures taken by the Forest Department. District level committees under the chairmanship of Conservator of Forests have also been constituted on 1.8.00. These committees will monitor steps taken to evict the encroachers as per law;
- (d) presently, out of 148 cases (611.23 acres) charge-sheets have been filed for 124 cases (563 acres), orders passed by Assistant Conservator of Forests/Deputy Conservator of Forests in 116 cases (554.19 acres), appeals filed against these orders before Conservator of Forests in 47 cases (428.77 acres) and number of appeals disposed of by Conservator of Forests in 28 cases (324.11 acres). In all the cases where orders have been passed as well as cases in which appeals have been disposed of, without exception the decisions are in favour of the Government;
- (e) In 129 cases, First Information Report have been filed and in 105 cases charge-sheets have been filed in JMFC. Out of these, 2 cases have been disposed of by JMFC – both resulted in eviction. Fourteen of the pending cases in JMFC Court, pertaining to the Thatkola State Forest, have been quashed by District Court on 2.4.00 (against the Forest Department) on the reasoning that provisions of Section 99 of Karnataka Forest Act do not confer powers on the forest officers to investigate without having recourse to relevant provisions of CrPC.

Revision petition dated 27.2.02 has been filed before the Hon'ble High Court; and

- (f) Twenty-eight writ petitions have been filed before Karnataka High Court. Forest Department has filed counter affidavits in all the cases. Out of these, 10 cases have been disposed of in favour of Government and remaining are pending.

During the State Government reiterated that it accepts the Survey of India's report as the final report and is committed to remove all encroachments as reported by Court Commissioner and confirmed by the Survey of India report. On the issue of poor progress of eviction of encroachments, it was mentioned by the State Government that now a committee under the chairmanship of Chief Secretary has been constituted to oversee the progress of encroachment removals. It is expected that the pace of encroachment removals would substantially increase. It was also reiterated that the High Court orders quashing the proceedings of JMFC in some of the cases would not create any legal hurdle in encroachment removals and, therefore, it was decided not to appeal against these orders. However, the State Government pleaded for exempting the encroachments done by SC/ST as it intends to move Government of India seeking approval of regularisation of such encroachments under the Forest (Conservation) Act, 1980. It was also explained by the State Government that irrespective of the reports of the Joint Director, Land Records and other earlier reports, the encroachments which have been confirmed by Survey of India, action would be taken for their removal by treating it as the final report.

Intervention Application No.413

The IA No.413 has been filed by the District Farmers and Coffee Growers Welfare Association, Chickamagalur. The main pleas made in the application is that the encroachments have been done by SC/ST and other weaker sections of the society. They are in possession of this land for more than 100 years. No steps for eviction of encroachers may be taken.

On being specifically asked, the applicants were unable to provide any proof of them being genuine representative of the SC/ST and other weaker sections of the society they claim to represent. In support of their claim, they were asked to provide documents about registrations of the Society, Memorandum of Association, Article of Association, resolution passed by the society for approaching Hon'ble Supreme Court and list of the members. None of these details have been made available by the applicants so far, therefore, no cognizance of the issues raised in the IA may be taken and the IA may be dismissed.

Intervention Application No.437

The IA has been filed by Karnataka State Government for seeking extension of time for final detailed response to the Court Commissioner's Report by 4 weeks from 2nd July 1999 onwards. Since more than 3 years have already passed, no separate order on this application now needed.

Intervention Application No.453

IA No.453 has been filed by Shri B.L. Shankar, one of the persons who is reported to have encroached on the forest land. At the relevant time he was President of the ruling Janta Dal and is presently Speaker of Karnataka Vidhan Parishad. The main issues raised by him are that due to political reasons, the dispute about his having encroached the forest land has been raised. The coffee plantation owned by him is more than 100 years old. The Survey No.3 where his coffee plantations are there overlaps the forest area. There is a difference of about 2 to 3 acres between the notification constituting the area as reserved forest and map of the area subsequently prepared. When survey was being done by Survey of India no notice or opportunity was given to him to explain factual position. No survey of his land (outside forest area) has been done. The First Information Report was filed against him

with mala fide intentions. The total area owned by him as per the records is 113.22 guntas in Survey No.177, 180 and 3. The area under his possession can be verified now also and if it is found that total area under his possession is more than 113.22 acres balance area can be taken away from him by treating it as encroachment. The Survey of India should be asked to survey his land also. No cognizance of the overlapping of the boundaries and the report given by the Joint Director, Land Survey is being taken.

CONCLUSIONS

Based on the Court Commissioner's Report & Survey of India Report, State Government's views, affidavits and intervention IAs and the issues raised during the hearings the Central Empowered Committee is of the considered view that:-

- (a) the report given by the Survey of India about boundaries of Thatkola Reserved Forest and the extent of encroachment inside it should be accepted as the final report as Survey of India is the apex survey organisation in the country. The survey has been done by it using the latest equipments in a scientific manner. The authenticity and reliability of the survey report cannot be doubted;
- (b) as reported by the Court Commissioner and confirmed by Survey of India report, 611.23 acres of forest land has been encroached inside Thatkola Reserved Forest. Out of this, 556.04 acres has been encroached for coffee cultivation and 55.19 acres for other purposes;
- (c) the encroachments taken place inside Thatkola Reserved Forest needs to be immediately evicted specially as these encroachments are for commercial purposes;
- (d) adequate steps have not been taken by the State Government for removal of encroachments in the past in spite of appointment of Court Commissioner by Hon'ble Court and deep interest taken in the matter by Hon'ble Supreme Court of India, the encroachments have been allowed to continue on one pretext or another including pendency of joint survey report, Survey of India's report, and pendency of the cases filed in various courts.;
- (e) after removal of encroachments, it is necessary to rehabilitate the encroached area by afforestation and other conservation measures; and
- (f) compensation for environmental losses caused due to encroachments should be recovered from the encroachers specially as these encroachments are for commercial purposes. Similarly, compensation should also be recovered from the State Government if it does not take effective steps immediately for removal of encroachments.

RECOMMENDATIONS

In view of above, the Central Empowered Committee unanimously recommends that:-

- (a) Shri RMN Sahai, Court Commissioner's Report about the forest area under encroachment in Thatkoli Reserved Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith;
- (b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number/survey number and the Forest Range from where the encroachments are being removed in compliance of this order;
- (c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that police protection and help needed for removal of encroachments is timely provided;

- (d) compensation for environmental losses caused due to encroachments which have taken place in the instant case for commercial purposes, shall be recovered from the encroachers identified by the Court Commissioner @ Rs.10 lakhs per hectare as an exemplary punishment. For any encroachments not removed by the State Government for any reason whatsoever within three months, compensation for continued environment losses shall also be paid by the State Government @ 10,000/- per hectare per month. The money so recovered shall be kept in a separate account and shall be used exclusively for forest protection and conservation with the concurrence of the Central Empowered Committee;
- (e) the Action Taken Report shall be filed by the Chief Secretary, Karnataka before the Central Empowered Committee every month till the encroachments are completely removed and all the compensation payable by the encroachers / State Government are recovered / deposited; and
- (f) the earlier orders made in the matter shall be read, modified wherever necessary to this extent. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

The Hon'ble Court may please consider the above recommendation and pass appropriate orders in the matter.

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 30.10.2002 and the encroachments indulged by influential persons have been directed to be removed. The detailed of the Hon'ble Supreme Court order is included in this compilation.

(5)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In

I. A. No. 566 of 2000

(Dated : 13.8.2002)

(Regarding utilization of funds received for compensatory afforestation and net present value of land diverted changing of establishment Compensatory Afforestation Fund)

1. During the course of the hearing of Interlocutory Application (IA) nos. 419 and 420, Mr. Kirit Rawal, Additional Solicitor General had placed on record a statement showing the position of the cases approved for diverting forest area for non-forestry purposes, compensatory afforestation stipulated and actually done, funds to be received, actually received and utilised. The Hon'ble Supreme Court *suo moto* treated the statement as an IA and after giving it IA No.566, issued notices to the defaulting states which have recorded poor progress in utilisation of funds and not submitting the quarterly progress reports to the Ministry of Environment & Forests hereinafter referred to as the MoEF.
2. After hearing the I.A. on 23rd November, 2001, the following directions were issued by the Hon'ble Court:

“Most of the affidavits have been filed from a statement which has been placed on record by the learned Amicus Curiae. It is clear that large sums of money have been realised by various States from the user-agencies to whom permissions were granted for using forest land for non-forest purposes. Monies were paid by them to the State Governments for compensatory afforestation but the utilisation of the money for re-forestation represents only about 83 per cent of the funds actually realised by the State Governments. The shortfall is of nearly Rs.200 crores.

While on the next date of hearing the Court will consider as to how this shortfall is to be made good, the Ministry of Environment & Forests should formulate a Scheme whereby whenever any permission is granted for change of user of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation then the responsibility of the same should be that of user-agency and should be required to set apart a sum of money for doing the needful in such a case the State Governments concerned will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user-agency or of the State Governments as the State Governments may decide. The scheme which is framed by the Ministry of Environment & Forests should be such as to ensure that afforestation takes place as per the permissions which are granted and there should be no shortfall in respect thereto. Counsel for Union of India states that appropriate scheme will be formulated on the basis of which permissions will be granted in future and the same placed before this Court within eight weeks. List thereafter.”
3. During the course of hearing on 18.2.2002, a cost of Rs.5000/- was imposed by Hon'ble Court on the MoEF for not submitting the scheme for compensatory afforestation as per its order dated 23.11.2001. The scheme was subsequently submitted by the MoEF through an affidavit dated 22.3.2002.

Present system of Compensatory Afforestation

4. Presently, compensatory afforestation is carried out as per the guidelines issued by the MoEF from time to time under the Forest (Conservation) Act 1980 (hereinafter referred to as the FC Act). As per the guidelines, the compensatory afforestation is required to be done over equivalent non-forest area at the cost of the user agency. Wherever non-forest land is not available, which is to be certified by the Chief Secretary, compensatory afforestation is to be done over double the degraded forest area at the cost of the user agency. In cases involving violations of FC Act, undertaking of additional compensatory afforestation over double the degraded forest area is also stipulated. After the funds for the compensatory afforestation are deposited with the concerned State Government and land for this purpose is transferred and mutated in favour of the Forest Department a formal approval for diversion of forest land for non-forest use under Section 2 of the FC Act is given by the MoEF. The compensatory afforestation is by and large done by the Forest Departments in the respective States.
5. As per the statement circulated by the MoEF during the course of hearing, a copy of which is annexed hereto as **Annexure “A”**, as against Rs.859.29 crores which was to be recovered from the user agencies Rs.793.86 crores has been recovered so far and Rs.496.22 crore has been actually spent on compensatory afforestation. Thus, less than 60 per cent of the funds which were to be paid by the user agencies have been actually spent on the compensatory afforestation. Further, as against the stipulation of compensatory afforestation to be done over 6,73,527 hectares, so far it has been done over 4,26,965 ha, which is about 60.64% of the target.

Procedure for receipt and utilisation of funds for Compensatory Afforestation

6. In the States of Chattisgarh, Madhya Pradesh, Uttranchal and Uttar Pradesh, the money received on account of compensatory afforestation is directly deposited by the user agency with the Forest Department as ‘Forest Deposit’. Since this does not form part of the consolidated fund, these are readily available to the concerned Divisional Forest Officer for undertaking afforestation works as and when required. The availability of funds for the compensatory afforestation is not a problem for these States. However, in most of the other states, the funds received from the user agencies for compensatory afforestation are deposited as revenue receipts with the State Government which are made available to the Forest Department only through budgetary provision. All the states, except Karnataka are facing problems in timely release of funds for compensatory afforestation. General perception of the representatives of the States is that unless and until the present system of release of funds through budgetary provisions is changed, the pace and quality of compensatory afforestation cannot be increased significantly. It is, therefore, desirable to create a separate Fund for compensatory afforestation, wherein all the monies received from the user agencies is deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular State would be utilised in the same State. There was a unanimity of view that such a system would help undertaking of compensatory afforestation in a planned manner on a continuous basis. Such a Fund would also ensure timely and adequate release of money, and provide necessary flexibility in implementation of the schemes. There was a general consensus among the States and UTs that the funds for compensatory afforestation which are yet to be recovered from the user agencies as well as the unutilised funds lying with the States should also be transferred to such a Fund.

Activities Permissible under Compensatory Afforestation

7. Presently, the compensatory afforestation scheme envisage plantations of seedlings and its maintenance i.e. artificial regeneration (plantation) in the identified area. There was general consensus amongst the States/UTs that the present practice of concentrating only on artificial regeneration through plantations should be dispensed with as it does not adequately compensates the loss of natural forest. A part of the fund should also be used for assisted natural regeneration, wherein the natural forests are allowed

to regenerate and grow by undertaking silvicultural and cultural operations such as fire tracing, singalling of seedlings, protection, etc. These activities help in regenerating the root stock, which already exists in the degraded forests. Assisted natural regeneration would be of a great help in conservation and development of forests in an efficient and cost effective manner and the same amount of fund could be utilised to cover a much larger area. Besides, it helps in restoring the natural forests which is not always possible through plantations. There was unanimity of view that compensatory afforestation funds should be utilised for assisted natural regeneration and other forest conservation and development activities in addition to plantations as per the requirement of the area i.e. the compensatory afforestation plan should be a site specific plan wherein assisted natural regeneration should be given due importance.

Adequate compensation for (loss of) forest land – recovery of Net Present Value

7. To compensate for the loss of tangible as well as intangible benefits flowing from the forest lands which has been diverted for non-forest use, net present value of such land is being recovered from the user agency in the States of Madhya Pradesh, Chattisgarh and Bihar. The underlying principle is that the plantations raised under the compensatory afforestation scheme can never adequately compensate for the loss of natural forests as the plantations require more time to mature and even then they are a poor substitute to natural forest. In the States of Madhya Pradesh and Chattisgarh, the net present value is being recovered @ Rs.5.80 lakhs per hectare to Rs.9.20 lakh per hectare of the forest land depending upon the quality and density of the forest land diverted for non-forestry use. The States/UTs as well as Ministry of Environment & Forests are of the view that in addition to the funds realised for compensatory afforestation, the net present value of forest land being diverted for non-forestry purposes should also be recovered from the user agency. The fund so recovered could be utilised for undertaking specific activities such as forest protection and other conservation measures. It is, therefore, desirable that norms for this purpose may be laid down for all the States.

Funds for Catchment Area Treatment Plant

9. While approving diversion of forest land for major and medium irrigation projects, one of the conditions imposed by the MoEF under the FC Act on the user agency is to undertake suitable catchment area treatment as per site specific scheme. Though at the time of the approval under the FC Act, the user agencies agree to implement the catchment area treatment plan, on one pretext or another, this important condition remains unfulfilled. The State/UTs as well as the Ministry of Environment & Forests are of the view that the funds needed for catchment area treatment plan should also be deposited by the user agency in advance in the aforesaid Fund.

Involvement of User Agency for Compensatory Afforestation

10. There was a general consensus that it would be desirable to allow carrying out of compensatory afforestation through the user agency specially large public sector undertakings frequently require forest for these projects. The public sector undertakings such as Power Grid Corporation, NTPC. etc., may be encouraged to establish Special Purpose Vehicle for compensatory afforestation. The plantations can be undertaken by such Special Purpose Vehicle by identifying non-forest area in advance for raising plantations thereon. Concurrent monitoring to ensure quality of plantations, survival rate and selection of species could be done by the State Forest Departments. Whenever any forest land is diverted for non-forestry purposes by such public sector undertakings, suitable credit for afforestation done through such Special Purpose Vehicle can be given to them. Alternatively, instead of each of the such public sector undertaking forming separate Special Purpose Vehicle, a number of them could jointly establish the Special Purpose Vehicle for the purpose. However, there was a general reluctance to allow compensatory afforestation through private user agencies in view of the lack of technical know-how, un-reliability, lack of monitoring and other practical

problems faced in the field. In such cases compensatory afforestation could continue to be done by the Forest Department. The user agencies could be involved in monitoring and for protection work.

11. After considering the views of the State Governments as well as Ministry of Environment & Forests, the Committee is of the considered view that:-
 - (a) the present system of compensatory afforestation is neither being implemented effectively nor does it adequately compensates the loss of natural forests;
 - (b) in addition to artificial regeneration (plantation), assisted natural regeneration should also be undertaken under the compensatory afforestation scheme as it helps in restoring the natural forests in a cost effective as well as time effective manner;
 - (c) in the present system, the funds for compensatory afforestation are provided generally through budgetary allocations, which is time consuming and fraught with delays. Establishment of 'Compensatory Afforestation Fund' outside budgetary system, would greatly help in effecting implementation of compensatory afforestation schemes. The funds received towards compensatory afforestation including the unutilised funds, may be deposited in the fund. Money towards compensatory afforestation may be directly released to the implementing agency as and when required;
 - (d) to compensate the loss of natural forests, net present value of forest land should also be recovered from the user agency for which uniform norms needs to be laid for all the States/UTs; and
 - (e) the public sector undertakings such as NTPC, Power Grid Corporation, etc., which frequently require forest land for development projects should be encouraged to form Special Purpose Vehicles for undertaking plantations.
12. Based on above, the Committee unanimously recommends:-
 - (a) in addition to the funds realised for compensatory afforestation, net present value of the forest land diverted for non-forestry purposes shall also be recovered from the user agencies, while according approval under the Forest (Conservation) Act, 1980;
 - (b) a 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan funds, etc., shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month;
 - (c) the funds received from the user agencies in cases where the forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26 A or 35 of the Wild Life (Protection) Act, 1972, for undertaking activities related to protection of bio-diversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be exclusively used for undertaking protection and conservation activities in protected areas of the respective State/UT;
 - (d) the amount received on account of compensatory afforestation but not spent or any balance amount lying with the State/UT or any amount that is yet to be recovered from the user agency shall also be deposited in this Fund;
 - (e) besides artificial regeneration (plantations), the funds shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose,

- site specific plans should be prepared and implemented in a time bound manner;
- (f) the user agencies especially the public sector undertakings such as Power Grid Corporation, NTPC, etc., which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestations. Necessary procedure for this may be laid down by the MoEF Fund with the concurrence of the Central Empowered Committee; and
 - (g) an independent system of concurrent monitoring and evaluation shall be evolved and got implemented by the Compensatory Afforestation Fund to ensure that the funds are properly and effectively utilised.

The Hon'ble Court may please consider the above recommendations and pass appropriate orders in the matter.

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 30.10.2002 and MoEF has been directed to establish the Compensatory Afforestation Fund. Net Present Value of forest land diverted for non-forestry purposes has also been directed to be recovered from the user agencies. The detailed Supreme Court order is included in the compilation.

(6)

**REPORT
OF
THE CENTRAL EMPOWERED COMMITTEE
IN
I.A. NO. 780**

(Dated: 15.9.2002)

(Regarding painting of rocks by Coke, Pepsi etc in Manali)

BACKGROUND

1. This IA No. 780 was filed on 14.8.2000 by learned Amicus Curiae raising the issue of painting of rock surfaces in the eco fragile regions of Himalayas. The IA refers to the news report published in the Sunday Express (Indian Express) dated 11.8.2002 titled “RAPE OF THE ROCK” on vandalism indulged by multinational companies and other entities by painting rock surfaces in the eco-fragile region of the Himalayas for the purpose of advertising their products.
2. The said IA was heard on 14.8.2002 when the Hon’ble Supreme Court passed an order the operational part of it is reproduced below:

“Issue notice to Union of India, State of Himachal Pradesh, Pepsi Foods Limited and Coca Cola India Inc., returnable on 2nd September, 2002.

In the meantime, NEERI is requested to inspect the stretch of road between Manali and Rohtang from the point of view of examining the damage to the ecology caused by the advertisements of Coca Cola and Pepsi and other similar measures can be undertaken.

Pepsi Foods Limited and Coca Cola India Inc. should also show cause as to why exemplary damages should not be imposed upon them by reason the ecological / geological damage caused by the said advertisements.”

3. On 2nd September, 2002, after hearing the Leaned Amicus Curiae Shri Harish N. Salve and the learned Advocates appearing on behalf of the respondents, the Hon’ble Supreme Court, among others, gave the following directions:

“We direct the Secretary, Empowered Committee – Mr. Jiwrajka and Mr. Mahendra Vyas to go to various locations in Himachal Pradesh and give a report with regard to advertisements which are painted on the rocks in and around the area. The report be given within ten days. To come up on 16th September, 2002.”

“The Committee of Mr. Jiwrajka & Mr. Mahendra Vyas will be at liberty to take any expert in the first instance to assist them.”

“The representative of Coca Cola and Pepsi will be at liberty to accompany the Committee”.

4. During the course of hearing on 2.9.2002 learned Amicus Curiae drew attention to a list submitted in the Court by Shri Arun Jaitley, learned Senior Advocate appearing on behalf of Coca Cola Inc., which indicates that entities other than Coca-Cola and Pepsi, have also painted their advertisements. The Hon’ble Supreme Court issued notices to ten such other entities.
5. Shri Ashok Desai, learned Senior Advocate, appearing on behalf of Pepsi Foods Limited, informed the Hon’ble Court about orders passed by the State of Himachal Pradesh under section 5 of the

Environment Protection Act, 1981 regarding removal of advertisements, in response to which the Hon'ble Supreme Court gave the following directions:

“While the advertisements have to be removed the mode or method of removal cannot be left to the sweet will of the wrong doer. It will have to be ensured that the removal of the advertisements does not cause violation or adversely affect the ecology of the area. For this purpose, it is better that the entities to whom such notices have been issued first inform the State Governments and this Court as to the mode and manner in which it proposes to remove the advertisements and it is only after the same is approved by an appropriate authority that the action of removal would be permitted to be undertaken.”

VISIT TO THE AFFECTED AREAS FROM 10.9.2002 TO 12.9.2002

6. The Committee visited the affected area in Kullu, Mandi and Bilaspur Districts of Himachal Pradesh from 10th to 12th September, 2002. Prior to its visit, on Committee's request Shri H. S. Sohal, Deputy Copnservator of Forests in Regional Office, Ministry of Environment & Forests, Chandigarh visited the affected areas in advance on 6.9.2002 to 8.9.2002 to assess the affected area.
7. The Committee accompanied by Prof. B. Pitchumani, Department of Chemical Engineering, IIT, Delhi, drove through the stretches of road running along the river Beas between Kullu to Manali, Manali and Rohtang Pass, and Kullu to Pandoh Dam and beyond towards the plains. Thousands of advertisements were found painted on the rocks / boulders in the river bed and on either sides of the road. Almost the entire stretch of road between Pandoh Dam in Mandi District upto Beas Nullah close to Rohtang Pass have been covered with advertisements of various sizes and colours painted on rock surfaces by different entities. None of the advertisements have been painted with the approval of any of the authority such as the Forest or the Revenue Department. All along the route, which is overpoweringly beautiful, the Committee saw rocks defaced and painted with garish and ugly colours – which could be best described as “commercial vandalism”. The rocks and boulders in the river bed have also not been spared. These have been painted with toxic paints with total disregard to the fragile ecosystem and the environment.
8. The Committee was aghast to see that one of the most beautiful areas of the Himalayas which have great ecological and geological importance, have been spoilt by the actions of the respondent entities. Unfortunately, all these are located in the most spectacular regions of the Himalayas. The entire area has been spoilt in a manner which jars the senses of the visitors. A collection of photographs taken by the Committee during the visit showing the magnitude of the problem is annexed hereto as ANNEXURE-A placed at page no. 33 onwards of this Report.

Products Advertised

9. During the visit, the maximum number of advertisements noticed by the Committee were of Coca-Cola, MBD Books, Fena Detergent, Birla White Cement and Pepsi. The Committee also saw advertisements of various other products such as Sleepwell Mattresses, Nestle Classic and Milky Bar, Ayur, Annapurna Hotel, Amaron Batteries, Hotel Trishul, Hotel Marble, Marvel Gold Chai, Rimzim Resort, Hotel Prashant, Gagan Vanaspati, Shiva Fun World, Water Fun World and Lake View Café.

Size of the Advertisements

10. The size of the advertisements varied from about ten square feet to about hundred square feet, however, the maximum number of advertisements were of about ten to twenty square feet each. The smaller ones were found in clusters along the road and the river bed.

Crude attempts to remove advertisements

11. The Committee noted that crude attempts, at hundreds of places, have been made to wipe out the advertisements by methods, such as, using a thick coat of paint, some of them with the intention to

hide the name of the entities involved, thereby adding more toxic paint to this eco fragile region. The others have used the hammer and chisel and rotary grinding machine to remove the paint from rock surfaces. Such sites have become another eyesore to the already spoilt landscape. The employees of the Malhotra Book Depot (MBD) were caught by the officials of the Forest Department chipping the painted rocks by using a rotary grinding machine. They have already chipped off and destroyed a large number of rock surfaces in an attempt to hide their deeds thereby causing more damage to the ancient rocks in this eco-fragile region.

CHEMICAL COMPOSITION OF PAINTS

12. Colours in paints are a result of different chemical constituents (colouring agents) used by the paint manufacturer. Zinc oxide, zinc sulphide, lithopone, and titanium dioxide are the chemicals generally used to impart white colour in paints. Black comes from carbon and minerals like iron oxide. Cadmium and cuprous oxide are used for giving a red tint. Several synthetic pigments are also used for giving a red tint. Chromates, molybdates and cadmium compounds contribute yellow and orange. Both organic and inorganic pigments are used for imparting blue and green colours.

Methods of Removal

13. Several techniques are being used in India and other parts of the world for removing paints which include scrapping, wire brushing, sanding, abrasive blasting, grit blasting, burning, chiseling, use of aqueous stripping solutions, solvent strippers and biochemical based stripping agents. The modern removal techniques include use of freezing / cryogenic, burn-off ovens / pyrolysis and the use of laser.
14. Keeping in view sensitive eco-system and proximity to the river, the use of following techniques with suitable modifications may be considered:

(i) Grit blasting:

For the advertisements which have been put on rock / boulder surfaces close to the stream, it is essential to prevent the debris or the waste mixing with water. Use of Grit Blast process may be appropriate in such situations. In this process, a stream of high speed particles is directed towards the coated substrate and the paint is, thus, removed by mechanical method. The waste generated during removal is captured by a powerful vacuum system to prevent toxic residue escaping and polluting the environment. The debris is passed through the filtering system in a closed loop.

(ii) Chemical Methods:

For removal of paint on the rock surfaces near roads chemical method may be more suitable. In this method (organic or inorganic) chemicals are applied as a primer which adheres to the paint film which is sought to be removed. Upon heating by hot stream of air, the chemicals present in the paint undergoes a transition phase when its viscosity suddenly drops and the layer of coating as a film is simply removed by pulling it off the primer layer.

(iii) Laser

By this method, a laser beam is used to decompose the coating. This is considered to be the latest and the most environment friendly technology in vogue in developed countries. The laser technique is a media-free method for removing paint. The beam of intense laser light focused on the affected surface generates enough energy to vaporize a thin layer of coating with each pulse. A concussive shock-wave occurs simultaneously with each pulse; this helps propel residual paint or contaminant particles away from the work surface. Thus, with each pulse of laser light, a thin layer of paint scale or other contamination is removed. The contact is so brief that although the top layer of paint is vaporized in the impact area and very little

heat is transmitted to the substrate beneath the paint. Most of this heat is carried away from the work surface by the vapors and dislodged particles. Because it is media-free, requiring neither chemical nor abrasive assistance, the laser technique is potentially the most advanced and environment friendly.

15. Some of the above technologies are not readily available in India. The exact methodology for restoration of the area will have to be decided after detailed survey of the area, assessment of adaptability of the technology, availability of funds and relative advantages and disadvantages of different technology and processes.

THE ARREST AND RELEASE OF MBD EMPLOYEES

16. On 6.9.2002 the Range Forest Officers, Manali Range, had caught three employees of the Malhotra Book Depot (MBD), moving around in a jeep, chipping the rock surfaces painted with MBD advertisements using rotary grinding machine powered by a portable generator set. These persons along with their vehicle and equipment were caught and handed over to the SHO, Manali, Shri Roshan Lal on the evening of 6.9.2002. A copy of the letter dated 6.9.2002 along with seizure memo prepared by the Forest Range Officer, handing over the custody of these persons along with their vehicle and equipment to the SHO, Manali is annexed hereto as **ANNEXURE-B** placed at page no. 31 and 32 of this Report. However, on 7th morning the SHO had released the said persons along with their vehicle and equipment without even informing the officials of the Forest Department. The Committee was surprised that in spite of the Hon'ble Supreme Court's order dated 3.9.2002 which had specifically prohibited the respondent entities to remove the paint from rocks surfaces, etc. without approval by an appropriate authority, the offenders were released. This fact was admitted by the SHO, Manali during the course of a meeting of the Central Empowered Committee and the senior officials of the State of Himachal Pradesh at the Circuit House on 11.9.2002. The SHO's explanation for releasing the said persons was that no case could be made out against the said persons after he was shown the order of 21.8.2002 issued by the Principal Secretary (S&T), Himachal Pradesh giving instructions to remove the paint and restore the rocks surfaces to their original condition. On specific query raised by the Principal Secretary (Forests), Principal Chief Conservator of Forests and also the Deputy Commissioner, Kullu, as to why the Forest Department was not contacted before releasing the accused, no satisfactory explanation was offered by the SHO. The senior State Government officials present in the meeting were highly critical of the action of the SHO.

LEGAL POSITION

Area affected is forest land

17. The forest settlement of the Kullu Sub-Division of the erstwhile Kangra District, which now forms the entire Kullu District, was done by A. Anderson, the Forest Settlement Officer some time in 1888. Based on the recommendations of the Settlement Officer all undemarcated government owned uncultivated wasteland of Kullu Sub-Division were notified as Protected Forests by a Notification No. 282 dated 1st June, 1896, issued by the Forest Department of the then State of Punjab. These areas have been classified in the records of the Forest Department as "Third Class Protected Forests". This fact was also confirmed from the Principal Chief Conservator of Forests, Principal Secretary (Forests), Divisional Forest Officer and other officials. The status of these Protected Forests continues unchanged till date. A copy of this notification is annexed hereto as **ANNEXURE-C** placed at page no. _____ of this Report.

Violations of the Forest Conservation Act, 1980

18. As per Hon'ble Supreme Court's order dated 12.12.1996 in the WP No. 202/95, all areas notified as forest or recorded as forest in government records or which have characteristics of forest are 'forest' for the purpose of Section 2 of the Forest (Conservation) Act 1980. In the present context, since the area has been notified as forest and also recorded as forest in government records, it is a 'forest' for the purposes of the Forest (Conservation) Act 1980. Any non-forestry activity including use of such area for any type of advertisement requires prior approval of the Central Government. The advertisements painted or otherwise put by the respondents and others, are in violation of the provisions the Forest (Conservation) Act, 1980.

Violation of the order of the Hon'ble Supreme Court

19. The Hon'ble Supreme Court in its order dated 12.12.1996 in the WP (Civil) No. 202/95 has held that:

“.....in view of the meaning of word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith.”

20. In the present case, the advertisements have been painted or otherwise put up by the respondents and others without obtaining prior approval of the Central Government under Section 2 of the Forest (Conservation) Act 1980. These activities have thus been carried out in violation of the Hon'ble Supreme Court's orders dated 12-12-1996 and, therefore, are liable to face contempt proceedings.

Penalty prescribed under the Forest (Conservation) Act, 1980

21. The Penal provisions laid down for any violation of the provision of section 2 of the Forest (Conservation) Act, 1980 are reproduced below:

Penalty for contravention of the provisions of the Act

“3A. Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

Offences by authorities and Government department

3B. (1) Where any offence under this Act has been committed –

(a) by any department of government, the head of the department; or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

22. Since in the present case the advertisements have been put up and painted in violation of Section 2 of the Forest (Conservation) Act, 1980, the above mentioned penal provisions are attracted.

Unauthorised use of Government Lands

23. Irrespective of the legal status of the land, the land being government land could not have been used by the respondents and other without approval of the competent authority of the State Government. No such approval has been sought or given to them. The respondents are, therefore, also guilty of unauthorized use of government land for commercial purposes.

ORDERS ISSUED BY THE STATE OF HIMACHAL PRADESH UNDER THE ENVIRONMENT (PROTECTION) ACT, 1986

24. While the matter was being heard by the Hon'ble Supreme Court, the State Council for Science Technology & Environment, Himachal Pradesh through Principal Secretary (S&T) issued two orders under Section 5 of the Environment (Protection) Act 1986. The order issued on 21.8.2002, directed the respondents to remove all such advertisements along the road side rocks of the state and bring them back to the original condition, within 15 days of issue of this notice. Subsequently, another order was issued on 4.9.2002 prohibiting the removal of the advertisement by destructive methods.

ACTION TAKEN BY FOREST OFFICIALS

25. Show cause notices were issued to Coca-Cola, Pepsi and Malhotra Book Depot on 21-8-2002 by the Divisional Forest Officer, Kullu for violating the provisions of the Indian Forest Act, 1927, Forest (Conservation) Act, 1980 and the orders of the Hon'ble Supreme Court. Notices were also issued by the Range Forest Officer, Manali Range to the advertisers. Other than MBD, none of the persons have responded to these notices. The MBD in its reply dated 2-9-2002 has stated that the advertisements might have been put in due to ignorance with no intention to cause any damage to the fragile ecosystem. After reading the new paper report, action was taken by them to remove the advertisements with a view to restore the rocks to the original position.

MEETING WITH THE STATE GOVERNMENT OFFICIALS

26. That after visiting the affected area on 10th and 11th September, 2002, the members of the Central Empowered Committee held a meeting on 11.9.2002 at the Circuit House with the Shri Abay Shukla, Secretary (Forests & Environment), Shri R. A. Singh, Principal Chief Conservator of Forests, Shri R. D. Nazim, Deputy Commissioner, Kullu, Shri Ajay Kumar, Conservator of Forests (Policy & Law), Shri B. D. Suyal, Divisional Forest Officer, Shri Rajiv Sharma, Range Officer, Manali Range and Shri Roshan Lal, SHO, Police Station Manali.
27. During the course of the meeting the officials expressed serious concern about the growing problems of "commercial vandalism" and indiscriminate misuse of public land including forest land for commercial purposes. This problem is rampant throughout the state specially in all the important tourist destinations. There is no effective mechanism to deal with this menace. The Committee was assured that the State Government will take all the necessary steps to deal with this problem in conformity with the orders and directions of the Hon'ble Supreme Court of India. The State Government had also dispatched their team to assess the situation in Kufri and other tourist destination where they found most of the advertisements (Boards) which were nailed on the trees had already been removed, although many were still present.

GEOLOGY OF HIMALAYAS

28. A Sanskrit proverb rightly states that 'a hundred divine epochs would not suffice to describe all the marvels of the Himalaya'. The Himalayas are one of the youngest and the most fragile among the major mountain ranges in the world. These were formed 50 to 100 million years ago by the movement of the Indian Peninsula pushing the floor of the Sea of Tethys and colliding into the formidable mass of Eurasia. This tectonic movement of the huge land mass powered by elemental forces gave rise to the Himalayan mountain range which is still rising.

SENSITIVE ECO-SYSTEM

29. The Himalayas harbour a unique flora and fauna, which have evolved through millions of years. The broad leaved forests comprise of the stately and beautiful Chestnut, Oak, Birch, Rhodendrons, etc., and the pine forests comprising the magnificent Deodars, Fir, Spruce, Chir, Blue Pine, etc., which are interspersed with a variety of shrubs, grasslands, annual herbs and other lower plants such as ferns, mosses and lichens. The region has exceedingly rich bird life, which include the magnificent monal, tragopan, cheer and blood pheasant, snow pigeons, woodpeckers, golden eagle, bearded vulture, thrushes, buntings, larks, snow cocks, etc. The mammals include the elusive snow leopard, lynx, Himalayan black bear, the rare brown bear, martens, Himalayan wolf, wild dog, etc. Most of these animals and birds are highly endangered and have been given protection under the Wild Life (Protection) Act, 1972.

MEETING WITH HOTELIERS

30. The Committee heard the grievances of the representatives of the hotel owners namely, Marble Hotel, Trishul Hotel and Zing Zing Bar and Restaurant. They expressed their ignorance about the legal implications of their actions. The advertisements put in by them were of mild paint which gets wiped out every year by the effect of snow and weathering. Besides, they had no intentions to violate the law or spoil the area. They had painted a few advertisements only after seeing the advertisements of other big companies. They assured the Committee that they will never repeat it in future and would abide by all the laws applicable. At the same time they also requested that the authorities should give some space which could be used by them in accordance with rules and regulations.

CHEAPEST MODE OF ADVERTISEMENT

31. The mode of advertisement in present case is the cheapest and cost-effective. The amount spent is only on cost of the paint and labour. No rules or regulations are observed, no permission is sought, no payment for the use of space is made to any of the Government agency owning the Government land. The ecological loss, spoiling the ambience of the area, unauthorized use of government property and violation of the acts and order of the Supreme Court continues with impunity and insensitivity reflecting the prevailing 'free for all' attitude.

AMOUNT SPENT ON ADVERTISEMENTS

32. As per the information available with the Committee the amounts directly spent by each of the multinational companies such as the ones who are respondents in this IA exceeds Rs. 200 crores annually. This figures does not include expenditure incurred by agents / bottlers on the advertisements. It is unfortunate that even after spending huge amounts annually on advertisements, these companies are resorting to a cheap, crude, unauthorized and illegal mode of advertising on forest land.

SIMILAR SITUATION IN OTHER AREAS

33. Almost all the places of tourist attraction suffer misuse of government property in violation of the laws. In absence of deterrent and effective mechanism to deal with the situation the problem is increasing in magnitude all over the country.

OTHER RELATED ISSUES

Unauthorized mining

34. During the visit the Committee saw mining of sand and boulders from the Beas River as well as from the government land adjoining the road. The Committee was informed that presently mining leases are given by the Director (Industries) on the basis of the recommendation of the committee comprising representatives of the Forest, Revenue, Mining and Industries Department. This committee annually identifies the islands of stones formed in the midst of the riverbed from where the removal of stones and sand should be permitted. In spite of the area being 'forest' no approval

under the Forest (Conservation) Act, 1980 is being taken by the State Government. The present system needs to be completely changed to ensure compliance with the Forest (Conservation) Act, 1980. Further, the boulders and sand should be removed from the middle of the river bed instead of the banks with the view to reducing frequency of floods and consequent erosion of the banks of the river.

Regularisation of encroachments

35. All the wasteland in the State of Himachal Pradesh have been declared as forest land, by the State Governments notification No. 29-241-BB/49 dated 25.2.1952. The State Government is actively pursuing to regularize encroachments on government lands and in many areas the land involved is above mentioned forest land, which is in violation of the provisions of the Forest (Conservation) Act, 1980 as well as the order dated 12-12-96 of the Hon'ble Supreme Court.

Change in status of forest land to non-forest land

36. The State of Himachal Pradesh by notification No. FFE-B(F)-8-76/96-Loose dated 24.8.1998, has issued a clarification that “gair mumkin” and “chargah bila drakhtan” areas are to be not included in wasteland for the purposes notification issued on 25-2-1952 by which such areas were notified as forest. This notification is not in conformity with the provisions of the Forest (Conservation) Act, 1980 and is also in violation of the order of 12-12-96 of the Hon'ble Supreme Court.

USE OF FOREST LAND BY GOVERNMENT AGENCIES

37. The Forest Department, Border Roads Organisation and the State Education Department who have also been added as respondents on the basis of the list provided by Shri Ashok Desai, learned Senior Advocate appearing on behalf of the Coca-cola India Inc. have not been found to have used to forest land for commercial purposes, therefore, they cannot be treated at par with other respondents.

CONCLUSIONS AND RECOMMENDATIONS

38. After surveying the affected area and keeping in view the geological and ecological importance of this extremely beautiful and sensitive and fragile region, the Committee is making the following recommendations:-
- i- “Commercial vandalism” in the Kullu-Manali and adjoining areas as well as in other parts of Himachal Pradesh on rocks/boulders adjoining the roads, trees and in river beds is being done in violation of the Forest (Conservation) Act, 1980 and the order dated 12-12-96 of the Hon'ble Supreme Court;
 - ii- no approval for use of government property for commercial purposes has been obtained by the advertisers;
 - iii- a large number of advertisements seen by the Committee belong to Coca-cola India Inc., Malhotra Book Depot, Pepsi Foods Limited, Grasim Ltd. (Birla White Cement) and Fena Private Limited (Fena Detergent) who are misusing government owned forest land for the cheapest mode of advertisement. Other entities are also involved in this activity;
 - iv- the crude process used by the advertisers for removal of advertisements has caused irreparable damage to the fragile eco - system;
 - v- the traditional techniques of paint removal i.e. rubbing, burning, chiseling, grinding, etc., are not environment friendly methods and is likely to cause more damage. Keeping in view the fragile eco-system and the proximity to the Beas river, a combination of technologies including modern techniques being used in developed countries such as laser, grit blasting and chemical methods, etc., may have to be used;

- vi- recovery of exemplary damages and cost of restoration of the area, which has suffered ecological/geological damages due to the actions of the above named respondents, may be considered by the Hon'ble Supreme Court. The Committee recommends one time recovery of an amount equivalent to two per cent of the expenditure incurred, by each of the above named respondents, on advertisement and related activities in India during financial year 2001-02, including by their subsidiaries and or their franchise / bottling agents; and
- vii- the amount so recovered may be kept in a separate bank account for using exclusively for restoration, monitoring and protection work. Part of the funds may also be used for setting up an effective monitoring and preventive mechanism to deal with such problems in other important tourist destinations in Himachal Pradesh.

The Hon'ble Supreme Court may please consider these recommendations and may please pass appropriate orders in the matter.

ACKNOWLEDGEMENTS

The Committee appreciates the valuable assistance provided by Professor B Pitchumani, Department of Chemical Engineering, IIT, Delhi, who accompanied the Committee on the visit and provided valuable technical inputs in the Report. The Committee also appreciates Shri H S Sohal, IFS, Deputy Conservator of Forest, Regional Office, Ministry of Environment & Forests, Chandigarh who on a short-notice undertook advance survey of the affected area to assess the magnitude of the problem. The Committee acknowledges the valuable assistance provided by the Shri Swadesh Talwar, Regional Photo Editor, Shri Jatin Gandhi, Chief Reporter both from The Indian Express, Chandigarh who showed the affected sites and also provided some of the photographs by the Committee in this Report. Last but not the least, the Committee gratefully acknowledges the co-operation and valuable inputs provided by Shri Abay Shukla, Principal Secretary (Forests), Shri R A Singh, Principal Chief Conservator of Forests, Shri Ajay Kumar, Conservator of Forests (Policy & Law), Shri R D Nazim, Deputy Commissioner, Kullu, Shri B D Suyal, Divisional Forest Officer and Shri Rajiv Sharma, Range Officer, Manali Range to the Committee.

Sd/-
(M K Jiwrajka)
Member Secretary

Sd/-
(Mahendra Vyas)
Member

(7)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In**

**IA Nos. 414 & 414 A of 1999 together with
IA No. 173 of 1997, 423 of 1999 and 751 of 2000.**

(Dated: 27.12.2002)

(Regarding grant of licenses to the saw mills in the State of Maharashtra)

IA No. 414 of 1999 has been filed by the State of Maharashtra seeking permission for;

- I) grant of licenses to the unlicensed saw mills operating prior to 16.7.1981;
- II) grant of licenses to three existing unlicensed plywood and veneer units, which were operating under industrial licenses;
- III) grant of licenses to wood based industries which intend to operate only on imported timber;
- IV) grant of licenses to the ancillary units using band saws and circular saws up to 18 inches;
- V) grant of licenses to captive saw mills of the Government.

2. IA No. 414-A of 1999 has been filed by the State of Maharashtra seeking extension of four weeks time for filling of affidavit pursuant to the Hon'ble Supreme Court's order dated 7.5.1999. The affidavit has since been filed by the State Government. The IA has therefore become infructuous.
3. IA No. 173 of 1997 and IA No. 751 of 2000 have been filed by Maharashtra Timber Laghu Udhyog Mahasangh seeking approval of the Hon'ble Supreme Court for grant of licenses to their saw mills which were operating prior to 16.7.1981.
4. IA No. 423 of 1999 has been filed by Nagpur Timber Merchants' Association seeking relaxation of the Hon'ble Supreme Courts dated 4.3.1997 and to allow the Government of Maharashtra to grant licenses to the wood based units to operate them exclusively on imported timber.
5. Since the issue raised in these IAs are identical to the issues raised in IA No. 414 and 414 A filed by the State of Maharashtra, these were tagged and heard together.

(I) GRANT OF LICENSES TO THE UNLICENSED SAW MILLS OPERATING PRIOR TO 16.7.1981;

6. On 16.7.1991, the State Government of Maharashtra issued a notification modifying the earlier Rules namely Bombay Forest Rule, 1942, the Bombay Transit of Forest Produce Rules, 1960 and the Hyderabad Transit of Forest Produce (Bombay) Rules, 1958, regulating grant of new licenses to the saw mills. The notification provided that new license for saw mills could be issued only if following main conditions were fulfilled:

- i) the applicant has purchased machinery etc. prior to 16.7.1981;
 - ii) other formalities relating to obtaining industrial license, municipal licenses etc. have been completed by the applicant; and
 - iii) the saw mill is located at least 10 km. away from the boundaries of any reserved or protected forest.
7. The Hon'ble Supreme Court by order dated 4.3.1997 had directed to close down all unlicensed saw mills in the State of Maharashtra, the relevant portion of the said order is reproduced below:

“All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/license for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/license for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.”

8. Pursuant the above order, 1304 saw mills, which did not have a valid licenses to function as a saw mill on the relevant date i.e. 4.3.1997 were closed down. Out of the above, 696 saw mills were in operation prior to 16.7.1981 i.e. when the said notification was issued on 16.7.1981.

Submissions of the State Government

9. The State Government has sought permission of the Hon'ble Supreme Court to allow it to grant licenses to the said 696 saw mills. The main arguments advanced by the State Government are as under:
- i) that the unlicensed saw mill were in operation prior to 16th July, 1981;
 - ii) the State Government had taken a decision in January, 1997 to grant license after further relaxing the conditions stated in the Government's notification dated 16th July, 1981;
 - iii) these saw mills had been running for more than 25 years. Some of these were registered under the provisions of the shop and establishment Acts. Many were registered as small scale industrial units and were paying some fee to the local bodies. Most of these saw mills were serving rural needs and if these were closed down, it would cause hardship to the rural people;
 - iv) in view of the Hon'ble Supreme Court's order dated 4.3.1997, the State Government could not implement its decision taken in January 1997 and could not grant licenses to such saw mills;
 - v) the rated capacity of the saw mills in the metropolitan cities is 245 cubic metre (cu. mt.) and in urban / rural area 160 cu. Metre. For all the existing 5505 saw mills including 1,307 unlicensed saw mills, 9.8 lakh cu. mt. timber is needed. Total timber available in Maharashtra is 10.15 lakh cubic metre which is sufficient to cater to the needs of al the saw mills.

Submission by the applicant Association

10. The main plea taken by the Maharastra Timber Laghu Udyog Mahasangh in IA No. 173 and IA No. 751 in support of the issue of grant of license to 696 unlicensed saw mills are as under;
- i) the license capacity or actual capacity of the saw mills is neither fixed nor notified;
 - ii) the capacity has not been worked out for different type of saw mills. It depends whether it is a primary saw mill units or secondary saw mill unit or an ancillary unit;
 - iii) sudden closure of these saw mills will adversely affect the persons who have been dependent on the said business for their livelihood and survival. It would also create serious labour and unemployment problem. The State Government had already decided in December 1996 to

- grant license to all the saw mills which were operating since 1981. The decision was not implemented because the matter was pending before the Hon'ble Supreme Court;
- iv) the saw mills were operating for last 20 years or more with the full knowledge of the Government;
 - v) after the Rules regulating saw mills were modified on 16.7.1981 by the State Government, the saw mills owners had immediately submitted their applications which remained pending. Neither the applications were rejected nor the licenses formally granted. The saw mills were allowed to work with the tacit understanding and on the belief that the licenses would be definitely granted to them may be at a later date;
 - vi) there is sufficient wood available in Maharashtra to cater to the need all of the existing saw mills including 696 'unlicensed' saw mills;
 - vii) sustainability of the saw mills is not a relevant factor. No quota of any type is given by the State Government. They meet their requirement either by buying timber in Government conducted auctions or from non-forest areas or by imports;
 - viii) they are not involved directly or indirectly in any illegal felling of trees;
 - ix) the units has invested a lot of money in the business and they have been in operation for a long time. Most of saw mills are owned by middle class persons. The units have been allowed to remain functional for 16 long years with temporary permissions granted by the State Government;
 - x) as per affidavit dated 23.10.2002 filed by the Maharashtra Timber Laghu Udyog Mahasangh before the Hon'ble Supreme Court, there are 64 saw mills which fulfilled all the three conditions mentioned in 16.7.1981 notification issued by the State Government, under which they are eligible for grant of a license;

Observations of the Committee

11. The Hon'ble Supreme Court by order dated 12.12.1996 had directed all the States to constitute within one month an Expert Committee to assess the sustainable capacity of the forest qua saw mills and wood based industry, the number of existing saw mills which can safely be sustained and the optimum distance from the forest qua that state, at which the saw mill should be located. The Expert Committee for the State of Maharashtra estimated total availability of timber in Maharashtra at 17 lakh cubic metre (cu. mt.). Annual capacity of the saw mill to process timber was worked out to 500 cu. mt. per year. It was estimated that 3,400 saw mills can operate on a sustainable basis in the State as against total 5,495 saw mills (which includes 4,191 licensed and 1,304 unlicensed saw mills) which were already functioning in the State.
12. The Hon'ble Supreme Court vide para 9 of the order dated 12.12.1996 had also directed to constitute a Committee comprising of the Principal Chief Conservator of Forest and another senior officers to ensure the compliance of the said order and file status reports. However, this Overseeing Committee has re-examined the report of the Expert Committee and arrived at the following conclusions:
 - a) the rate of consumption by saw mills is not uniform;
 - b) the wood used by primary and secondary saw mills is different;
 - c) the rate of consumption in metropolitan and urban / rural areas is different; and
 - d) quantity of wood imported from outside India will have to be considered for determining sustainability.

13. Subsequently, the total quantity of timber available in the State of Maharashtra was reassessed to be 10.15 lakh cubic metre, including imported timber and wood procured from other States. The rated capacity of the saw mills was also completely modified. As against the earlier figure of 500 cubic metre per annum, it was taken to be 245 and 160 cubic metre per annum for saw mills in metro areas and urban/rural area respectively. Based on above modified figures of production and rated capacity of saw mills it was concluded that sufficient wood is available for all licensed as well as unlicensed saw mills in the State.
14. During the course of hearing, the Committee asked the State Government to provide actual production and availability figures of timber etc. According to the information provided by the State Government during the year 2000-01, the actual availability of timber was 7.63 lakh cu. mt., which included 1.28 lakh cu. mt. timber from forest area, 0.99 lakh cubic metre firewood from forest area, 0.88 lakh cu. mt. timber from non-forest area, 1.92 lakh cu. mt. fire-wood from non-forest area and 2.56 cu. mt. timber imported from other countries.
15. The actual production figures of timber and firewood from species like Babul, Subabul, Eucalyptus etc., growing in the non-forest areas were not available because these species do not need felling permission or transit permit from the Forest Department. Presuming the availability of timber etc. from such species to be around 1.5 lakh cubic metre, total availability of wood for the saw mills comes to about 9 lakh cubic metre.
16. The Committee found the following figures as contradictory and without any basis;
 - i) the Expert Committee which was constituted pursuant to the Hon'ble Supreme Court's order dated 12-12-1996 had estimated that 500 cu. mt. timber per annum would be required to sustain a saw mill. These figures have been arbitrarily reduced by the State Government to 245 cubic metre in metropolitan area and 160 cubic metre for semi-urban/rural area. The State Government was unable to explain and give any valid reason for such a wide variation in the rated capacity of the saw mills estimated by the Expert Committee and the Overseeing Committee;
 - ii) the quantity of wood available for saw mill was estimated by the Expert Committee to be 17 lakh cu. mt. Subsequently, the State Government estimated the availability to be 10.15 lakh cubic metre. The actual availability of timber has been found to be 9 lakh cubic metre. Thus there is a wide variation in the figures provided by the State and the timber actually available.
17. Considering the above submissions and figures presented, the Committee is of the view that the revised figures of rated capacity of the saw mills, which widely differed from those assessed by the Expert Committee, cannot be accepted on their face value especially as the revised figures accommodate all the unlicensed saw mills. After taking into consideration the actual production figures of wood from different sources, the Committee is of the firm view that all the licensed as well as unlicensed saw mills cannot be sustained in the State. Grant of license to the unlicensed saw mills would further increase the pressure on the forest resources and would act open the doors for over exploitation/illegal felling. This clearly is not permissible by the orders dated 12-12-1996 passed by the Hon'ble Supreme Court.
18. In January, 1997 a decision was taken by the State Government to regularize 696 unlicensed saw mills, which were in operation prior to 16.7.1981, by relaxing the conditions stated in the said notification dated 16.7.1981. The State Government was unable to explain the reasons why these saw mills were allowed to continue functioning for more than 16 years in violation of its own notification dated 16.7.1981. If a saw mill is allowed to function in violation of statutory rules for more than 16 years, that itself cannot be a ground for granting them a license especially when there is no timber available from legal sources to meet their requirements.
19. The Committee is also unable to agree with the views of the State Government/applicant saw mill

associations that closure of these unlicensed saw mills will cause hardships to the rural people. The number of licensed saw mills is much more than the wood available in the State. If needed, some of the saw mills may be allowed to be shifted from metropolitan areas to the rural area to cater to the need of the rural population.

20. The Committee is also unable to agree with the view of the State Government/applicant saw mill associations that unlicensed saw mills should be granted license as a decision in this regard was already taken by the State Government in January, 1997 before the Hon'ble Supreme Court's order dated 4.3.1997. As per the State Government own notification, all these saw mills were operating illegally without any license, therefore, these should have been closed by the State Government even before the Hon'ble Supreme Court's order dated 4.3.1997.
21. The Expert Committee constituted by the State pursuant to the order dated 12.12.1996 was required to file its report within one month directly to the Hon'ble Supreme Court. Whereas the Overseeing Committee constituted pursuant to the same order, was required to oversee the compliance of the said order and file status reports in the Hon'ble Court. The said order does not permit the Overseeing Committee to review or re-examine the Expert Committee's report. Clearly, the Overseeing Committee had exceeded its brief and reopened the question of sustainable capacity of saw mills in the State, which as per the order dated 12.12.1996 is not permissible.

RECOMMENDATIONS

22. After taking into consideration, the Hon'ble Supreme Court's order dated 12.12.1996 and 4.3.1997, report of the Expert Committee constituted by the State Government, views of the Overseeing Committee, actual production figure of timber in Maharashtra, Rules framed under notification dated 16.7.1981, issues raised in the IAs, the Committee is of the considered view that all the unlicensed saw mills in Maharashtra, which did not fulfill the criteria laid down by the notification dated 16.7.1981 should have been closed down in 1981 itself. These saw mills have been allowed to continue in violation of statutory Rules. There is no valid reason to allow grant of license to these saw mills especially as the number of existing saw mills in the State is much more than the availability of wood needed by them. For catering to the need of rural population, if found necessary by the State Government, they may permit shifting of required number of saw mills from metropolitan areas to rural areas. If the 64 saw mills were actually eligible for grant of licenses as per the notification dated 16.7.1981, their cases may be examined by the State Government and if found eligible, the State Government may approach the Hon'ble Court through a separate IA explaining the reasons for not granting license to such units earlier. The Overseeing Committee had no authority or power to review or re-examine the report filed by the Expert Committee before the Hon'ble Supreme Court in terms of order dated 12.12.1996. Therefore, the entire exercise of review of Expert Committee is vitiated, therefore, its findings are unacceptable to the Committee.

(II) GRANT OF LICENSES TO THREE EXISTING UNLICENSED PLYWOOD AND VENEER UNITS, WHICH WERE OPERATING UNDER INDUSTRIAL LICENSES

22. There were seven licensed veneer / plywood units and three unlicensed veneer / plywood units in Maharashtra. Pursuant to the Hon'ble Supreme Court dated 4.3.1997, all the three unlicensed veneer/plywood units have been closed down. The State Government has sought permission to grant licenses to these veneer / plywood units in view of the following reasons:
 - a) they were having industrial license;
 - b) sizeable capital expenditure in regulating has been incurred by the units; and
 - c) many workers have become jobless.
23. During the course of hearing, the State Government expressed the view that the unlicensed plywood / veneer factories were allowed to operate under the presumption that industrial license is sufficient

for allowing the units to continue its operation and there was no need to obtain a separate license under the Bombay Forest Rules which regulate working of the saw mills.

24. The Committee is unable to agree to the above reasonings given by the State Government because;
- i) as per the existing Bombay Forest Rules, it was mandatory to have a saw mill license for use of band saw / circular saw or other machinery for conversion of timber;
 - ii) other than three units, all other units were having valid licenses;
 - iii) the number of licensed wood based unit in Maharashtra already exceeds the availability of wood needed by them;
25. The Committee therefore recommends that the prayer of the State Government for allowing grant of the license to three unlicensed plywood / veneer factories may not be accepted.

(III) GRANT OF LICENSES TO WOOD BASED INDUSTRIES WHICH INTEND TO OPERATE EXCLUSIVELY ON IMPORTED TIMBER

26. In the IA No. 414 filed by the State Government of Maharashtra and IA No. 423 filed by Nagpur Timber Merchants Association, a prayer has been made for grant of license to saw mills which intend to use only imported timber. The main plea is that use of imported timber will not put any pressure on the forest resources as indigenous timber will not be used. It will provide employment opportunity and value addition. The units may be situated in identified industrial area with adequate checks and controls.
27. As mentioned earlier, the number of existing licensed saw mills in Maharashtra is more than the availability of wood from all sources including imported timber. In view of above, the Committee is of the view that there is no justification for grant of new licenses for saw mills for functioning exclusively on imported timber. However, the State Government may allow shifting of required number of saw mills to identified industrial estates to operate on imported timber.

(IV) GRANT OF LICENSES TO THE ANCILLARY UNITS USING BAND SAWS AND CIRCULAR SAWS UP TO 18 INCHES

Background

28. There are about 4,000 identified auxiliary units which use band saws or circular saws up to 18 inches. The actual number of such units may be much more. These units are not primary consumers of the wood and are basically involved in fabrication of packing cases, furniture articles, toys etc. As per sub-Rule (10) of Rule 88 of Bombay Forest Rules, 1942, which is reproduced below, these units were exempted from the purview of saw mill licenses.

“nothing contained in this rule shall apply to the ordinary operation of domestic carpentry or to other similar work on a small scale.”

29. By a notification dated 4.6.1993, the Bombay Forest Rules 88 (10) was modified by inserting the following explanation;

“The expression ‘other similar work on a small scale’ shall not include carpentry or saw mill operations taken up as a vocation, or for the purpose of trade, business or commerce, by a person operating a saw mill as a small scale industry.”

30. Thus, ancillary units which did not earlier require saw mill licenses, came within the purview of such licenses w.e.f. 4.6.1993. However, in view of the Hon’ble Supreme Court’s order dated 4.3.1997, these units could not be regularised by granting them a license.
31. The State Government has sought permission of the Hon’ble Court to issue licenses to ancillary units using circular saws or band saws up to 18 inches in diameter.

OBSERVATIONS

32. During the course of hearing, the representative of the State Government has informed that a

- i) band saws up to 18 inches can also be used for conversion of round logs into sawn timber, therefore, licenses are essential for use of band saws of any size;
 - ii) the circular saws having diameter up to 12 inches can easily be used for secondary conversion by the ancillary units;
 - iii) licenses are not essential for ancillary units using circular saw up to 12 inches in diameter. There is no need to prescribe the distance limit of 10 km from forest for use of such circular saws;
33. On the recommendation of the said Committee, the State Government decided to replace the existing explanation to Rule 1988 (10) by the following;

“The expression” Other similar work on small scale” shall means and include carpentry units which are not primary consumer of wood and which do not consume any fresh material for primary sawing but undertake only re-sawing operation of carpentry works for small wooden articles such as toys, photo frames, boxes, etc. taken up as vocation in form of cottage industry or small scale industry and for this purpose use a circular saw of diameter 12” or below but shall not include other small scale unit involved in saw mill operation taken up on commercial basis as a small scale industries. In this explanation, for the small sawing units covered therein, the 10 KM distance criteria for location from forest boundary and license, is not essential. ”

RECOMMENDATIONS

34. The Committee is of the view that the recommendations of the Committee constituted by the State Government to examine the issue of regularisation of such ancillary wood based units are reasonable and appropriate and if implemented would ensure that hardship is not caused to the existing ancillary units. On the other hand, it will also ensure that such units do not misuse the band saws for conversion of illegal timber. The Committee therefore recommends that instead of permitting the State Government to issue licenses for use of band saws and circular saws up to 18 inches in diameter, the State of Maharashtra may be allowed to replace the explanation clause to Rule 88 (10) of Bombay Forest Rules, 1942 as mentioned above.

(V) GRANT OF LICENSE TO THE GOVERNMENT OWNED CAPTIVE SAW MILLS

Observation & Recommendation

35. The State Government has sought for permission to grant licenses to the saw mills required to be run by various departments of the State and the Central Government, including their undertakings, such as Jail Department, Forest Department, Western Coal Fields etc., for their internal / captive use.
36. In view of there being little chances of misuse of such units for processing of illegal timber and since these units would be operated for captive use by Government Departments, it would be in public interest, to allow them to operate under proper licenses. The Committee, therefore, recommends that the State of Maharashtra may be permitted to grant licenses to captive saw mills owned by the State Government, Central Government or their respective undertakings.

The Hon'ble Court may please consider the above recommendations of the Committee and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 14.7.2003 and all unlicensed saw mills have been directed to be closed.

(8)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
I.A. Nos. 395 of 1998, 496 of 1999 and 497 of 1999

(Dated: 27.12.2002)

(Regarding exemptions sought by the State of Meghalaya in respect of felling of trees as per approved working plans, establishment of industrial estates etc.)

I) IA No. 395 of 1998:

This IA has been filed by the State of Meghalaya seeking modification of para 7(c) of the Hon'ble Supreme Court's order dated 15.1.1998. For the sake of convenience, para 7(c) is reproduced below:

“The Government shall ensure disposal of illegal timber before permitting the conversion/disposal of legal / authorised timber available with wood based industries.”

The reason behind such an order was that before the wood based units are allowed to dispose HPC cleared legal timber, illegal timber which was seized by the Government pursuant to the Hon'ble Supreme Court's order dated 12.12.1996 and 15.1.1998, should first be disposed off. This would prevent any possibility of wood based units from clandestinely converting and using illegal timber as legal timber. The main issue raised in the IA is that all the three Autonomous District Councils of Meghalaya should be treated as separate and distinct entities for the purpose of para 7 (c) of the Hon'ble Supreme Court's order dated 15.1.1998.

Since in Meghalaya, para 7(c) of the Hon'ble Supreme Court's order has already been complied with and the timber owned by the wood based units has been allowed to be disposed off as confirmed by the Ministry of Environment & Forest in an affidavit filed by it, this IA has, therefore, become infructuous.

The Committee recommends that IA No. 395 may please be dismissed.

I) IA No. 496 of 1999:

This IA has been filed by the State of Meghalaya seeking permission of the Hon'ble Supreme Court to grant license to the new wood based industries set up by local tribals. The Hon'ble Supreme Court

by order dated 15.1.1998 has banned grant of new licenses to any new wood based unit in the North-Eastern States. The operative part of the said order is reproduced below:

“There shall be a complete moratorium on the issue of new licenses by the State Governments or any other authority for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed with the concurrence of Ministry of Environment & Forests.”

It has been stated in the IA that pursuant to the Hon’ble Supreme Court’s order, the HPC had cleared inventory of 79 wood based units prior to 15.1.1998 and 38 units thereafter. Out of the above total of 117 units, 56 units cleared before 15.1.1998 and 26 cleared after 15.1.1998 i.e. 82 in all have applied for issue of license. Keeping in view the above situation, as less number of units have applied for grant of license, the State Government may be permitted to issue new licenses to 20 units in favour of the local tribals.

During the course of hearing Shri A. D. N. Rao, counsel for the Ministry of Environment and Forests, was of the view that there is no justification for seeking modification of para 18 of the Hon’ble Supreme Court’s order dated 15.1.1998 from prohibition imposed on grant of new licenses, especially as the quantity of timber being felled from the forests as per the approved Working Plans is inadequate even to meet the requirement of the existing wood based industries.

The Committee agrees with the views of the MOEF and recommends that for the time being no new licenses for wood based industries may be issued in Meghalaya. Once, the HPC cleared wood based units have shifted to the industrial estates and if their installed capacity is found to be less than the total quantity of timber available as per the approved Working Plans, then only the question of granting fresh licenses to any wood based industry should be considered.

During the course of hearing, the representative of the District Counsel requested to shift the location of the industrial estate as the present location did not have sufficient land and required infrastructure facilities as a result of which the HPC cleared units are unable to shift there. He also requested for establishment of minor industrial states to cater to the needs of the local population. Both these issues may be examined by the MOEF and the State of Meghalaya within the ambit of the Hon’ble Supreme Court’s orders. If it is found that some adjustments in the location of the industrial estate is feasible, the MOEF may work out such details. It must, however, be ensured that the letter and spirit of the orders of the Hon’ble Supreme Court is not violated.

In view of the above, the Committee recommends that the I.A No. 496 of 1999 may please be dismissed.

III) IA No. 497 of 1999:

This IA has been filed by the State of Meghalaya seeking permission for felling of trees from plantations raised in the District Counsel areas without insisting on the preparation of the Working Plan. It is prayed that the felling should be allowed to be regulated as per local Acts, Rules and Customs. It has been argued that plantation have been raised on a large scale in the District Council. In the absence of approved Working Plans, trees in these plantations cannot be felled.

The Hon’ble Supreme Court’s order dated 12.5.2001 has already laid down detailed procedure for felling of trees from forest areas as well as non forest area including plantations. As per above orders, the felling of trees from forest areas could be allowed only as per the approved Working Plans / Schemes whereas the felling of trees from non-forest area could be allowed only as per detailed guidelines which are prepared by the State Government with the concurrence of the Central Government. For the sake of convenience the relevant portion of the said order is re-produced below:

“Felling of trees from forest shall be only in accordance with working plans / schemes approved by

Ministry of Environment & Forest as per this Court's order dated 15.01.1998. It is again clarified that such working plans / schemes shall also be needed for felling of trees from any non-government forest area including the lands which are required to be treated as "forest" as per this Court's order dated 12.12.1996. While implementing the working plans / schemes approved by the Central Government, State Government or the concerned authority, as the case may be, shall ensure that no felling is done unless and until sufficient financial provisions exist for regeneration of such areas as per this Court's directions dated 22.9.2000. For felling of trees from non-forest area including in respect of plantations on non-forest areas, detailed guidelines / rules shall be framed by the concerned State Governments which shall come into effect after the same concurred with modification, if any, by the Ministry of Environment & Forest. The guidelines/rules shall also include provision for penalties and mode of disposal in respect of any felling done in violation of such guidelines/rules. Till such guidelines/rules become effective, no felling from any area other than under approved working plans/schemes or felling schemes shall be permitted. The schemes, guidelines/rules which shall be framed by the concerned State Government within three months and decision thereon shall be taken by the Ministry of Environment & Forests which one month of the date of receipt."

During the course of hearing, Shri A.D.N. Rao, the Counsel for the MOEF informed the Committee that the Working Schemes prepared by the State Government for Jantia and Khasi Hill Councils have already been approved by the MoEF. However, guidelines for permitting felling of trees from non-forest area, including plantations is still under preparation by the State Government. In order to remove hardship of the local people model guidelines have been prepared by the MOEF on 25.10.2001. The State Government may allow felling of trees from the Approved Working Plans / Schemes and from the non-forest area as per the model guidelines after ensuring that the felling is allowed strictly in conformity with the local laws, rules, regulation and customs.

In view of the above, the Committee is of the view that as far as the felling of trees in plantations is concerned, the Hon'ble Supreme Court's order dated 12.5.2001 has laid down detailed guidelines, therefore, no separate orders / clarification is required at this stage.

In view of above, the Committee recommends that IA No. 497 of 1999 may please be dismissed.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 6.5.2003 and the I. A.'s have been dismissed.

(9)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In

I. A. No. 583 of 2000

(Dated: 30.12.2002)

(Application for grant of licenses to the wood based units by the High Power Committee for North Eastern Region)

1. IA No. 583 of 2000 has been filed by Assam Forest Products (P) Ltd. of Assam, seeking modification of para 14 & 15 of the Hon'ble Supreme Court order dated 15.1.1998 relating to eligibility of the wood based units in North-Eastern States for clearance by the High Power Committee (HPC). As per para 15 of the Hon'ble Supreme Court order dated 15.1.1998, units which had not furnished details/information to the HPC or which had not been cleared by the HPC as on 15.1.1998 were not eligible for grant of license and the stocks in their custody, if any, were to be confiscated to the State Government.
2. Para 14 & 15 of the Hon'ble Supreme Court's order dated 15.1.1998 is reproduced below;
Para 14:- *“Units which have been penalised because they were found to exceed normal recovery norms, but were within 15% of the said norms, will have a right to approach the High Power Committee on or before 9th February, 1998. The High Power Committee shall examine all relevant material, in particular the income tax and excise records for the preceding three years. The High Power Committee shall dispose of all such applications within 45 days thereafter and such mills may be granted license if the High Power Committee finds that it is not against public interest so to do.”*
Para 15 :- *“Units which have not furnish details / information to the High Power Committee so far or which have not been cleared by the High Power Committee, shall not be granted any license and the stocks in their custody if any, shall be confiscated to the State Government. In case of leased mills belonging to corporations / trusts / cooperative societies owned / controlled / managed by the State Government and where the lessees have been penalised by the High Power Committee, the leases shall stand revoked. Such mills shall, however, be eligible for relicensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government. “*
3. In view of the above, on 30.10.1998, the Member Secretary, HPC had circulated a letter to the State Governments stating that wood based units which have not been cleared by the HPC by 15.1.1998 were not eligible for grant of license and the stocks held by them should be confiscated. The applicant unit was cleared on 4.6.1998 by the HPC after its inventories and clarification given by them were

scrutinised and verified by the HPC. It was argued that there was no deliberate attempt on the part of the applicant company to delay the matter. Therefore, the applicant company should not be closed and the Hon'ble Supreme Court order may be suitably modified enabling the applicant company to become functional.

4. Subsequently, the Hon'ble Supreme Court on 1.5.2000 partially modified the earlier order dated 15.1.1998 wherein it was clarified that wood based units in respect of which complete inventory details have been made available to the HPC by 15.1.1998 are eligible to be examined by the HPC. The operational part of the order dated 1.5.2000 for the sake of ready reference is reproduced below;

“A question has arisen with regard to cases where orders had not been made by the HPC on or before 15th January, 1988. This Court's order dated December 1996 had contemplated documents being filed and orders being passed by 15th January, 1998. It is possible that due to volume of work, the HPC may not have been able to pass orders by 15th January, 1988 even though papers and other relevant material had been submitted to the HPC by that date. We, therefore, make it clear that the HPC would be entitled to look into the records and pass orders in every case where documents and material had been placed before the HPC by 15th January, 1998. We further make it clear that wherever any penalty and/or additional penalty has been imposed by the HPC, the unit concerned will have a right to approach the HPC to examine the matter afresh. In modification of paragraph 14 of the order of December 1996, we permit any unit in respect of which penalty and/or additional penalty has been levied by the HPC to approach the HPC for reconsideration on the basis of the material which it may choose to produce provided such a request is made by the unit within one month of the passing of the order by the HPC or, in those cases where orders have already been passed, within one month from today.

In as much as the HPC would in effect be discharging quasi-judicial functions, it will be appropriate that the HPC may briefly indicate the reasons in support of the order passed by it.

It is further clarified that wherever the HPC has given clearance to a unit after 9th February, 1988, the unit will be entitled to relocation.

It is, however, made clear that no unit which had not furnished the record and particulars before 15th January, 1988, will be entitled to the benefit of this order.”

5. The HPC has informed this Committee that by its order dated 12.2.2002 it has taken a decision to carry out fresh examination of the inventory of the applicant unit. Accordingly, certain details have been sought from the applicant unit, which are still awaited. The matter has been fixed for hearing before the HPC on 21.1.2003.

6. The Committee is of the view that since the Hon'ble Supreme Court has already clarified the applicability of para 14 and 15 of order dated 15.1.1998, and as the HPC has decided to reexamine the inventory of the applicant unit, for the time being, no further action is required.
7. The Committee, therefore, recommends that the IA No. 583 of 2000 may please be dismissed.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwarjka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 6.5.2003 and the I A has been dismissed

OF
THE CENTRAL EMPOWERED COMMITTEE

In

I.A. Nos. 705 of 2001

(Dated: 31.12.2002)

(Regarding use of forest land falling within the Shettihalli Sanctuary in Karnataka for construction of the Upper Tunga Irrigation Project)

1. IA No. 705 of 2001 has been filed by M/s Karnataka Neeravari Nigam Ltd., through its Managing Director seeking approval of the Hon'ble Supreme Court for use of 49.26 hectare forest area within the Shettihalli Sanctuary in Karnataka for construction of the Upper Tunga Irrigation Project. The total forest area required for the project is about 449.55 hectare out of which about 427 hectare will involve temporary submergence. The project envisages to irrigate 2.34 lakh hectare area. There is an existing old dam which was constructed in 1956, however, for optimum utilisation of water resources during the rainy season, it was proposed to construct another structure 100 metre down-stream of the old dam.
2. The Hon'ble Supreme Court by order dated 14.2.2000 in I.A. No. 548 as inter-alia had directed as under:
"Issue of notice to all the respondents. In the meantime, we restrain respondents No. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary....."
3. Further the Hon'ble Supreme Court by order dated 9.5.2002 in I. A. No. 18 of 2002 in Writ Petition (Civil) No. 337 of 1995 while dealing with destruction of the habitat in the National Parks and Sanctuaries declared under the Wild Life (Protection) Act, 1972 has directed as under:
"I.A. Nos. 15, 17, 20, 22, 23, 24, and 25 be first placed before the Standing Committee of the I.B.W.L. for its consideration. In the meantime, no permission under Section 29 of the Wild Life Act should be granted without getting the approval of the Standing Committee."
4. In view of the above orders, the MOEF is not examining the proposals received by it under the Forest (Conservation) Act, 1980 for diversion of forest land for non-forestry use within any National Park or Sanctuary until and unless a specific approval for the same is accorded by the Hon'ble Supreme Court. The present application has been filed for seeking approval of the Hon'ble Supreme Court in compliance with the aforesaid order.
5. The proposed use of forest land falling within Shettihalli Sanctuary was examined by the Standing Committee of the Indian Board for Wild Life in its meeting held on 12.7.2002. The relevant abstract of the Minutes of the Meeting of the Standing Committee of the Indian Board for Wild Life is reproduced below:
"However, in view of the fact that the Upper Tunga project would provide irrigation to 86,000 ha. in the drought prone area of Dharward District, the Committee recommends for the diversion of 49.26 ha of sanctuary land from the Shettihalli wild life sanctuary subject to the following conditions.
 - i) *The Project Authorities will deposit at least Rs. 15 crores, within a period of one month of the sanction, for a revolving fund to be set up for the management of Bhadra Sanctuary & Shettihalli sanctuary. A fool proof mechanism to receive and utilize the money shall be finalized by the*

government in consultation with MoEF.

- ii) The State Government will add an area of 3 Sq. Kms (300 ha) to the Shettihalli Sanctuary. In case it is not possible to add the area to this sanctuary, then an equivalent area would be added to Bhadra sanctuary within 90 days of the sanction.*
- iii) Compensatory afforestation as may be stipulated by the Forest Advisory Committee in an area not less than 550 ha. to be taken up.*
- iv) Responsibility for initiating the work in non forest area in violation of the guidelines issued under Forest Conservation Act, 1980 be fixed.*
- v) The reservoir will be part of the Shettihalli sanctuary and no fishing or any other commercial activity will be allowed.*

6. During the hearing, the applicant requested the Committee to consider recommending reduction in the amount to be deposited by way of compensatory afforestation due to following reasons;
 - i) The applicant Nigam is functioning totally on borrowed resources. As such, the deposit amount may be reduced to Rs. 1 crore;
 - ii) regarding adding 3 Sq. Kms to the Shettyhalli WLS from the adjoining areas, it would be difficult to find suitable lands adjoining the sanctuary. The addition of an area equal to twice the size of the submergence area of 49.26 ha. i.e. , about 100 ha. may be considered;
 - iii) as regards protecting the sanctuary area from fishing or other commercial activities, stringent measure against any such activities in consultation with Forest Department may be imposed. However, the reservoir which is about 50 years old, should not be treated as a part of sanctuary for practical and administrative reasons.
7. The Committee does not see any merit in the above plea and does not recommend for dilution of any of the recommendations made by the Standing Committee of the Indian Board of Wildlife.
8. This Committee for the limited purposes of I.A. 548, after taking into consideration the recommendations of the Standing Committee of Indian Board of Wild Life, which is the highest advisory body on Wild Life matters in the country, recommends that the Hon'ble Court may consider approving applicant's proposal for use of 49.26 hectare forest land from the said sanctuary in the State of Karnataka subject to the conditions imposed by the Standing Committee of the Indian Board for Wild Life, besides any other stipulations which the MOEF may impose while considering the proposal for diversion of forest land for non-forest use under the Forest (Conservation) Act, 1986 and for granting clearance under the Environment (Protection) Act, 1986. The Committee also recommends that Rs. 15.00 crore to be provided by the applicant may be deposited in the "Compensatory Afforestation Fund" to be established as per the directions given by the Hon'ble Court by order dated 30.10.2002 in IA No. 566.

The Hon'ble Court may please consider the above recommendations of the Committee and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 14.7.2003 and the applicant has been allowed the use of forest land falling in the Shettihalli Sanctuary in Karnataka for construction of the reservoir on payment of Rs. 15 crore to the Forest Department to be deposited in the Compensatory Afforestation Fund.

(11)

**REPORT
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

I.A. No. 1785 with I.A. No.s 1806, 1815, 1817-18, 1819,
1822, 1823, 1824, 1825, 1794 -1795 and 1832

In

Writ Petition (Civil) No. 4677 of 1985

(Dated: 7.2.2003)

(Regarding regulating mining activities in Haryana in M. C. Mehta Vs. Union of India.)

1. Pursuant to the order of the Hon'ble Supreme Court dated 27.1.2003, the Committee is filing this report giving suggestions regarding functioning of the mines falling within 5 km. from Delhi-Haryana Border in Faridabad and Gurgaon Districts of Haryana including those falling within 2 to 5 km. from Badkal Lake and Surajkund.
2. The Committee in its earlier reports dated 22.1.2003 and 25.1.2003, had requested the State of Haryana to provide information / details of mines, status of compliance of conditions stipulated while granting statutory clearances, mines which were found operating in violation of statutory conditions etc. through letter dated 18.12.2002 addressed to the Chief Secretary, Haryana. The information received from the State Government was found to be incomplete, therefore, the same was sought again vide letters dated 27.12.2002 and 21.1.2003. In response, the State Government's letter dated 25.1.2003, which has been signed by the Asstt. Mining Engineer for Director Mines & Geology, Haryana has been received, which also does not contain all the information sought by the Committee. The important information / details which have still not been made available by the State Government to the Committee are as under:
 - i) mine wise details of stipulated conditions, which have been fulfilled and those which have not been fulfilled;
 - ii) details of five major mineral mines in Faridabad and Gurgaon Districts which have fulfilled all the conditions stated in the approved mining plans, environmental and other clearances;
 - iii) details of the mines where mining activity has been undertaken without obtaining requisite environmental clearance;

Copy of the Committee's letter dated 21.1.2003 and the reply received from the State of Haryana are collectively annexed hereto at **ANNEXURE-A** to this report.

3. Since the State Government has not been able to provide the required information even after protracted correspondence, the Committee has no other option but to submit its suggestions on the basis of the information available with it:
4. There are 38 mines which were operating up to 5 km from Delhi-Haryana border in Faridabad and Gurgaon districts before they were closed down pursuant to the Hon'ble Court's order dated 6.5.2002. Out of these, 25 are in Faridabad district (7 mining leases for major and associated minor mineral granted / renewed prior to 27.1.1994, twelve mining leases for major and associated minor minerals granted/renewed after 27.1.1994 and 6 mining leases for minor minerals granted through public auction) and 13 are in Gurgaon district (7 mining leases for major mineral along with mining mineral, 2 mining leases for major mineral and 4 mining leases for minor minerals). Out of the above, 11 mines fall within 2 to 5 km from Badkal Lake and Surajkund, where mining was earlier allowed to be resumed pursuant to the Hon'ble Supreme Court's order dated 10.5.1996
5. The Committee is of the view that in addition to the legal status of the area i.e. whether the area under mining lease is a 'forest', the other important issues which requires to be considered in the present matter are:
 - i) Impact of mining on the groundwater;
 - ii) whether mining is undertaken in a haphazard manner or section-wise by formation of benches (as per approved mining plans);
 - iii) whether mining has been done after ensuring that the top soil and other over burden is stacked systematically or haphazardly (rehabilitation of mined area is not possible if over burden etc. are not stacked properly);
 - iv) whether plantations required to be done as per the approvals have been raised;
 - v) whether conditions on which the mining plans and other clearances were accorded have been fulfilled;
 - vi) whether required environmental clearances have been obtained;
 - vii) whether effective mechanism is in place to monitor and enforce implementation of the approved mining plans, conditions of environmental clearances and other statutory approvals specially about systematic mining, proper over burden dumping, rehabilitation of mined area and afforestation.
6. After considering the information provided by the State Government, examination of the individual Environmental Management Plans, legal status of the land, status of compliances of conditions on which statutory approvals were accorded, reconnaissance of the mine area, the Committee is offering the following suggestions for the consideration of the Hon'ble Court:
 - i) the ban on mining activity may continue up to 2 km from Surajkund and Badkal Lakes, as per the Hon'ble Court's order dated 10.5.1996;
 - ii) each of the existing mines may be physically inspected by Inspection Team(s) comprising officials of the State Government, Indian Bureau of Mines, Director General of Mines Safety and the Ministry of Environment and Forest to report the specific conditions which have not been fulfilled/violated especially in respect of:
 - a. section-wise (bench-wise) mining to be done as per approved mining plan;
 - b. storage of top soil as per approved mining plan;
 - c. dumping of over-burden in identified area as per the approval mining plan;
 - d. plantations as per Environmental Management Plan;
 - e. observance of mines safety Rules and Regulations;

- f. damage to the plantations raised under externally aided projects (foreign funding);
- g. damage if any to the water table / underground aquifers; and
- h. compliance of environmental clearance stipulations;

The Inspection Team(s) may submit the reports to the State Government and the Ministry of Environment & Forest (MOEF) with copies to the Central Empowered Committee (CEC) for their comments and for carrying out verification, if found necessary.

- i. suitable penalties for non-compliance / violation of various conditions, as found by the above Inspection Team(s) or by the CEC may be imposed.

Norms for quantifying the penalties for violation of various conditions may be formulated by the State Government with the concurrence of the CEC. No mine may be allowed to resume mining activity without first paying the penalty imposed on it.

- j. mining activity may completely be prohibited in area where plantations have been undertaken with the foreign assistance / funding (externally aided projects). Mining leases already granted / approved in all such areas may be cancelled;

- k. year wise requirement of funds for implementation of various conditions under which mining has been approved may be computed for each mine. To ensure compliance of these conditions, adequate safeguards by way of bank guarantee, mortgage of immovable assets, pledge of movable assets, personnel guarantee of the lessee or others (supported by adequate assets) may be put in place;

- l. MOEF may examine the Environment Impact Assessment Report / Environment Management Plan of individual major mineral mines and proposals for approval under the FC Act, if the mining lease is in 'forest' as per the Hon'ble Supreme Court's order dated 12.12.1996 in Writ Petition (C) No. 206/95, and take decision(s) thereon, including regarding measures for protecting the water table and underground aquifers, in a time bound manner; and

- m. regular inspection of the mines may be undertaken by the identified officials of the State Government, Indian Bureau of Mines and Director General of Mines Safety. Mines which are found to have violated the conditions may be made liable to pay stiff penalties including closure of the mines.

The Hon'ble Court in the light of the observations made in the earlier reports, may please consider the suggestions made above and may please pass appropriate orders in the matter. The Hon'ble Court may please consider passing similar orders in respect of mines which are located beyond 5 km from Delhi-Haryana border.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The report of the CEC has been examined by the Hon'ble Supreme Court during the hearings, however the matter is still being heard by the Hon'ble Supreme Court.

(12)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE

In

I.A Nos. 782, 783, 784, 793, 794, 795, 813, 814 and 815 of 1996

(Dated: 16.4.2003)

(Regarding restricting number of wood-based industries in Bihar – closure of licensed saw mills found to be in excess of the timber availability)

I.A. No. 782, 783 and 784 have been filed by M/s New Jagdambey Timbers and 49 others from Nalanda, Bihar. I.A. No. 793, 794 and 795 have been filed by M/s Arya Timber and 12 others from Nalanda, I.A. No. 813, 814 and 815 have been filed by M/s Vishwakarma Kashta, Shilpi Vikas Samiti, Bihar and 196 others. These I.A.'s have been filed against the resolution No. 418E dated 8.7.2002 issued by the Government of Bihar regarding wood based industries with a plea to restrain the State Government from interfering in the operations of the applicant's wood based industries. Since all these I.A.'s have raised identical issues, for the sake of convenience they were tagged and heard together.

Background

2. The Hon'ble Supreme Court by order dated 12.12.1996 has inter-alia directed as under;
“.....
7. *Each State Government should constitute within one month, an Expert Committee to assess:*
(i) the sustainable capacity of the forests of the State qua saw mills and timber based
i n d u s t r y ;
(ii) the number of existing saw mills which can safely be sustained in the State;
(iii) the optimum distance from the forest, qua that State, at which the saw mill should be
located.
8. *The Expert Committee so constituted should be requested to give its report within one month*
of being constituted.
9. *Each State Government would constitute a Committee comprising of the Principal Chief*
Conservator of Forests and another Senior Officer to oversee the compliance of this order
and file status
reports.....”
3. Pursuant to above directions, the Government of Bihar (undivided) constituted an Expert Committee vide notification No. 274 dated 24.1.1997 under the Chairmanship of the Chief Conservator of Forest (Development), Bihar. The Committee submitted its report (First Report) on 7.8.1997, arriving at the conclusion that about one lakh cubic metre wood is available annually from the forest on sustainable basis and another four lakh cubic metre wood was annually available from the private

plantations and imports. Based on above figures, the Committee recommended that 1,110 saw mills may be allowed to operate in the State on a sustainable basis as against existing 3,991 saw mills. The Committee also recommended closure of the excess number of saw mills numbering 2,881 in a phased manner over a period of 3 years. The State Government had filed the said report before the Hon'ble Supreme Court through an affidavit on 9.12.1997. After examining the said report and related issues, the State Government decided to allow 1,950 saw mills, 109 plywood mills and 265 veneer mills to operate. Thus the number of plywood mills and veneer mills were not reduced giving jurisdiction that these wood based industries will meet their requirement of timber either from licensed saw mills or from imports. The State Government decided to close all the excess saw mills in a phased manner, while 733 unlicensed saw mills were decided to close down immediately. These decisions were communicated by the State Government to the PCCF, Bihar vide letter No. 343E dated 28.10.2000.

4. A number of Writ Petitions were filed in Patna High Court against the above mentioned decision of the State Government. These petitions were dismissed with the observations/directions that the State Government should appoint a Committee of Experts / Officers to identify individual saw mills which were to be allowed to operate to close down. Pursuant to these directions, an Expert Committee was constituted by the State Government vide notification No. 232E dated 5.4.2002. The Bihar Saw Mills (Regulation) Act, 1990 was also amended and the veneer and the plywood units were brought under the definition of saw mills.
5. The Expert Committee submitted its report (Second Report) on 27.4.2002. After examining the Second Report of the State of Bihar (present Bihar) by resolution No. 418 E dated 8.7.2002 issued detailed instructions about number of saw mills to be permitted in different area, criteria for continuance of saw mills, closure of excess licensed saw mills, time frame for closure of excess saw mills and criteria for issue of new saw mill licenses. A number of Writ Petitions were filed before the Patna High Court against the Resolution No. 418E dated 8.7.2002. These Writ Petitions were dismissed giving liberty to the petitioner's to approach the Central Empowered Committee. A number of Writ Petitions were also filed in Patna High Court against the decisions taken by the Selection Committees' constituted as per the resolution dated 8.7.2002. The Hon'ble Patna High Court directed that the petitioner's grievances should be examined by the Secretary, Environment and Forest, Bihar and pass speaking orders giving reasons for the decisions.

Issue raised by the applicants.

5. The main arguments raised by the applicant saw mills are summarised as under:
 - i) The saw mills are not dependent on forests for meeting their timber requirement. This is met mainly from the plantations and from imports from the other States/countries. None of them have ever been found to be involved in using illegal timber.
 - ii) In the First Report it was clearly mentioned that 17.15 lakh cubic metre of timber is annually available on sustainable basis from the forest of the Bihar State. However, while working out the number of saw mills which can be sustained in the State, instead of taking above figure, the production capacity of the State Trading Organisation of the Forest Department which was one lakh cubic metre per year, was considered. Since the availability of timber is 17 times higher, the saw mills of the petitioners cannot be closed on the basis of production capacity of the Forest Department alone;
 - iii) in the First Report, it is clearly admitted that authentic data about timber availability from non-forest area was not available. The applicant saw mills are primarily dependent on timber from non-forest area. The number of saw mills which can operate on sustainable basis have been decided without obtaining proper data. Until and unless proper and authentic data is obtained, there is no basis for closing down the applicant's saw mills.

- iv) the State Government itself admits that the First Report suffered from a number of flaws and infirmities. This report as well as the Second Report, which is completely based on the data of the First Report, which admittedly had flaws, cannot form the basis for closing down a large number of saw mills;
- v) the number of saw mills that have been permitted to operate in the State have been fixed purely on the basis of population figures without considering the actual capacity of the saw mills. They use about 60 cu. m. timber per year whereas the Report estimates at about 400 cu. m. per year in North Bihar and 500 cu. m. in South Bihar;
- vi) the State Government has decided to reduce the number of existing saw mills from 3,991 to 1,950 (in undivided Bihar). On the other hand, all the existing 109 ply wood mills and 265 veneer mills have been allowed to continue. While allowing the ply wood factories/veneer mills to continue a view has been taken that their raw material requirement would be met from the saw mills or from imports. This is totally arbitrarily and discriminatory. It is a well established fact that the ply wood factories and veneer factories require huge quantity of timber for meeting their raw material requirements, therefore, they cannot be treated as a secondary consumer of timber. They cannot meet their requirement of timber by using sawn timber produced by saw mills. If a decision to close any wood based unit was to be taken, first of all, the ply wood factories and veneer factories should have been closed. The ply wood and veneer mills operating prior to 12.12.1996, even if they did not have a valid license, have been allowed to continue whereas the saw mills, which are having valid licenses, have been asked to close down;
- vii) Instead of closing the saw mills, which are meeting their timber requirement from non-forest areas, it would be appropriate to allow such units to continue under appropriate Rules and Regulations to ensure that they are not involved in any illegal use of timber. The State may even impose more stringent conditions to ensure strict compliance of the Rules and Regulations.
- viii) The Hon'ble Supreme Court had only directed the State Government to assess the sustainable capacity of the forest qua saw mills and timber based industries and the number of existing saw mills which can safely be sustained. The Hon'ble Supreme Court had never directed the State to close the saw mills found to be in excess of the sustainable capacity of the forest, therefore, the State Government's resolution dated 28.10.2000 or 8.7.2002 are not in conformity with the directions of the Hon'ble Supreme Court;
- ix) in the Report of the Second Expert Committee, the number of sawmills to be allowed to operate in the State (divided Bihar) has been worked out to 1,450 without taking into consideration the recommendations of the First Expert Committee. The figure of 1,450 is based on the decision taken by the State Government. The entire issue of availability of timber from forest area, from non-forest area, imports from other States and imports from other countries, installed capacity of the saw mills, veneer mills and plywood factories and the number of wood based industries that could be sustained in the State should be referred back to a Committee for giving their recommendations after obtaining proper and authentic information / data. Wherever reliable information/data is not available, the Committee should first collect such information / data and thereafter make its recommendations. In the meantime, all existing saw mills in Bihar should be allowed to operate. While deciding the number of saw mills that should be allowed to operate, the State Government should first lay down equitable and transparent criteria for the saw mills vis-à-vis plywood factories and veneer factories.

Submissions of the State Government

6. The reasons given by the State Government in support of their decision to close excess number of saw mills are summarised as under;

- i) Bihar is perhaps the only state in the country, which have made sincere efforts to implement the Hon'ble Supreme Court's order dated 12.12.1996 in letter and spirit. The purpose of the Hon'ble Supreme Court order was to ensure that the number of saw mills is regulated as per availability of timber. There is no restriction imposed by the Hon'ble Court that the saw mills found to be in excess of the availability of wood, should not be closed. In fact, it would be logical that saw mills found to be in excess of the availability of timber are closed down immediately so that forests can be managed on sustainable basis.
- ii) In undivided Bihar, there were 3,991 private saw mills, 61 Government saw mills, 109 plywood mills and 265 veneer mills out of these 2,090 saw mills, 3 Government saw mills, 67 plywood factories and 246 veneer mills are located in present North Bihar. The First Expert Committee, after considering the availability of wood had recommended 310 saw mills of South Bihar and 800 saw mills of present North Bihar i.e. total 1,110 saw mills to be allowed to operate and the excess saw mills were to be closed down in a phased manner. For this purpose, the capacity of the saw mill has been taken as 500 cu. m. per year in South Bihar and 400 cu. m. per year in North Bihar. No recommendations have been made with regard to the Government owned saw mills, plywood mills or veneer mills. After considering the report of the PCCF and other relevant information the State Government had decided to allow 1,950 saw mills, 265 veneer mills and 109 ply wood mills to operate i.e. 840 saw mills more than the recommended number. This comprises of 1,450 saw mills located in North Bihar (present Bihar) and 500 saw mills for undivided South Bihar. The same number of saw mills i.e. 1,450 saw mills have been retained in the present Bihar. The second Expert Committee has not recommended any changes in the number of saw mills that should be allowed to operate. It has only identified the saw mills and made recommendations which one's should be allowed to operate and which should be closed down;
- iii) while calculating the number of saw mills that can be safely sustained in the state, the availability of timber from forest area as well as non forest area has taken into consideration. The assessed annual increment of 17.5 lakh cu. m. does not mean that entire timber is available for felling. A substantial portion of this annual increment takes place in the protected area (i.e. National Parks and Sanctuaries), where no felling is permitted. For calculating the number of saw mills, the actual production figures of timber from the forest area have to be considered;
- iv) detailed procedure has been laid down to identify the saw mills to be allowed to operate. Details of each saw mills were examined by a Committee comprising the District Magistrate, the Divisional Forest Officer and the District Superintendent of Police;
- v) the illegally felled timber from forest area is not necessarily used by the saw mills situated adjoining forest areas. Such timber has been found to be used by saw mills situated in non-forest areas. Without regulating the number of saw mills and other wood based industries it will not be feasible to have effective control over illicit felling of trees or to manage the forest on a sustainable basis;

the Patna High Court has given no directions with regard to the number of wood based industries to be allowed to operate in Bihar. The High Court directions are with regard to the process of identification of the saw mills which were to be allowed to continue and those which were to be closed. To ensure that the identification was done with due care and caution, the High Court had advised the State Government to appoint a Committee of Experts / Officers;

in respect of plywood mills the State Government has taken a decision that they will obtain their raw material from licensed veneer mills or licensed sawmills and depots or from imports. Veneer saw mills will have to obtain their raw material either from the saw mills or by imports. Since they were not to be primary consumer of wood, such units were not closed down;

while giving its recommendations, the First Report of the Expert Committee had considered the annual supply of timber from all the sources including private plantations and imports. The Committee had estimated annual availability of timber from notified forest of the State at one lakh cu. m. and availability of wood from private plantations and imports at 4 lakh cu. m. Thus total availability of wood has been estimated to be 5 lakh cu. m. and number of saw mills that can be allowed to operate on sustainable basis has been worked out to 1,110. The number was increased to 1,950 saw mills to by taking into account and covering any defects or assumption on the basis of which assessments and estimates were made;

Out of total area of the divided State of Bihar, 6.8 % area is under forest out of which about 50% is degraded. The forest area having dense forest cover is in notified National Parks or Sanctuaries where felling is not permitted. Thus, the capacity to sustain the saw mills is almost nil. The main source of timber for wood based industries is plantation on non-forest area and imports for neighbouring States / other country;

the total number of saw mills in the State has been decided on the basis of sustainable capacity of the forest and availability of timber from other sources. The second Expert Committee was constituted not for the purpose of deciding the number of saw mills but for deciding the criteria for distributing the saw mills in different areas in the state. Based on the Second Report of the Expert Committee, the number of saw mills in different districts has been decided; and

the closure of saw mills which were operating on an unsustainable basis has helped in controlling illegal felling in the State;

OBSERVATIONS & RECOMMENDATIONS

7. After carefully examined the issue raised by the applicants and the State of Bihar, the Committee is of the view that the objective of the Hon'ble Supreme Court's order dated 12.12.1998 was to ensure that the number of wood based industries in different States does not exceed the wood available from different sources so that the forest are managed on a sustainable basis. The Committee is, therefore, of the view that the decision taken by the State of Bihar to regulate the number of wood based units as per wood availability is in principle justified. The Committee is not aware of any other State that has taken similar steps to implement the Hon'ble Supreme Court's order dated 12.12.1996. The Committee also concurs that for calculating wood availability actual production figures need to be considered irrespective of the assessed annual growing stock figures. The Committee also agrees with the State Government that the number of wood based industries whether situated adjoining forest or otherwise, is required to be regulated qua wood availability. However, the Committee is also of the view that various decisions taken by the State Government to close down saw mills suffer from number of glaring defects which are stated below:

- i) Plywood and veneer factories are also primary consumers of wood i.e. like saw mills which require timber for meeting their raw material requirements. The timber requirement of a plywood or veneer factory cannot be met from the saw mills. In fact, the timber requirement of a plywood / veneer factories is substantially higher than the saw mills. While calculating the number of wood based units that could be allowed to operate on a sustainable basis in the State, the requirement of timber by plywood,

vener and Government owned saw mills should have been considered, which has not been done.

- ii) As the timber availability from all sources including from plantations has been considered while fixing number of units that could be allowed to function on sustainable basis, plywood/vener units cannot be separately allowed on the reasoning that they will only use timber provided by the saw mills or imported timber. The decision of the State Government to allow continuance of the plywood factories and vener factories is arbitrary as it is discriminatory against the saw mills and therefore cannot be justified.
- iii) After considering the timber available from all sources including from non-forest area / adjoining States and imports from other countries, the principles for distributing available wood amongst different categories of wood based industries i.e. saw mills, plywood factories, vener mills etc. should have been decided. The number of saw mills (including Govt. owned saw mills), vener mills and plywood mills that would be permitted to operate should have been decided on the basis of timber requirement worked out for each of the category of wood based unit. This important exercise which is absolutely necessary, has not been done by the State Government.
- iv) The main source of timber is plantations etc. from the non-forest area in Bihar. No reliable data in this regard has been provided in the First Report as well as Second Report. Besides, authentic figures of timber availability from imports from other States/ countries have also not been provided in the Reports.
- v) Since the number of wood based units allowed to operate has been fixed at the State level, the units allowed to continue should also have been decided at the State level on the principle of first come last go basis. In area where number of eligible wood based units is more than what is needed, required number of units may be shifted to the area having less number of units than required for which equitable and transparent guidelines should be prescribed by the State Government.

9. In view of the above observations this Committee is of the view that the State of Bihar should re-examine the availability of timber from all sources, including timber available from non-forest area, timber imported from other States and from other countries. In addition to private saw mills, the timber requirement of Government owned saw mills, plywood factories and vener factories should also be worked out. Depending upon availability of timber and installed capacity of wood based industries and applying equitable and non discriminatory criteria the State Government should work out the total number of the wood based units in different categories i.e. saw mills, Government saw mills, ply wood units and Vener units which can be allowed to continue. A seniority list of different categories of wood based units should be prepared at the State level and number of units which can operate on sustainable basis in each category should be allowed to continue on the principle of first come last go.

10. In respect of units which were operating prior to enactment of Bihar Saw Mills (Regulation) Act, 1990 the inter-se seniority should be decided on the basis of date such unit had started operating and has been in continuous operation with all valid permissions required at the relevant time i.e. registration as a small scale unit etc. subject to the condition that the unit has applied within a period of 30 days as provided in section 5(b) of the Act and the unit has subsequently been granted a saw mill license. In such cases, actual date of issue of license is not relevant because as per section 5(b) of the Act pending grant of license the unit is deemed to be working under valid licence. In case of units which started functioning after the Act came into force or which had not applied within 30 days as provided in Section 5(b) of the Act, the actual date of grant of license should be the basis of determining the seniority. If in

a particular area, the number of wood based industries is found to be more or less than the number fixed for that particular area, some of the units may be shifted to other area to suitably adjust the number for which suitable guidelines may be evolved. To ensure transparency, a provisional seniority list of the wood based units in different categories may be prepared which should be widely publicised and before a final list is drawn an opportunity should be given to the affected parties to file their objections and only after considering them a final list should be prepared.

11. The entire exercise of assessment of timber availability, preparation of seniority list of wood based units, identification of units eligible to continue or to be closed may be completed in a time bound manner say within four months. The Committee is not recommending reopening of any of the saw mills closed by the State Government till the exercise is completed as the Committee is of the view that total numbers of saw mills already allowed to operate by the State Government may be much more than the raw material (timber) available on sustainable basis. . However, closure of some of the plywood / veneer factories on first come last go should be considered till the exercise is completed by the State Government.

The Hon'ble Supreme Court may please consider the above recommendations and may please to pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC have been accepted by the Hon'ble Supreme Court by order dated 18.8.2003.

(13)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
CCP No. 193 of 2001

(Dated: 28.4.2003)

(Regarding felling of trees in the plantation (estates) in Tamil Nadu in violation of Hon'ble Supreme Court dated 12.12.96)

This contempt petition has been filed by District Forest Officer, Gudalur, Nilgiris, Tamil Nadu against Shri Gowri Shankar, Owner of Glenrock Estate, Pandalur Taluk, Nilgiris District, Tamil Nadu and Shri Vinoth Kumar, Manager, Glenrock Estate, Pandalur Taluk, Nilgiris District, Tamil Nadu for alleged violation of the Hon'ble Supreme Court order dated 12.12.1996 and 4.3.1996 dealing with felling of trees in Janmam land. On 16.12.2002, the Hon'ble Supreme Court passed the following order;

“We request Central Empowered Committee to give recommendations on the aspects which have been highlighted in the Report filed by the Principal Chief Conservator of Forests, Tamil Nadu within four weeks. ”

The present report is being submitted pursuant to above orders.

BACKGROUND

2. The Hon'ble Supreme Court order dated 4.3.1997 and 12.12.1996 dealing with felling of trees in Janmam area is reproduced below;

Order dated 4.3.1997

- “(i) As far as shade-trees in the Janmam areas are concerned, they would be governed by para 4(a) of our order dated 12.12.96 in so far as it applies to the State of Tamil Nadu. However, all trees so felled in the Janmam areas shall be delivered by the plantation to the State Government which will be free to deal with the dispose of the same. The State Govt. shall, however, keep a record of all such trees received by it. This will apply also to trees felled prior to the interim orders which are still in the possession of the plantations.*
- (ii) In so far as fuel trees are concerned, we direct that felling of fuel trees be carried on strictly in accordance with the Report of TANTEA. After felling of fuel trees, the plantations shall submit the account of such trees to the State Govt. Any fuel trees not required by them would be surrendered by them to the State Government and the State Government would be free to deal with such trees. The State Government shall, however, maintain an account of any fuel trees received by it.*
- (iii) We further clarify that the direction that there will be no further expansion of the plantation so as to involve encroachment (by way of clearing or otherwise of forest) will apply to the Janmam lands as well.”*

Order dated 12.12.1996

“.....(IV) FOR THE STATE OF TAMIL
NADU.....”

4. In so far as the plantation (tea, coffee, cardamom etc.) are concerned, it is directed as under: (a) The felling of shade trees in these plantations will be limited to trees which have been planted, and not those which have grown spontaneously; limited to the species identified in the TANTEA Report; in accordance with the recommendations of (including to the extent recommended by) TANTEA; and under the supervision of the statutory committee constituted by the State Government.

(b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees, and the further action for felling them will be as per that report. Meanwhile, Eucalyptus and Wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

(c) The State Government is directed to ascertain and identify those areas of the plantation which are a "forest" and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-para (b) and (c) above will not apply to such area.

(d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forest".

3. As per the petitioners, M/s Glenrock Estate Pvt. Ltd a plantation situated in Janmam area in Pandalur Taluk of Nilgiris, in persistent violation of orders of the Hon'ble Court, have been indulging in cutting of trees and clearing of forest land for the purpose of expansion of the plantations. For the year 1996-97, 1998-99, 1999-2000, seven cases, eight cases and twelve cases respectively have been registered against them. Out of above, in five cases they have been convicted and remaining cases are pending for trial. Criminal proceedings initiated against them did not appear to have any deterrent effect presumably because on conviction, the criminal courts have been merely imposing meagre amounts of about Rs. 500 as fine. The petitioner has requested to initiate contempt proceedings and impose appropriate punishments on the respondents for violation of the Supreme Court's order. In support of his contention, Divisional Forest Officer has enclosed details of 27 offence cases booked against the Glenrock Estate (At Annexure P-II of the contempt petition).

4. During the course of the hearing of the contempt petition on 23.11.2001, the learned Amicus Curiae made a suggestion that for every illegal felling of tree in any plantation, one hectare of the land may be taken away from the plantation owners for compensatory afforestation. The operative part of the Hon'ble Supreme Court's order dated 23.11.2001 is reproduced below;

"At the request of Mr. M. L. Verma, learned senior counsel appearing for contemnor-respondent No. 1, the petition is adjourned by six weeks in order to enable him to file an affidavit. List thereafter. A suggestion has been made by Mr. Harish N. Salve, Ld. Amicus Curiae in which there is some merit that for every illegal felling of tree in any plantation one hectare of land must be taken away from the plantation owners for the purpose of compulsory afforestation. This aspect will be considered.

5. After hearing the matter on 18.2.2002, the Hon'ble Supreme Court passed the following orders;

"In pursuance to the order dated 23rd November, 2001, we direct the Principal Chief Conservator of Forests to conduct a survey of the plantations within the State and to give a report as to the extent of illegal felling of trees which has taken place, the area of land

where this illegal felling has been done and the owner of the plantation to whom the land belongs, so that on the next date of hearing appropriate orders can be passed in terms of the suggestion of the learned Amicus Curiae in this Court's order dated 23rd November, 2001, with regard to compulsory afforestation on the ratio of two hectares of land for every one hectare in which the trees have been felled. The report be furnished by the PCCF within eight weeks."

6. In compliance of the Hon'ble Court's order, the Principal Chief Conservator of Forests, Tamil Nadu has filed Report on 17.5.2002 and 6.8.2002 giving plantation wise details of number of trees felled in different plantation. In all 32955 trees are reported to have been felled in different plantation. As mentioned at internal page 40 of the PCCF report filed on 17.5.2002, in Glenrock Estate Pvt. Ltd in all 1667 trees have been illegally felled. Details of these 1667 trees have been given in the Report dated 6.8.2002 at serial No. 22 at page 13-14. As per the Report, offence cases have been booked in respect of 282 trees. For balance trees offence cases were not booked as the tree felling was not noticed earlier.

ISSUE RAISED DURING THE HEARING

7. The main plea taken by the respondent Shri Gowri Shanker are as under;
 - i) Before cutting trees, the Glenrock Estate has invariably obtained prior permission under the Tamil Nadu Private Forest Protection Act, 1949. In support of above, number of orders permitting felling of trees in his favour has been annexed to the counter affidavit filed by him on 22.10.2002. Number of stumps included in the enumeration done by PCCF are actually stumps of legally cut trees.
 - ii) The company owns estate to an extent of 4400 acres and on which a substantial area is virgin forest. It is practically impossible to supervise and protect the entire area. It would be appropriate that the responsibility for protection of this area is taken over by the Forest Department. He is willing to provide necessary funds for this purpose.
 - iii) The illegal felling of the trees are basically done by tribals for firewood and not by the respondents who clearly would have no commercial use for the same. He is virtually helpless against wanton acts of destruction by local tribals foraging for firewood or from timber smugglers cutting trees of value, since even the local police refuse to act on complaints made against them.
 - iv) In respect of 27 offence cases mentioned in the petition in most of the cases accused were not employees of the company. In one or two cases where fines were paid by the company, it was basically to avoid further Court appearances since the deponent had to travel over 700 KM for every hearing.
 - v) The respondent has been convicted on a vicarious basis for the misdeeds of the employees and daily wage earners engaged for seasonal activities. Despite threat of dismissal migrant labourers or daily wage earners often take firewood from the forest.
 - vi) In none of the charge sheets, it is mentioned that trees have been illegally cut by Glenrock Estate.
8. During the course of hearing held before CEC on 28.3.2003, Shri J. C. Kala, PCCF, Tamil Nadu stated that as per the enumeration done by Tamil Nadu Forest Department in all 32,955 trees have been illegally felled from various plantations. Out of above 1667 trees have been felled in Glenrock Estate Elma Ltd. Number of offence reports have been issued for such illegal felling, details of which are given in the contempt petition. The Estate owners must be made responsible for protection of the area and to ensure that no trees are illegally felled in violation of the Hon'ble Supreme Court order. The penalties imposed in such cases need to be adequate to have some deterrent effect.

CONCLUSIONS AND RECOMMENDATIONS

10. The Committee is of the view that the it is obligatory for the plantations to ensure that in the plantation area felling of trees in violation of Supreme Court order dated 12.12.96, with 4.3.97 does not take place. For any felling of trees done in violation of the Hon'ble Court orders, the plantation owners / management, has to held responsible. The plantation cannot be absolved of its responsibility on the plea that the felling has not been done by them or their employees.
11. As found during the survey done by PCCF, Tamil Nadu, 32955 trees has been felled in violation of Supreme Court's order including 1667 trees in Glenrock Estate. For this, in addition to proceedings initiated by the concerned authorities under the provisions of the relevant Act, (s), the plantation should also be made to pay money for compensatory plantation.
13. In view of the above, the Committee agreeing with the views of the PCCF, recommends that;
Plantation shall be responsible to ensure that no trees are felled in their area in violation of Hon'ble Court's order dated 12.12.96 and 4.3.1997.

For trees felled in violation of Hon'ble Court's order, as found in the survey done by PCCF, Tamil Nadu pursuant to the Hon'ble Court's order dated 18.2.2002, compensatory afforestation of 20 trees should be undertaken by the Forest Department at the cost of the plantation either in the plantation area or in adjoining forest / non-forest area. For this purpose, the plantation may be asked to deposit an amount of Rs. 100/- per tree to be planted i.e. @ Rs. 2000/- per illegally felled trees. This may be in addition to any proceedings that may be initiated by the concerned authorities under the provisions of the relevant Act(s).

The Hon'ble Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendation of the CEC has been accepted by the Hon'ble Supreme Court by order dated 7.5.2003 and notices to 632 contemnors are being served by the concerned District Judge.

(14)

**RECOMMENDATIONS
OF**

THE CENTRAL EMPOWERED COMMITTEE

In

I.A. No. 392 of 1998

(Dated: 6.5.2003)

(Regarding sale of illegally mined material from forest land confiscated in Mirzapur, U.P.)

This IA has been filed by the State of Uttar Pradesh. The Hon'ble Supreme Court by order dated 14.1.1998 in I.A. No. 263 of 1998 had directed seizure of illegal mined material in Mirzapur, Uttar Pradesh. The operational part of the said order for the sake of ready reference is re-produced below:-

"In view of large quantities of illegally mined minerals admittedly lying in the areas, as evident from the material produced before us, we direct the District Magistrate, Mirzapur, U.P. to seize the same forthwith together with instruments and vehicles used for commission of these illegal activities (including vehicles used for transportation of the minerals). The District Magistrate will exercise these functions as a Commissioner of this Court. Particulars of the seized goods be furnished together with details of persons from whose possession they are seized by the District Magistrate on or before 22.01.1998."

In compliance of above order, seizure of illegal mined material was made by the State Govt. through the Forest, the Police and the Revenue Department. The State has seized 11,20,730 stone slabs (Pattiya), 111 cubic metre Gitti, 627 cubic metre bolder and other miscellaneous material. The State of Uttar Pradesh has moved the present IA seeking permission for release of the seized material under appropriate directions of the Court for utilisation in the development works.

During the course of hearing, the representatives of the State Govt. informed the Committee that the total value of the seized material would be about Rs. 1.50 crores. The State requested that permission for disposal of the seized material through public auction may be accorded.

The Committee agrees with the request of the State Government and after considering the facts explained in the IA, makes the following recommendations;

- i) The seized mined material may be allowed to be sold through public auction;
- ii) a Committee may be constituted with the concerned District Magistrate, Divisional Forest Officer and District Mining Officer as its members for fixing of the up-set price, conducting the sale through auction, issue of necessary transit passes, monitoring of the movement of the material and other related activities. The Committee may work under the supervision and direction of the Regional Chief Conservator of Forest (Lucknow), Ministry of Environment & Forest;
- iii) the sale proceeds, after deducting direct expenses incurred for conducting the sale, if any, may be kept in a separate bank account. The amount so realized may be used for forest protection work. For this purpose, Principal Chief Conservator of Forests Uttar Pradesh may prepare a scheme in consultation with the Regional Chief Conservator of Forest (Lucknow), Ministry of Environment & Forest.

The Hon'ble Court may please consider the above recommendations and pass appropriate orders in the matter.

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

The recommendations of the CEC has been accepted by the Hon'ble Supreme Court by order dated 7.5.2003 and the seized material has been directed to be sold through public auction under the control and supervision of a Committee consisting of the DM, DFO and District Mining Officer.

(15)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
IA Nos. 430, 469, 470 and 517**

(Dated: 8.5.2003)

(Regarding appeals against the order of the High Power Committee for NE-Region)

I) I.A. No. 430 of 1998

This I.A. has been filed by M/s Khosa Industries (P) Ltd., Dimapur, Nagaland against the High Power Committee's order dated 23.4.1998 whereby the applicant company's licence was cancelled and a penalty of Rs. 47,019 was imposed on it. The application was fixed for hearing on 6.8.2002 and 24.2.2003, however none appeared. The applicant has not raised any issue which needs clarification / modification of the Hon'ble Supreme Court's orders.

In view of the above, the Committee recommends that the I.A. No. 430 of 1998 may please be dismissed.

II) I.A. No. 469 and 470 of 1999

These I.A.s have been filed by M/s Jayanta Saw Mill, Agartala, Tripura against cancellation of the saw mill license. The licence of the applicant saw mill has been cancelled by the High Power Committee on the reasoning that complete inventory details were not received by 15.1.1998 i.e. the cut off date fixed by the Hon'ble Supreme Court by order dated 15.1.1998 and 1.5.2000. These I.A.s were fixed for hearing on 22.8.2002 and 24.2.2003, however none appeared. The applicant has not raised any issue which needs clarification / modification of the Hon'ble Supreme Court's order.

In view of the above, the Committee recommends that the I.A. No. 469 and I.A. No. 470 of 1999 may please be dismissed.

III) I.A. No. 517 of 1999

This I.A. has been filed by M/s Assam Veneer (P) Ltd., Assam against the cancellation of its licence as per the decision taken by the High Power Committee.

This I.A. was fixed for hearing on 25.2.2003, however none appeared. The applicant has not raised any issue which needs clarification / modification of the Hon'ble Supreme Court's order.

In view of the above, the Committee recommends that the I.A. No. 517 of 1999 may please be dismissed.

The Hon'ble Supreme Court may please consider the above recommendations and may please to pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendation of the CEC has been accepted by the Hon'ble Supreme Court by order dated 21.7.2003 and the appeals have been dismissed.

(16)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

I.A. No. 659 and 669 of 2001

(Dated: 2.6.2003)

(Application filed by Amicus Curiae Mr. Harish Salve, Senior Advocate for declaring area around Matheran hill station in Maharashtra as eco-sensitive zone under E. P. Act, 1986)

I.A. No. 659 has been filed by Amicus Curiae seeking directions to prevent the destructions of forest in and around Matheran in Maharashtra being caused due indiscriminate development in the area. Following prayers have been made in the application;

- a) direct the Union of India to take steps to set up a Committee under the Environment (Protection) Act so as to do all that is necessary to protect the environment of this fragile area of Matheran;
- b) direct the State of Maharashtra and its officers and in particular the Deputy Conservator of Forest, Alibag Forests Division, Raigad District to immediately conduct a survey and report on the forest cover in the non forest lands of Matheran – irrespective of the ownership of the land;
- c) direct the State of Maharashtra and its officers including in particular the Collector, Raigad District not to renew any leases of the property in Matheran till the survey is conducted and orders thereon passed by this Hon'ble Court and;
- d) direct the State of Maharashtra including the Conservator of Forest in charge of the area to ensure that there is no further felling of trees whatsoever in the Matheran area without leave of this Court, till further orders.

2. I.A. No. 669 in 659 has been filed by the learned Amicus Curiae against the decision taken by the Task Force for Matheran chaired by the Divisional Commissioner, Konkan Division to permit free access to all roads in Matheran to tempos and tractors and to approve re-laying of the roads with concrete. Following prayers have been made in the said application;

- a) direct the Union of India – Ministry of Environment & Forests to set up a Committee under the Environment Protection Act forthwith to examine the problems relating to damage to the environment and the forests in and around Matheran area and suggest steps for its amelioration;
- b) restrain the State of Maharashtra from making any relaxation of any of the provisions set in place for protecting the environment including in particular provisions relating to the movement of any type of vehicles in the hill areas of Matheran;
- c) restrain the State of Maharashtra, its servants and agents from granting any permissions to tempos or tractors or any other vehicles which are at present not permitted to ply within the local areas of Matheran and;
- d) pass any other further orders as this Hon'ble Court may deem fit and proper.

3. After examining the affidavit dated 11.7.2002 filed by the Government of Maharashtra, this Hon'ble

Court on 12.7.2001 passed the following order;

“An affidavit on behalf of the Government of Maharashtra has been filed in Court today. Unfortunately, the affidavit is very cryptic and lacks necessary particulars. Further details and documents should be placed on record along with an affidavit to substantiate the averments made in this affidavit. Further affidavit be filed within four weeks from today. The State is directed to file along with the said affidavit the Survey Report called for in the order dated 10th May, 2001 of this Court. List the IAs after four weeks.

In the meantime, we make it clear and direct that no vehicle like tractor, tempo, car, truck or other mechanised vehicle, excepting an ambulance and a fire-engine, will be permitted to ply in Matheran irrespective of the fact that any permit has been granted or not.

Pending further orders, there shall be no movement of felled timber by natural causes or otherwise from Matheran nor there shall be any sale thereof.

In the affidavit filed in the Court today, it has been stated that the State Government has communicated to the Government of India its principal approval to declare Matheran as an eco-sensitive zone by letter dated 21st November, 2000. Pending decision being taken thereon, we direct that Matheran should be regarded as eco-sensitive zone with all the consequence which flow therefrom.”

4. On 6.2.2002 draft proposals to notify Matheran and surrounding regions as eco-sensitive zone was notified by the MOEF. On 18.2.2002, this Hon’ble Court passed the following order;

“.....Long after orders have been passed, the Ministry of Environment & Forests have now on 6th February 2002 issued a notification containing draft proposal for notifying Matheran and the surrounding areas as the eco-sensitive zone. The notification states that the draft proposal shall be taken up for consideration after the expiry of a period of 60 days. We expect that final notification will be issued within four months from today. Affidavit should be filed within a week thereafter. List thereafter.”

5. During the course of hearing held by the Central Empowered Committee on 28.3.2003, counsel appearing for MOEF that the final notification in respect of Matheran has been issued on 4.2.2003 and a copy of the notification was also filed.

6. Matheran eco-sensitive zone alongwith 200 meter as buffer zone. The notification inter-alia provides for preparation of Zonal Master Plan and Tourism Master Plan, restriction on establishment of industrial units, felling of trees and ground water harvesting ban on mining, use of planting and discharge of untreated effluents, identification of natural heritage, and constitution of the Monitoring Committee. The notification provides for movement of ambulance and fire engine and use of tractor for transportation of solid waste. The relevant portion of the notification is reproduced below;

“.....4. (n) No vehicular traffic shall be permitted within the Matheran Municipal limits, except ambulance and fire engine and use of tractor for transportation of solid waste.”

7. During the hearing, Shri A.D.N. Rao, Standing Counsel for the MOEF stated that an application is being filed before the Hon’ble Court seeking permission to allow the movement of tractors in relaxation of their lordships order dated 12.7.2001 and to permit more than one ambulance and also a fire engine. The Matheran Bachao Samiti, a reputed NGO associated with the conservation issues of Matheran has requested the Committee to consider the following :

- i) the final Matheran Eco Sensitive Zone notification dated 4 February 2003 permits use of tractors for solid waste management in Matheran, which is contrary to this Hon’ble Court’s order dated 12.7.2001 whereby movement of only one ambulance and a fire engine has been

permitted. The Hon'ble Court has turned down the plea of the State Government to permit tractors. The present systems of solid waste management is working well in Matheran. The Matheran Hill Station Municipal Council has earlier this month received a cash award of Rs. 2 lakhs from the State Government for its cleanliness drive and has been adjusted as the cleanest municipality in Raigard District. The provision of permitting tractors in clause 4(n) of the notification should, therefore, be struck down;

- ii) The Monitoring Committee set-up under the notification has been given powers only under section 19 of the Environment (Protection) Act, 1986, to file complaints. Powers u/s 5 and 10 of the said Act should also be given, as has been given to similar other authorities such as the Coastal Zone Management Authorities, etc.. These powers would permit a smoother and better functioning of the Monitoring Committee;
- iii) The area finally declared as Eco Sensitive Zone in Matheran has been substantially reduced from what was intended in the draft notification. The final notification comprises mainly of hills, forest areas and Green Zone as per the area's Regional Plan, and has excluded most of the habitation. As the area is ecologically fragile and has been declared as eco sensitive, the forest area in Matheran should be considered and treated at par with Protected Areas i.e. National Parks or a Sanctuaries and any non forest use of forest land should be deal with accordingly; and
- iv) adequate fuel wood plantations should be undertaken in the area surrounding Matheran to reduce pressure on the dense forests of Matheran.

RECOMMENDATIONS

8. After examination of relevant information, the Committee is of the view that;
- i) the movement of unspecified number of ambulance, fire engine and tractors (for transportation on solid waste) permitted in the final notification is neither desirable nor is in conformity with this Hon'ble Court's order dated 12.7.2001, which had prohibited movement of all vehicles except one ambulance and one fire engine. Presently, solid waste management is being effectively and efficiently undertaken in Matheran without using any mechanised vehicle. It is, therefore, desirable that the final notification may be suitably modified which would be in conformity with this Hon'ble Court's order dated 12.7.2001.
 - ii) in view of the eco-sensitive nature of the area included in the notification, while considering any proposal for non-forestry use of forest area in the notified area, the procedure laid down for the National Park and Sanctuary may be followed by the MOEF which would permit diversion of forest area for non-forestry purposes only in rare and absolutely essential cases; and
 - iii) in view of the fragile nature of the area and pressure on the forest adequate fuelwood plantation should be undertaken in the surrounding area to prevent illegal cutting of trees for firewood etc.; and
 - iv) in view of the eco sensitive nature of the area an specific protection plan may be prepared by the Marashtrara Forest Dept. and necessary funds for implementation of the Plan may be provided by the State Government on priority basis.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note: The recommendation of the CEC has been accepted by the Hon'ble Supreme Court by order dated 25.8.2003 and Matheran has been notified as an eco-sensitive area.

(17)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

IA Nos. 819, 820 and 821 of 2002

(Dated: 3.7.2003)

(Regarding felling of trees along transmission lines against laid by Power Grid Corporation of India Ltd. through forest areas in Uttranchal)

These I.A.s have been filed by Shri Jaya Prakash Dabral, working with Uttarakhand Jan Jagriti Sansthan, an NGO, against the felling of trees in Tehri area and the Rajaji National Park for construction of 800 KV transmission line by the Power Grid Corporation of India Ltd. (PGCIL) between Tehri and Meerut. The petitioner had earlier raised this issue in public interest litigation by filing Writ Petition (Civil) No. 480 of 2002, which was heard by the Hon'ble Chief Justice of India on 13.9.2002. The petitioner was directed by the Hon'ble Court to file an I.A. through Amicus Curie in Writ Petition (Civil) No. 202 of 1995.

2. The present I.A's were heard on 18-11-2002 when the Hon'ble Court passed the following order directing the Central Empowered Committee to examine the issue and file its response.

“.....Let Power Grid Corporation – Respondent No. 6 respond to the point raised in the application by filing an affidavit within a period of four weeks. Let copy of the applications be sent to Central Empowered Committee and the Committee may give a report after hearing the applicant and the Power Grid Corporation. List after the report of the Central Empowered Committee is received.”

The Applicant has sought the following main reliefs' in the I.A.s:

- a) the Power Grid Corporation India Limited (PGCIL) should be directed to realign the route of transmission line between Tehri and Rishikesh to save trees;
- b) the PGCIL should be directed to lay the transmission line using modern and eco-friendly technology;
- c) the MOEF should be directed to recover the money given by the PGCIL for compensatory afforestation, from the State of U.P. and to return to the State of Uttranchal for undertaking afforestation through NGO's, self help groups or Gram Panchayats in Tehri Garhwal District, which had suffered the loss of forest;
- d) the PGCIL should be directed to pay higher compensation to the private land owners whose lands have been taken over for constructing pillars keeping in view very small land holdings of the hill people;

THE TEHRI PROJECT / TRANSMISSION LINE

4. The Tehri Hydro-Electric Project is being constructed by the Tehri Hydro-Development Corporation Ltd. (THDC) on the river Bhagirathi in Tehri with total installed capacity of 2,400 megawatts. For evacuation of power from the project, 800 KV transmission line is being constructed by the Power Grid Corporation India Ltd. (PGCIL). The transmission line is being laid between Tehri and Meerut and further upto Mandola and Muzaffarnagar substation. The revised cost of the project is Rs. 6,000 crores including Rs. 663 crores for the transmission line system.

APPROVAL UNDER F. C. ACT, 1980

5. Based on the proposal move by the Power Grid Corporation through U.P. Forest Department, the Ministry of Environment & Forest (MOEF) had approved under the Forest (Conservation) Act, 1980 use of 603.105 hectare forest land for laying of the transmission line system. The approval is subject to following conditions:
 - i) legal status of land will not change;
 - (ii) compensatory afforestation will be done over equivalent non-forest land i.e. 606.616 hectare the cost of which would be borne by the PGCIL;
 - (iii) a minimum 15 mtr. clearance shall be maintained within the Rajaji National Park to eliminate remote possibility of electrocution of wild elephants;
 - (iv) maximum right of way for the transmission line on forest land shall be 85 meter;
 - (v) below each conductor, width clearance of 3 mtr. would be permitted for taking the tension stringing equipment, but after stringing is done the natural regeneration should be allowed to come up and only an outer strip shall be left clear to permit maintenance of the lines;
 - (vi) in hill areas where adequate clearance is already available, trees will not be cut.
6. In compliance of stipulated conditions 606.616 hectares non-forest land was transferred and mutated in favour of the State Department, HarDOI district, Uttar Pradesh for raising compensatory afforestation.

RECOMMENDATIONS OF THE INDIAN BOARD FOR WILDLIFE

7. The alignment of the transmission line passing through the Rajaji National Park was examined by an Expert Committee constituted by MOEF under the chairmanship of Shri H. S. Pawar, Former Director, Wildlife Institute of India. After examining number of alternatives, the Committee recommended that the transmission line should be allowed to pass through the edge of the Rajaji National Park in view of the fact that it is too late in the day to suggest complete realignment and the alternative route feasible outside Rajaji National Park has dense forest where a much larger number of trees will have to be felled.
8. As per the directions of the Hon'ble Supreme Court, the matter was examined by the Standing Committee of the Indian Board for Wildlife. The Standing Committee accepted the report of Shri H. S. Panwar Committee and recommended to the Hon'ble Supreme Court for allowing the laying of transmission line through the Rajaji National Park. The Standing Committee also recommended that the Power Grid Corporation should pay an amount of Rs. 50 crores for development and management of Rajaji National Park.

Permission granted by the Hon'ble Supreme Court

9. The PGCIL had filed I. A. Nos. 634, 635, 697 and 698 seeking permission to fell trees within Rajaji National Park in modification of the order dated 14-2-2000 by which the Hon'ble Court in I.A. no. 548 had prohibited felling of dead, dying, deceased trees and grasses from National Parks and Sanctuaries. After taking into consideration the report of the Panwar Committee, recommendations of the Standing Committee of Indian Board of Wildlife and revised enumeration done in Rajaji National Park, this Hon'ble Court by order dated 29.10.2002 allowed felling of 14,739 trees in Rajaji National Park for laying of the transmission line as against felling of 66,427 trees approved by MOEF while according approval under F.C. Act. The operative part of the Court's order is reproduced below;

“..... These applications have been filed for permission to erect transmission lines by Power Grid

Corporation, which lines are to pass through the Rajaji National Park.

Since the filing of these application lot of discussion has taken place, ground situation examined and now it is reported by the learned counsel for the applicant that through the proposed corridor where the transmission lines will be erected 14,739 trees will have to be cut. Permission for erecting the lines through the Rajaji National Park and cutting these trees had been accorded by the Union of India as well as the State of Uttaranchal. Permission was not made operative because of the earlier orders of this Court.

Taking all circumstances into consideration, these applications are allowed. Permission is granted to the Power Grid Corporation to erect the transmission lines through the Rajaji National park. Aforesaid 14,739 trees will be cut by the Forest Department of the State of Uttaranchal under the supervision of the Central Empowered Committee. Trees so cut shall be sold by the Forest Department under the supervision of the Central Empowered Committee by public auction.”

APPLICANTS SUBMISSIONS

10. The applicant has raised the following main issues in the I.A. during the hearing:-
 - i) the route of the transmission line has been finalised without conducting proper studies of topo-sheets and aerial survey. Remote sensing and geological information system (GIS) facilities should have been used for this purpose which could have helped reduce the cost and in saving a large number of trees;
 - ii) the present alignment of the transmission line passes through Reserve Forest in Jaikot-Phalsari near Gaja, Advani villages. These forests have been zealously protected by the villagers are more than 150 to 200 years old and are ecologically unique and important. Here the Chir pine trees grow in association with *sal* at a height where *sal* is rarely found. This forest area has been saved from the contractors axe by the villagers through the well known Chipko movement which began in 1978. The transmission lines should have been laid through North of Gaja passing through a barren mountain area avoiding dense forest of Jaikot-Phalsari near Advani. From Rishikesh the lines should have gone along the banks of Ganga and not through Rajaji National Park;
 - iii) trees have been felled in violation of guidelines prescribed by the MOEF for laying of transmission line through forest area. The guidelines provide for clearing three meter wide strips for laying transmission line below each conductor. In the hilly area where adequate clearance is already available, trees are not to be cut. In spite of these guidelines, the entire 85 meter wide right of way has been cleared of trees, while in some areas width up to 105 mtr. have been clear felled;
 - iv) the compensatory afforestation in lieu of felling of trees done for laying transmission line in the Himalaya has been done 500 km. away in HarDOI District in the plains of U.P. This does not compensate the loss of forests suffered by the ecological fragile area of Himalaya. The afforestation should have been done nearby the place where felling has taken place to replace the loss of forest. The funds received for compensatory afforestation should be returned to Uttaranchal Government for carrying out afforestation in the Himalayas close to the area which has suffered the loss of forest;
 - v) the compensation paid to the private land owners for use of their land for erection of transmission towers is inadequate. The criteria for computing compensation in the hills should be different from that of the plains. The farmers, in addition to compensation being paid for the loss of crop, should also be paid for preparing the land to make it fit for agriculture;

Block foundation has been used as against Pile foundation. The towers with extensions should have been made to make them higher which would have ensured that trees below them would be at a safe distance. This would have helped in saving hundreds of trees. Like in many countries Chainette type and Guyed towers should have been used which could have saved more trees. Instead of using I-I-I string suspension design should have been used, which requires less clearances and the swing of the cable is also more controlled.

RESPONSE OF THE POWER GRID CORPORATION

11. The PGCIL response against the issues raised in the I.A. is as under:-

- i) the PGCIL has obtained permission for diversions of 603.105 ha. of forest land under Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the F.C. Act) from the MOEF on 21.2.2000 against which compensatory afforestation has been undertaken on 616.616 hectare of non-forest land in Hardoi District of U.P.;
- ii) the Hon'ble Supreme Court by order dated 31.10.2002 has permitted felling of 14,793 trees in Rajaji National Park after approving the recommendation of the Indian Board for Wildlife including payment of additional amount of Rs. 50 crores. The said amount has been deposited by the PGCIL with the Central Empowered Committee in compliance with the Hon'ble Court's order;
- iii) a substantial amount of funds have been given / deposited with the State of U.P., State of Uttaranchal and the Central Empowered Committee towards lease money, compensatory afforestation etc. as detailed below:-

a)	cost of 606.616 ha. land for raising compensatory afforestation over equivalent non forest land in Hardoi in U. P.	Rs. 1.72 crores
b)	for afforestation charges and development of grassland in Rajaji National Park	Rs. 2.58 crores
c)	lease charges deposited with the Forest Department, Uttranchal	Rs.18.98 crores
d)	deposited with the Central Empowered Committee as per the order of the Hon'ble Supreme Court dated 30.12.2002	Rs.50.00 crores
	TOTAL	Rs.73.28crores

- iv) the transmission line is being laid for using the electricity generated by the Tehri Hydro Project in the Northern States of the country, therefore, it is required to be completed at the earliest;
- v) the present route of the transmission line is the most viable option from the point of causing minimum disturbance to the geology, forest and wildlife. It is for this very reason the the present alignment has been allowed by the MOEF, the State Government of U.P. and the State of Uttranchal as well as the Hon'ble Supreme Court;
- vi) more than 75% of the work of laying of transmission lines has already been completed in the

area. Out of the present estimated cost of Rs. 663 crores, more than Rs. 460 crores has already been spent. The laying of the transmission line is required to be completed by 31st March, 2003 when the first unit of Tehri Hydro Electric Project is expected to start generation of power;

- vii) the guidelines of the MOEF have not been violated by the PGCIL while constructing the transmission line. In a 800 KV transmission line, there are three phases and each phase has four conductors, and trees have been felled only where it was found necessary;
- viii) the present alignment has been finalised after doing extensive survey of the area. The route suggested by the applicant from Tehri via Birogi, North of Gaja - Bhingarki- North of Agrakhil and then to Rishikesh has not been found suitable due to steep hills, deep valleys, involvement of more forest, residential houses and private land. The route from Tehri to Rishikesh via Birogi – North West of Agrakhil for Circuit –II and Northeast of Agrakhil for Circuit-I and then to Rani Pokhari, approximately 7-8 Kms on Rishikesh Dehradun highway has been taken to avoid dense Reserve Forest of Dehradun Forest Division. From Rishikesh to Haridwar the route is almost parallel to river Ganga keeping safe distance from densely populated area of towns /villages located along the river Ganga, NH-58, Railway line, existing transmission lines and other important religious places;
- ix) the total number of trees enumerated within the right of way of 85 meter width of the transmission line in the forest area other than in Rajaji National Park, comes to 24,996. However, the actual number of trees required to be felled may be even less;
- x) it is incorrect for the Applicant to say that for 800 KV Single Circuit Transmission line from Anpara to Unnao required right of way is 58.084 mtr. Here also the right to way approved by the MOEF is 85 metres;
- xi) the increase in the height of the tower with the help of extensions although results in avoiding lopping of trees but it has its own disadvantages. For preparation of larger base / foundation of such towers much more area is needed, which may require felling of additional trees.

SITE INSPECTION AND HEARING BY THE CENTRAL EMPOWERED COMMITTEE

12. Site inspection of the project area was carried out by Central Empowered Committee through Shri Mahendra Vyas, Member and Shri M.K. Jiwrajka, Member Secretary on 8th & 9th January, 2003 and again by Shri M. K. Jiwrajka, Member Secretary between 12th to 14th April, 2003, therefore, the hearing was held by the Committee on 23.1.2003 in Delhi. During the site inspection, the applicant was also given option to accompany, however due to his pre-occupation he could not accompany the Committee. During the site visit, the Forest Department was represented by Shri S. K. Chandola, CF, Bhagirathi Circle alongwith Shri Sameer Sinha, Director, Rajaji National Park, Divisional Forest Officer, Tehri Division and DFO Narendranagar. The PGCIL was represented by Shri N. K. Chanda, Executive Director, Shri D. Chaudhary, Addl. General Manager (Design), Shri D.K. Das, Dy. General Manager (Environment), Shri D. S. Yadav, Dy. General Manager and Shri Jai Singh Raghaw, Manager.

Feasibility of alternative alignment

13. During the site inspection, Shri Kumar Parasun, Shri Gyan Singh Rawat and Shri Dayal Singh and other residents of Advani area met and held discussion with the Committee. They have stated that the Advani village forest area has been preserved by the villagers by resorting to Chipko Movement which was started in 1978. They have clarified that they are not against laying of the transmission lines provided trees are not indiscriminately cut. They reiterated that an alternative alignment could save a large number of trees in Advani area.

14. Keeping in view the ecological importance of this unique forest which had both chir pine and sal

growing together and the efforts put in by the villagers to protect it, discussions were held with Forest Dept., PGCIL and villagers after which the Committee asked the PGCIL officials to carry out a quick re-survey of Advani area to explore feasibility of alternative alignment suggested in the Application / by the villagers and to find out the number of trees that will have to be felled in the present alignment and in the alternative alignment bypassing Advani forest. It was decided that the re-survey will be done by the PGCIL in association with the villagers, who would suggest the alternative route (s), alongwith the Forest Department officials.

15. The PGCIL, after a quick re-survey during which the representative of the local village and the Forest Department were present, reverted to the Committee expressing their inability to make any modification in the alignment on the ground that the alternate route suggested by the villagers is very steep and adequate ground clearance of 4.5 metre required for 800 KV transmission line is not available for the conductors. Besides, the inhabitants of the village falling in the route of the alternate alignment suggested by the representatives of the Advani village had raised objections as they did not want the transmission lines to pass through their village. This was also corroborated by the villagers of Advani. In view of the above, the alternate alignment suggested by the villagers / application was not further examined.
16. The Hon'ble Supreme Court by order dated 30.10.2002 in I.A. No. 634-635 & 697-698 has permitted laying of transmission line through the Rajaji National Park. The said order has been passed by Hon'ble Court after considering recommendation of the standing Committee of the Indian Board of Wild life and re-enumeration of trees to be felled. The Committee doesn't see any justification for review or modification of the said orders of this Hon'ble Court, accordingly the applicants plea for reviewing the felling in the Rajaji National Park is not being considered and recommended.

FELLING OF TREES WITHIN RIGHT OF WAY

17. The applicant as well as the villagers pointed out that the felling of trees is being done in the entire 85 metre width whereas as per the approval given under FC Act, it is required to be done only in 3 metre width below each conductor. During the visit of the Committee and the hearing, this aspect was also examined by the Committee.
18. Shri. S.K. Chandola, Conservator of Forests, Bhagirathi circle informed the Committee that after receipt of approval under FC Act, vide his letter No.2327/34-1(G)/11-141(K) dated 5.2.2001 addressed to Chief Conservator of Forests (Grahwal), he had sought clarification about the width in which felling of trees was to be done. The issue was discussed in a meeting with PGCIL wherein PGCIL insisted on clear felling of all the trees coming within right of way in the plains and within 36 meters plans in the hilly area. This was followed by Sh. Jai Singh, Manager-GVTV, PGCIL's, letter no. GVTP/RKSH/F-2/N.NGR/3713/1 dated 3.2.2001 wherein the view taken in the meeting about felling of trees was reiterated. On the insistence of PGCIL, this was agreed to and accordingly felling of trees was started. Out of 606.616 the forest land approved under FC Act for the transmission line, felling of trees over 34.95 ha. area has so far been completed and 2,973 trees have already been felled.
19. This stand was reiterated by PGCIL before the Committee during the visit. The Committee is unable to agree with that stand of PGCIL specially as the conditions stipulated in this regard by MOEF, while granting approval under FC Act, are completely based on the guidelines issued by Central Electricity Authority, which is the premier authority on such matters. In any case, if felling of trees in the entire right of way was required, then the PGCIL should have approached the MOEF seeking modification of the stipulations on which approval under the FC Act was accorded. It is relevant to mention that initially PGCIL had given a figure of 66,427 trees to be felled in Rajaji National Park. However after intervention of this Hon'ble Court, the number of trees to be felled was drastically brought down to 14,739.
20. After considering the conditions stipulated by MOEF under the FC Act, the difficulties being faced in regeneration of sal forest and efforts made by the resident of Advani and adjoining villagers in protecting the

forest, the Committee asked the Forest Department and the PGCIL to follow the following procedure for felling of trees for laying of the transmission line system in Rajaji National Park and other forest area:

I) General Felling of trees in the entire right of way i.e. in the entire width of 85 meter shall not to be undertaken. As per the conditions stipulated by MOEF and the guidelines issued by the Central Electricity Authority, the felling of trees is to be restricted to be barest minimum possible for foundation of transmission towers, laying of electric conductors and for maintaining required minimum clearance. This is subject to the overall condition that the total number of felled trees does not exceed the number of trees permitted by the Hon'ble Court.

II) Felling in the Rajaji National Park

- a) This Hon'ble Supreme Court by order dated 30.10.2002 has permitted felling of 14,739 trees in Rajaji National Park for laying of transmission line as against 66,427 trees recommended by the State Government / MOEF. This may be considered as the maximum number of trees that are allowed to be felled. Efforts should still be made to reduce the felling to the barest minimum.
- b) The trees required to be felled for laying foundation of the towers may be felled as per the requirement of the PGCIL.
- c) As against the marking done in three strips of seven meter each, felling of trees may be restricted to 4 meter wide strips for laying of conductors in each of the three phases within the right of way of 85 meter.
- d) Felling of trees in the area outside 4 meter wide strips but within seven meter wide strips, where enumeration of the trees have been done, may be permitted only if PGCIL certifies that such felling is absolutely necessary for laying of the transmission line.
- e) After stringing of the conductors for the transmission line is completed, for maintaining required minimum electrical clearance, branches etc, as required, may be cut / lopped. The felling of trees for this purpose may not be necessary as the height of the towers has already been decided to be increased. However, in specific cases where felling of trees is absolutely unavoidable, the felling may be undertaken only after obtaining prior concurrence of the CEC.

III) In and around Advani Village area

- a) As against enumeration of trees done in entire 85 meter wide right of way, felling of trees for laying of conductors may be done only in the three strips of 4 meter width each.
- b) The height of the tower may be suitably increased to ensure that no felling of trees is required for maintaining required minimum electric clearance.
- c) For foundation of the transmission towers, required number of trees may be felled.
- d) After stringing of the conductor for the transmission line is completed, for maintaining required minimum electric clearance branches etc. as required, may be felled.
- e) Felling of any other tree, even within the right of way, can be done only after a certificate about its necessity is given by PGCIL and is confirmed by the Conservator of Forests after site inspection and intimation to the CEC.

IV) In sal forest areas

In two patches of Sal forest through which the transmission line is passing, re-enumeration of trees falling within the three strips of 7 meter width each may be done. Felling of trees for foundation for transmission towers and for laying of conductors may be done as per the procedure prescribed for the Rajaji National Park. For maintaining electric clearance, felling / lopping of branches, as per the

requirement may be done. However, trees for this purpose may be felled only if necessity of such felling is certified by the PGCIL and is agreed to by the Conservator of Forests, Bhagirathi Circle after site inspection with intimation to the CEC.

V) In other forest area

Felling of trees in these area may be done as per the procedure prescribed for sal forest area in sub-para (IV) above.

CONCLUSIONS AND RECOMMENDATIONS

21. The Committee would like to put on record the commitment of the Applicant as well as villagers of Advani, Jaikot, Phalsari in preserving the unique forest of their area against all odds and bringing to the notice of this Hon'ble Court of indiscriminate felling of trees in the 85 meter width at many places along the route which was neither permitted nor required.
22. Though, the relief sought by applicant to direct realignment of route for laying transmission line between Tehri-Rishikesh is not being recommended by the Committee, but for this I.A. hundreds of trees would have been felled unnecessarily.
23. The funds used for compensatory afforestation in HarDOI in U.P. cannot be recovered now and returned to the State of Uttaranchal. However, Rs. 50 crores provided for development of Rajaji National Park which is in Uttaranchal State as per the Hon'ble Supreme Court order dated 30.12.2002 could be used effectively to preserve the flora and fauna and the habitat of the Rajaji National Park.
24. The applicant's plea that higher compensation should be paid to the villagers against the lands taken for erecting towers, especially in hilly areas where ownership of land is very small as compared with the land holdings in the plain, although justifiable is beyond the scope of the terms and reference of this Committee.
25. The PGCIL in this case has unfortunately interpreted "right of way" as right to cut or fell all the trees in 85 meter width below the transmission lines. As a result, more than two thousand trees have been felled along the route, many of which could have been avoided. The felling in the entire "right of way" zone is in violation of the condition imposed by the MOEF while granting approval under the FC Act. The applicant was correct in pointing out this aspect which has caused avoidable destruction of forest in the eco-fragile region of the Himalaya. The procedure as laid down in para 20 above for felling of trees needs to be strictly complied with.
26. The Committee's visit to Gaja, Jaikot, Phalsari and Advani villages, where a large unique grove of 150-200 year old trees of sal and Chir pine has been protected on the steep slopes of a high mountain, has been a touching and humbling experience. These simple villagers have shown remarkable dedication and commitment in preserving the trees in their areas. Their anguish over needless felling of trees by the PGCIL in the 85 mtr. width along the route under the transmission lines is quite understandable and justifiable. Yet, they cooperated with the Committee and the PGCIL team to work out a fair and reasonable solution which did not result in unnecessary felling of trees and at the same time did not cause delay in completing the project.

The Hon'ble Supreme Court may please consider the above recommendations and may please to pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendation of the CEC has been accepted by the Hon'ble Supreme Court by order dated 25.8.2003 and notices for having felled excessive number of trees in the area given as right of way have been issued to the Power Grid Corporation of India Ltd. Final decision of the Hon'ble Supreme Court is still awaited.

(18)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
IA No. 800

(Dated: 25.7.2003)

(Regarding appeal against the order of the Empowered Committee for the State of Madhya Pradesh regarding use of private capital for rehabilitation of degraded forest lands)

This I.A. has been filed by the State of Madhya Pradesh against the Empowered Committee for the State of Madhya Pradesh's order dated 29.7.2001 in which the permission sought by the State to use private capital for rehabilitation of degraded forest was rejected.

BACKGROUND

2. This Hon'ble Court by order dated 12.5.2001 had constituted the Empowered Committee for the State of M.P. to consider various applications pertaining to Madhya Pradesh, which were pending in the Writ Petition No. 202/95 before the Hon'ble Court. The relevant portion of the order is reproduced below:

"The Empowered Committees will consider and if possible dispose of the applications in conformity with the orders passed by this Court. In case any modification of an order becomes necessary, the parties will be at liberty to approach this Court even during this Summer Vacation.

The Empowered Committees should submit their reports by 31st July, 2001 on the work done by them....."

- v) Pursuant to the above order, I.A. No. 639 of 2000 filed by the State of M.P. seeking permission to use the private capital for rehabilitation of degraded forest land was transferred to the said Empowered Committee. After examination, the application was rejected by the Empowered Committee of M.P. by order dated 29.7.2001. The relevant portion of the order is reproduced below:

"The application has been made by the State Government seeking permission to use private capital for rehabilitation of degraded forest by leasing forestland to private parties. Since this arrangement is not permissible under the provisions of National Forest Policy 1988 and the Forest Conservation Act, 1980, therefore, the application is rejected."

4. The present I.A. has been filed against the above orders of the Empowered Committee of M.P.

Submission by the State of Madhya Pradesh

5. The main submissions made by the State of M.P. are as under:
- i) Out of 95,221 sq. km of forest area in M.P., about 40,000 sq. km is degraded forest. An estimated area of about 12,000 sq. km is being added to this category every year.
 - ii) For rehabilitation of the degraded forest land in the next 30 years about 2.53 lakh ha. forest area needs to be rehabilitated annually for which Rs. 253 crores is required. As against this,

the State Government is able to invest about Rs. 130 crores annually. In order to augment the investment in the forestry sector, the State Government had decided to involve private sector for rehabilitation work under strict control and supervision of the State Government. For this purpose, the selected degraded forest land would be leased to the Forest Development Corporation and the private sector will be associated for afforestation under the contract. A certain percentage of the crop from intermediate as well as final yield will be kept by the private sector as its charges for carrying out afforestation work and the balance be retained by the Government.

- iii) While the process of advertisement, calling tenders etc. was in progress, the Central Government raised objection on the grounds that such scheme is in violation of the Forest (Conservation) Act, 1980.
- iv) In view of the benefits that are likely to arise from the scheme, the Government of India may be directed to permit the State Government to allow the use of private land for rehabilitation of degraded forest land.
- v) The State Government do not intend to lease the forest land to private sector. The land will be leased in favour of the Forest Development Corporation, which is fully owned, controlled and managed by the State Government. The degraded forest land will be made available to the private sector only for afforestation purposes through an agreement / contract.

CONCLUSIONS & RECOMMENDATIONS

6. Section 2 of the Forest (Conservation) Act, 1980 prohibits the State Government to assign forest land by way of lease or otherwise to any Non Government Organisation / private persons without prior approval of the Central Government. The relevant portion of the Act is reproduced below:

“.....2. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i)

(ii)

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;”

7. From the above, it is clear that assignment of forest land – whether by way of lease or otherwise, to private sector for afforestation can be done only if it is approved by the Central Government under Section 2 of the Forest (Conservation) Act. For this, as prescribed under the FC Rules, the State Government is required to send the proposal in the prescribed performa alongwith complete details. The Central Government is empowered to take a decision on the proposal only after it is examined by the Forest Advisory Committee constituted under Section 3 of the Act.
8. This Committee is of the view that the decision taken by the State of Madhya Pradesh to assign forest land to private sector for afforestation without approval of the Central Government was in violation of the provisions of the FC Act, therefore, the objections raised by the Central Government were valid.
9. In view of the above, the CEC is of the view that the decision taken by the Empowered Committee for M.P. to reject the request of the State Government to direct the Central Government to approve use of private capital for afforestation was correct and does not need any interference. However, the State Government is at liberty to approach the Central Government for seeking approval under Section 2 of the FC Act. As and when such an application is received, the Central Government may, after

examining the same in accordance with the FC Act, Rules framed thereunder, guidelines issued for implementation of the FC Act and within the overall ambit of the National Forest Policy, 1988, take appropriate decisions.

10. The Committee, therefore, recommends that I.A. No. 800 may please be dismissed.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The recommendation of the CEC have been accepted by the Hon'ble Supreme Court by order dated 1.8.2003 and the I. A. filed by the State of Madhya Pradesh has been dismissed.

(19)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

FOR UTILISATION OF RS. 50 CRORE FOR RAJAJI NATIONAL PARK

(Dated: 28.7.2003)

BACKGROUND

I. A. No. 826 was heard by this Hon'ble Court when the following order was passed on 7th May, 2003 :

“
..... *In the meanwhile the Central Empowered Committee may give its proposal as to how there can be best utilization of money for upliftment of Rajaji Park.*”

Pursuant to the above order this proposal has been prepared and is being filed by the CEC.

2. An amount of Rs. 50 crore has been deposited by the Power Grid Corporation of India Ltd. pursuant to this Hon'ble Court's order dated 29.10.2002 in I. A. Nos. 634-635, 697 and 698 which were filed for seeking permission for felling of trees in Rajaji National Park, Uttranchal for laying of transmission lines between Tehri – Meerut. Presently, the amount is lying with the CEC and has been invested in short term fixed deposits in Nationalised Banks.
3. The CEC convened a meeting for preparation of the proposal on 2nd June, 2003 in which the Additional Director General of Forests (Wildlife), Ministry of Environment & Forests, Principal Chief Conservator of Forests, Chief Wildlife Warden, Field Director, Corbett National Park and Director Rajaji National Park all from Uttranchal Forest Department, were present. The meeting was also attended by Shri P. K. Sen, Director, Tiger & Wildlife Cell, WWF-I, Shri Aseem Srivastava, DIG(Wildlife), MoEF, Shri Bittoo Sahgal, Member Indian Board for Wildlife, Director Project Tiger, MoEF, Dr. A. J. T. Johnsingh and Dr. G. S. Rawat from Wildlife Institute of India, Shri Nirmal Ghosh, Friends of Doon Society and Shri A. D. N. Rao, Standing Counsel for MoEF. Director, Project Elephant Shri S. S. Bist also gave his suggestions. During the meeting presentations were made about the areas of concern and interventions needed to protect and improve the habitat of Rajaji National Park (RNP). Thereafter, a detailed scheme was prepared and circulated amongst the participants of the above meeting. After considering the suggestions and subsequent comments received on the draft scheme following proposal is submitted for consideration of this Hon'ble Court.

BASIC PRINCIPLES

4. The basic Principles on which the proposal is based are as under:
 - i) the principal amount of Rs.50 crore may remain as corpus fund and the annual income received thereon by way of interest etc. may be used for undertaking protection and habitat improvement of RNP on perpetual basis. This will ensure that the funds are available and utilized on long-term basis instead of spending large amount of money in a short span which may cause leakages and mismanagement;
 - ii) the money available under this scheme should complement and not substitute the existing allocation of funds for RNP from other sources;
 - iii) full involvement and ownership of the State Government in planning and implementation of

- the scheme is absolutely critical for ensuring effective utilisation of funds;
- iv) an independent evaluation and monitoring mechanism is necessary to ensure proper utilization of funds;
- v) involvement of NGOs in Planning and monitoring will help in better implementation of the scheme;
- vi) involvement of MoEF as a facilitator will help in achieving objectives of the scheme;
- vii) the agency responsible for custody and investment of the funds should have no any say in preparation of the plans, their implementation as well as in the evaluation and monitoring to ensure proper checks and balances;

STRUCTURE OF THE SCHEME

5. The basic structure of the scheme is as under:

- i) the principal amount of Rs. 50 crore will be invested in long-term fixed deposits with nationalised banks by the Custodian of the Fund (MoEF or any other suitable agency as this Hon'ble Court may deem fit and proper). The Custodian of the Fund will have no authority or power to use the funds or interest thereon except a nominal amount towards on auditing and maintaining proper accounts subject to an annual ceiling of 0.01% of the principal amount i.e. Rs. 50,000/- per annum;
- ii) up to 90% of the income receivable by way of interest etc. will be available / used during each year for various works / activities. The balance 10% of the income will be ploughed back / reinvested to set off inflation and fluctuations in interest rate;
- iii) a Steering Committee under the Chairmanship of the Chief Secretary, Uttranchal will be constituted with Forest Secretary, Finance Secretary, Planning Secretary, Revenue Secretary, Agriculture Secretary, Tribal Welfare Secretary, Principal Chief Conservator of Forests, Chief Wildlife Warden, Commissioner Garhwal Division, and three reputed NGO's working in the field of wildlife (to be nominated by the State of Uttranchal in consultation with the MoEF) as its members. Director General of Forest, MoEF or his representative will be a Permanent Special Invitee. The Chief Wildlife Warden will be the Member Secretary. The Steering Committee will be responsible for over all implementation of the scheme, especially with regard to policy decisions, inter department co-ordination, financial procedure, grant of special sanction for procurement etc. to be effected in relaxation of financial rules / procedure. It will be empowered to frame its own rules / procedure and should meet at least once every six months. It will also be empowered to co-opt officials / NGO's / experts as members or special invitees.
- iv) a Management Committee will be constituted under the Chairmanship of the Principal Chief Conservator of Forests, Uttranchal with Chief Wildlife Warden, Chief Conservator of Forests, Garhwal, two reputed NGO's working in the field of wildlife (to be nominated by the State of Uttranchal in consultation with the MoEF) as its members and Director RNP as Member Secretary. The Management Committee will be empowered to finalise and approve annual plan of operation for undertaking different works / activities for the protection and habitat improvement of RNP. The plan may also include activities outside the RNP if such activities are linked to RNP. No expenditure, which has not been approved by the Management Committee, will be permissible. The decision of the Management Committee will be by majority with minimum coram of three members and Chairman having the casting vote.
- v) the Director RNP will be designated as the implementing authority for the various activities /

works as approved by the Management Committee. Subject to the condition mentioned herein under at para (vi) below, the funds as approved by the Management Committee should be released by the Custodian of the Fund directly to him for which a separate bank account should be maintained. Director RNP should utilize the funds under the supervision of the Management Committee, overall guidance of Steering Committee and in conformity with the financial rules and procedure except in those cases where special permission is obtained from the Steering Committee.

- vi) a Monitoring Committee will be constituted under the Chairmanship of the Director, Wildlife Preservation – India, MoEF with Director Wildlife Institute of India, Director, Indira Gandhi National Forest Academy, and two reputed NGO's working in the field of Wildlife (to be nominated by the MoEF). This Committee will be responsible to monitor the implementation of the activities / works under the scheme and independent audit of the expenditure. In cases of instances of improper utilisation of funds or violation of financial rules is found by the Monitoring Committee, it should be empowered to intimate the same to the Custodian of Fund to withhold release of further funds. The Custodian of Fund should be duty bound not to release the funds on receipt of such intimation till the Monitoring Committee intimates otherwise. The members associated with the Steering Committee or the Management Committee will not be eligible to be a member of the Monitoring Committee. The Custodian of the Fun will make funds available to the Monitoring Committee for meeting of the expenditure on monitoring, audit, meetings, travel etc. subject to an annual ceiling of 0.1 per cent of the corpus fund (Rs. 5.0 lakhs / annum). The Monitoring Committee should also have the option of incurring the expenditure through Director, RNP.
 - vii) no expenditure on the salary of the regular officials / staff shall be met from the fund / income.
 - viii) an integrated annual plan showing details of funding from different sources for various works / activities for RNP should be prepared to prevent any possibility of misuse of funds. There should only be one source of funding for a particular work / activity.
6. Detailed rules and procedure for management of the funds may be prepared by the State of Uttranchal in consultation with the MoEF within a period of two months which may be notified only after obtaining the approval of this Hon'ble Court.

This Hon'ble Court may please consider the above proposal and may please pass appropriate order / directions in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The I. A. is pending before the Hon'ble Supreme Court.

RECOMMENDATIONS

OF

THE CENTRAL EMPOWERED COMMITTEE

In

IA Nos. 458 of 1998

(Dated: 29.8.2003)

(Regarding permission sought by the Ministry of Finance to dispose of confiscated timber)

This I.A. has been filed by the Ministry of Finance seeking modification / clarification of para 34 of this Hon'ble Court's order dated 15.1.1998 which prohibits redemption of confiscated timber to the person from whom illegal timber has been seized.

2. The main submissions made in the application are that the seizure of smuggled goods is done under Section 111 or 113 of the Customs Act, 1962 and after confiscation the property vests with the Central Government under Section 126 of the said Act. Pursuant the above direction of this Hon'ble Court, the Custom Department is neither able to file prosecution complaints in terms of Section 135 of the Customs Act, 1962 nor is in a position to redeem the confiscated timber / forest produce after recovery of fines etc. in accordance with the provisions of Section 125 of the said Act. This Hon'ble Court's order 15.1.1998 was issued in the context of the North-Eastern States and, therefore should not be made applicable for other States including the State of Tamil Nadu. The Custom Authorities should be allowed to deal with the timber and timber products seized / confiscated outside the North-Eastern States as per the provisions of the Customs Act, 1962.

CONCLUSIONS AND RECOMMENDATIONS

3. This Hon'ble Court's order dated 15.1.1998 was issued in the context of the North-Eastern States. For the sake of convenience, the relevant portion of the order is reproduced below:

"5. We have heard the amicus curiae, the learned Attorney General and leaned counsel for North-Eastern States. In view of the report of the High Power Committee and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North-Eastern States, we consider it appropriate to make the following orders:

.....

.....34. To ensure that timber / forest produce smuggled across the border may not be used as a cover for trade in illegal timber, it is directed that all such timber seized by Customs / Border Security Force should not be redeemed in favour of individuals who are smuggling it but should be confiscated and handed over to the concerned State Forest Department along with offenders, vehicles, tools and implements for prosecution under the relevant act."

4. From the above, it is seen that this Hon'ble Court's order dated 15.1.1998 is applicable to the North-Eastern States only and not to other States / Union Territory. The CEC, therefore, agrees with the contention of the Ministry of Finance, Government of India and is of the view that para 34 of the Hon'ble Court's order dated 15.1.1998 will not apply to the timber seized by the Custom's Department or Border Security Force outside the North-Eastern States. However, in order to fetch realistic market price, it is desirable that such timber and timber products are sold through open auction / sealed tender through the State Forest Department and the sale proceeds, after deducting expenses, are deposited with the concerned Central Government Departments.

5. The CEC, therefore, recommends that I.A. No. 458 may be disposed off with the clarification that the Custom Department and the Border Security Force are at liberty to take appropriate action under the provisions of the Custom Act, 1962 for confiscation and disposal of the timber and timber products and recovery of fines / penalties in all the States / UTs. except North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura). However, such confiscated timber and timber products should be disposed off through open auction / sealed tender through the respective State Forest Department and the sale proceeds, after deducting the expenses, should be deposited with the concerned Central Government Department.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendation is still awaited.

(21)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
Petition for Special Leave to Appeal (Civil)
NO. 20070 / 1998

(Dated: 2.9.2003)

(SLP filed by Amicus Curiae Mr. Harish Salve, Senior Advocate against the judgement and order dated 02/ 09/1998 in OWP 504 / 1998 of the High Court of Jammu & Kashmir at Srinagar regarding location of veneer with 8 km. from the boundary of the nearest forest mills)

This SLP has been filed by learned Amicus Curiae, Mr. Harish N. Salve against the order dated 2.9.1998 passed by the Hon'ble High Court of Jammu & Kashmir, Srinagar in OWP No. 504 of 1998 whereby the Principal Chief Conservator of Forests (PCCF) order dated 19.8.1998 regarding closure of the veneer mills situated within 8 KM from demarcated forest was stayed. The SLP was heard by this Hon'ble Court on 10.12.1998 when the impugned order and similar orders passed by the Hon'ble

High Court of Jammu & Kashmir were stayed. For the sake of convenience, the operative part of the order is reproduced below:

“Issue notice. In view of the directions issued by this Court on 12.12.1996, the operation of the impugned order and similar orders made by the High Court of Jammu and Kashmir with regard to the matters covered by the order dated 12.12.1996 of this Court shall stay.”

2. Subsequently, this Hon’ble Court by order dated 9.9.2002 directed the Central Empowered Committee (CEC) to examine the matter raised in this Special Leave Petition. For the sake of convenience, the operative part of the order is reproduced below:

“The Central Empowered Committee should examine the matter raised in this special leave petition. A complete set of papers be sent to the said Committee.”

Pursuant to above, the Central Empowered Committee, after hearing the matter on 25.7.2003 and 11.8.2003 is submitting this report.

BACKGROUND

3. This Hon’ble Court by order dated 12.12.1996 in Writ Petition (Civil) No. 202 / 95 has inter-alia directed that no wood based industries would be allowed to operate in Jammu & Kashmir within a distance of 8 KM from the boundary of forest. For the sake of convenience, the operative part of the order is reproduced below:

“(I) FOR THE STATE OF JAMMU & KASHMIR:

1.

2.

*8. No saw mill, veneer or plywood mill would be permitted to operate in the State at a distance of less than 8 Kms from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated
forthwith.”*

4. No Objection Certificates were issued in respect of 37 veneer units on the understanding that these were situated beyond 8 KM of the demarcated forest area. Subsequently out of the above, No Objection Certificates in respect of 15 units are cancelled after it was found that these units were actually located within 8 KM from demarcated forest area. The following eleven units challenged the

cancellation order in the Hon'ble High Court at Srinagar:

- i) M/s Kashmir Veneer Industries
- ii) M/s Jibran Manzoor
- iii) M/s Kashmir Wood Products, through Ab. Salam
- iv) Denthoo Saw Mills, through Ali Mohd. Denthoo
- v) M/s Khan Timber Traders
- vi) M/s Four Star Veneer, Industries
- vii) Owais Wood Products, through Razia Mushtaq
- viii) National Veneer Products
- ix) Renzoo Traders, through Bashir Ahmed Renzoo
- x) Kashmir Timber Traders
- xi) M/s Hill Agro Industries

5. In OWP No. 504 / 98 filed by M/s Kashmir Veneer Industries (listed at serial no. 1 above), the PCCF's order dated 19.8.1998 by which the No Objection Certificate granted to the unit was cancelled, was stayed by the Hon'ble High Court at Srinagar by order dated 2.9.1998. For the sake of convenience, the operative part of the order is reproduced below:

“ Notice returnable within two weeks. Notice in the CMP also returnable within the same period. A bare perusal of the impugned order reveals that the N.O.C. has been rescinded on the ground that the petitioner – Industrial Unit is located within eight Kilo Meters (8 K.M.). My attention has been drawn to annexure B & H issued by the functionaries of the state indicating that the location of the Unit is beyond 8 Kms. In this back drop, operation of the impugned order shall stay till next date of hearing, subject to objections of the other side. List as part heard in the week commencing from 21.09.1998.”

6. Further in Writ Petition No. 566 /98 filed by M/s Hill Agro-Industries (listed at serial no. 11 above), the Hon'ble High Court of Jammu & Kashmir at Srinagar by order dated 22.10.1998 stayed the cancellation of No Objection Certificate. For the sake of convenience, the operative part of the order is reproduced below:

“.....Keeping in view, the nature of controversy raised and the orders on record of the coordinate Benches of this court, the operation of the impugned order No. PCCF/ Lease/NOC/1574-78 dated: 19.8.1998 is stayed for two weeks subject to objections of otherside. The otherside is also free to seek amendment / modification of this order on proper motion. The respondents will be free to take required action against the petitioner units as directed / indicated by the Apex Court Judgment of December 12, 1996, in Godavarma Thirmulkpas case (Civil Writ Petition No. 202 of 1995) in case petitioner Unit is infringing the directions / orders of the Apex Court so far as the same pertain to State of J&K.”

7. This Special Leave to Appeal (Civil) No. 20070 / 1998 has been filed by learned Amicus Curiae Mr. Harish N. Salve against the impugned order dated 2.9.1998 in which the following main grounds have been raised:

- i) the contentions of the respondents that veneer units use agricultural produce and not forest produce is incorrect and untenable;
- ii) this Hon'ble Court's order dated 12.12.1996 is applicable to both saw mills as well as veneer mills. The contention of the petitioners before the High Court that the Hon'ble Supreme Court's order was applicable only to saw mills and not to veneer mills is incorrect;
- iii) the granting of license for setting up of veneer mills within a distance of 8 KM from demarcated forest area was contrary to the directions of this Hon'ble Court;
- iv) the Hon'ble High Court has committed an error in issuing the order of stay in the matter, which is before this Hon'ble Court and also the fact this Hon'ble Court has issued a general direction that all matters regarding such issues would be dealt with only by this Hon'ble Court.

8. The following prayers have been made in the SLP:

- i) grant special leave to appeal against the judgment and interim order dated 2.9.1998 passed by the High Court of Jammu and Kashmir at Srinagar in O.W.P.No. 504 of 1998;
- ii) grant ad-interim ex-parte stay to the effect and implementation of judgment and interim order dated 2.9.1998 passed by the High Court of Jammu and Kashmir, Srinagar in O.W.P. No. 504 of 1998, alongwith all other orders passed in relevant matters pending before the said High Court, till disposal of the instant petition by this Hon'ble Court; and
- iii) pass such other and further order as this Hon'ble Court may deem just and proper in the facts and circumstances of the case and in the interest of justice.

Issues raised before the Hon'ble High Court

9. In the Writ Petition filed by M/s Kashmir Veneer Industries before the Jammu & Kashmir at Srinagar against the Principal Chief Conservator of Forest's order dated 19.8.1998, the following main issues have been raised :

- i) the veneer units use poplar tree as raw material, which is an agricultural produce and not a forest produce;
- ii) the distance of 8 KM from the demarcated forest area, as fixed by this Hon'ble Court's order dated 12.12.1996 does not apply to the units set up within municipal limits;
- iii) the cancellation order dated 19.8.1998 of the of the PCCF is erroneous because
 - a) before passing the order the petitioner was not heard;
 - b) the petitioner units is within Municipal limits;
 - c) the issue of 8 KM does not apply to the units which comes within municipal limits;
 - d) Parimpora, where the units is situated, is hardly 7 KM from the main city centre and there are no forest around the area; and
 - e) Hon'ble Supreme Court's order does not govern veneer manufacturing units which use agricultural produce and not the forest produce.

10. The matter was heard by the CEC during the hearing held on 25.7.2003 and 11.8.2003. M/s Kashmir Veneer Industries remained absent in both the hearings. The main submission made by the State of Jammu & Kashmir are as under:

- i) the Hon'ble Supreme Court's order dated 12.12.1996 has prohibited setting up of any saw mills, veneer saw mill or plywood units within a distance of 8 KM from the boundary

of any demarcated forest area. The order is applicable to veneer mills also. Even the existing wood based units were required to be re-located. No Objection Certificate granted by the Forest Department in favour of 11 veneer peeling units were cancelled vide PCCF order dated 19.8.1998 after it was established that these units are located within a distance of 8 KM from the boundary of a demarcated forest area;

- ii) the cancellation of the No Objection Certificate has been done on the basis of comprehensive report received from Divisional Forest Officer, Photo Interpretation Division, who had carried out detailed exercise to identify the places which fall beyond 8 KM from the demarcated forest area. Such areas were demarcated on the Survey of India topo-sheet after superimposing working plan maps and by drawing radial lines from the demarcated forest area. Since the unit of M/s Kashmir Veneer Industries and others were found within a radial distance from the 8 KM from the demarcated forest area, the No Objection Certificate issued to them were cancelled.

CONCLUSIONS AND RECOMMENDATIONS

11. A plain reading of the Hon'ble Supreme Court's order dated 12.12.1996 makes it abundantly clear that the order is applicable to saw mills as well as veneer mills. The contention of the Respondent No. 4 - M/s Kashmir Veneer Industries, that the order is not applicable to veneer mills does not hold true. Similarly, the contention that this Hon'ble Court's order is not applicable to units situated inside Municipal limits is not correct as no such exemption has given in the Hon'ble Supreme Court's order dated 12.12.1996. The CEC is, therefore, of the view that wood based industries whether saw mill, veneer mill or plywood situated within a distance of 8 KM from the boundary of the nearest demarcated forest in Jammu & Kashmir will not be allowed to operate pursuant to this Hon'ble Court's order dated 12.12.1996 in Writ Petition (Civil) No. 202 / 95.
12. The identification of units located within a radial distance of 8 KM from the boundary of the nearest forest has been done by the Jammu & Kashmir Forest Department through Division Forest Officer, Photo Interpretation Division. From the documents made available during the hearing it is seen that a detailed exercise was done by said division. For this purpose, the Survey of India topographic map on 1:50,000 scale were used alongwith working plan maps showing the forest demarcation. After tracing the demarcated forest area and superimposing it on the Survey of India map, radial lines were drawn to determine the area within 8 KM distance from the demarcated forest area. The procedure used by the Jammu & Kashmir Forest Department is found to be correct.
13. In view of the above, the Committee of the view that M/s Kashmir Veneer Industries and other similarly placed units which are located within a radial distance of 8 KM from the boundary of the nearest demarcated forest area are not eligible to function and therefore, the decision to cancel the No Objection Certificate vide PCCF order dated 19.8.1998 was correct and does not require any interference.
14. This Hon'ble Court by order dated 12.12.1996 had directed that:
"This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal."
15. In view of the above, the impugned Hon'ble High Court's order dated 2.9.1998 and 22.10.1998 are contrary to this Hon'ble Court's specific directions.
16. The CEC, therefore, recommends that this Hon'ble Court may please consider setting aside the

Hon'ble High Court's impugned orders dated 2.9.1998 and 22.10.1998 and restore the PCCF, Jammu & Kashmir's order dated 19.8.1998 by which the No Objection Certificates given in favour of the veneer mills found to be located within 8 KM from the demarcated forest area were cancelled.

The Hon'ble Supreme Court may please consider the above recommendations and may please to pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendation is pending.

(22)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

I. A. No. 864 and 865

(Dated: 4.9.2003)

(Regarding permission sought by the Municipal Corporation, Bhopal for use of 9.878 ha. forest land falling within Ratapani Wildlife Sanctuary, in Madhya Pradesh for a water supply scheme for Bhopal)

These I.A.'s have been filed by Municipal Corporation, Bhopal seeking this Hon'ble Court's approval for use of 9.878 ha. forest land falling in Ratapani Wildlife Sanctuary, Bhopal in Madhya Pradesh. The matter was heard on 14.7.2003 when this Hon'ble Court passed the following order:

".....Let these I.As be forwarded to the C.E.C. which shall send its recommendations to this Court within a period of eight weeks."

2. Pursuant to above directions of this Hon'ble Court these I.A.s were examined by the CEC and this report is being submitted.

BACKGROUND

3. This Hon'ble Court by order dated 14.2.2000 in I.A. No. 548 has prohibited felling of trees, grasses etc. in National Parks and Sanctuaries. For the sake of convenience, the operative part of the order is reproduced below:

".....Issue notice to all the respondents. In the meanwhile, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park or Sanctuary or forest. If any order to this effect has already been passed by any of the respondent-states, the operation of the same shall stand immediately stayed."

Subsequently, the word "forest" was deleted by this Hon'ble Court by order dated 28.2.2000.

4. Further, this Hon'ble Court by order dated 13.11.2000 in Writ Petition (Civil) No. 337 / 1995 had directed that no de-reservation of National Parks / Sanctuary shall be effected.

5. This Hon'ble Court by order dated 9.5.2002 in W.P. (C) No. 337/95 had passed the following order:

".....I.A.Nos. 15, 17, 20 22, 23, 24 and 25 be first placed before the Standing Committee of the I.B.W.A. for its consideration. In the meantime, no permission under Section 29 of the Wild Life Act should be granted without getting the approval of the Standing Committee.

List the matter come up in August, 2002."

6. Pursuant to above orders, approvals under the Forest (Conservation) Act, 1980 (hereinafter referred as the FC Act) for use of forest land falling within National Park or Sanctuary, are accorded only after obtaining prior permission of this Hon'ble Court. For example, approval for felling of trees for laying transmission line through the Rajaji National Park was given under the FC Act only after this Hon'ble Court had given permission to the project on the condition that Rs. 50 crore would be deposited by the Power Grid Corporation Ltd. for protection and conservation of the National Park. Similar procedure

was adopted for Water Supply Scheme involving Shettihalli Wildlife Sanctuary, Karnataka and laying optical fibre through Mount Abu Sanctuary, wherein approvals under the FC Act were accorded by the MOEF after the projects were permitted by this Hon'ble Court and Rs. 15 crore and Rs. 17 lakhs were deposited by Karnataka Nirwari Nigam Ltd. and Bharat Sanchar Nigam Ltd. respectively.

Kolar Water Supply Project

7. The State of Madhya Pradesh is implementing the Kolar Water Supply Augmentation Project to provide drinking water to the residents of Bhopal and adjoining area with an estimated project cost of Rs. 111 crore. The Project involves use of 15.394 ha. forest land in Sehore, Raisen and Bhopal districts out of which 9.878 ha. forest land falls within Ratapani Wildlife Sanctuary. The project involves felling of 7,410 trees consisting of 3,297 teak trees and 4,113 miscellaneous trees out of which 4,290 trees lie in Ratapani Wildlife Sanctuary.
8. The Municipal Corporation, Bhopal decided to execute Kolar Water Supply Augmentation Project during November, 1997. Based on the project report prepared in June 1998, a loan of Rs. 77.51 crores was sanctioned by HUDCO during September, 1998 with the condition that the State of Madhya Pradesh will provide counter-guarantee for repayment. In March, 1999 the project was approved by the State Government after which in June, 1999 the tenders were invited which were subsequently approved in October, 1999. In May, 2001, the counter-guarantee for the loan repayment was given by the State Government and in February, 2002 work orders were issued to the selected contractors. Presently 34 MGD water is being supplied to Bhopal city from Kolar Dam. After completion of the project the availability of water to Bhopal would be enhanced to 44 MGD.
9. The total land required for the project is 29.044 comprising 15.394 ha. forest land, 10.4 ha. private land and 3.250 ha. revenue land. The forest land is required for construction of raw water pump house (0.960 ha.), raw water pumping main (5.388 ha.), water treatment plant (3.0 ha.) clear water pump house 0.240 ha., clear water pumping main (2.389 ha.), break pressure tank (0.20 ha.) and gravity main (3.217 ha.).
10. About 1.60 metre diameter pipeline parallel to the existing pipeline will be laid for transmitting water from Kolar Dam to Bhopal, For laying the pipeline 6.5 metre wide strip of forest along the road is

required. The pipeline is proposed to be laid parallel to the existing pipeline on the other side of the road. The total length of the pipeline is 24 KM out of which 5 KM will be passing through the forest area. The projected demand of drinking water upto the year 2016 is expected to be fulfilled by the project and an estimated population of about 26.5 lakh is likely to be benefited. The total cost of the project is Rs. 111 crore and is expected to be completed within a period of 18 months. Non-forest land for undertaking Compensatory Afforestation has been identified and a detailed Compensatory Afforestation Scheme has been prepared.

11. During the hearing by the CEC on 11.8.2003 and 20.8.2003, the Counsel appearing for the applicant stated that since no alternative site to undertake the project is possible therefore, it may be treated as a site specific project. No revenue or private land is available adjoining the dam on which the project could be undertaken. Efforts have been made to design the route of the pipeline in such a way that minimum possible forest land is required. The project is absolutely necessary to meet drinking water requirement of the people of Bhopal and is, therefore, in public interest. In view of the importance of the project, the forest land falling within Ratapani Wildlife Sanctuary may be allowed to be used.

Site visit by the CEC

12. Shri P. V. Jayakrishnan, Chairman, CEC and Shri Valmik Thapar, Member, CEC visited the project area on 16.8.2003. During the site inspection, detailed discussion were held with the concerned officials of the State Government / Project Authorities.

OBSERVATIONS AND CONCLUSIONS

13. Based on the site visit, discussions held with the concerned officials of the State Forest and the project authorities and the submissions made during the hearings, following observations / conclusions are made by the CEC:
 - (i) Ratapani Wildlife Sanctuary occupies an area of about 906 sq. km in Raisen and Sehore districts of Madhya Pradesh and forms an important catchment area on the North bank of the river Narmada and is rich in wildlife. It is an important breeding habitat for wildlife including the tigers. The area is proposed to be included by the MOEF under the Project Tiger. Recently, about three tiger cubs were abandoned by a tigress due to disturbance in the area. These were picked up the villagers / forest staff and are presently kept in Vanvihar / Zoo at Bhopal;
 - (ii) the Sanctuary includes the World Heritage site such as pre-historic Bhimbethka caves and several other sites of archaeological importance such as Ginnorgarh Fort, Prisoners of War Camp etc. These sites are not very far off from the project site.
 - (iii) Earlier in 1983, a drinking water pipeline was constructed from Kolar Dam to Bhopal through the same area for which no approval under the FC Act was taken from the MOEF;
 - (iv) the project is in public interest and appears to be site specific as no alternate route is feasible. The involvement of forest land within Ratapani Wildlife Sanctuary also appears to be inevitable;
 - (v) since the project involves use of 15.394 ha. forest land out of which 9.878 is in Ratapani Wildlife Sanctuary, before commencing the work the State Government should have taken prior permission of this Hon'ble Court in view of this Hon'ble Court's order dated 14.2.2000 in I.A. No. 548. However, no such approval / permission was sought / obtained although the entire exercise of project preparation, appraisal, sanction and administrative approvals, calling of tender, approval of the tender, counter-guarantee for payment of loan, issue of work order etc. for implementation of the project had been undertaken between November, 1997 to February, 2002. During the visit it was mentioned by the project authorities that they were under the impression that no approval under the FC Act would be required as the forest area was already diverted for the original project in 1983-84. Similarly, they were not aware of

- the requirement of obtaining Hon'ble Court's approval;
- (vi) the Kolar Dam Water Supply Augmentation Project will have adverse impact on the wildlife and the habitat of the sanctuary as the pipeline will cause fragmentation of the wildlife habitat at several places and degradation of the nearby habitat. Although, physically only about 10 ha. of sanctuary area is proposed to be diverted for the project, it will cause degradation of habitat in a much larger area as large number of labourers will have to be employed and a number of activities will take place in the area during the construction phase
 - (vii) in order to mitigate the adverse effect on wildlife and the habitat, while implementing the project, a number of measures such as chain link fencing of the area, habitat improvement by creating new water sources, strengthening of protection, habitat restoration through plantation of native trees, pasture development, development of suitable corridors for easy and undisturbed movement of wildlife etc. will be necessary. As per estimates prepared by the Chief Wildlife Warden, Madhya Pradesh, an amount of Rs. 4.60 crore would be required for this purpose;
 - (viii) the work on the water supply project had already been started and the contractors namely, M/s Larsen and Toubro has constructed its site office within the Ratapani Wildlife Sanctuary, which is in violation of this Hon'ble Court's order dated 14.2.2000. The construction work along the proposed alignment of the pipeline had already started in the non-forest area. An advance of Rs. 3.00 crore had already been paid to the contractors. For construction of break pressure tank, work has already been commenced inside the sanctuary and the excavated waste material had been dumped at an adjacent site in the sanctuary. No valid explanation for undertaking the work in violation of FC Act as well as this Hon'ble Court's order dated 14.2.2000 was given by the Project Authorities to the Committee. It is unfortunate that like many other projects this project has also placed before this Hon'ble Court a *fait accompli* situation;
 - (ix) the possibility of laying the proposed pipeline along the existing pipeline at a short distance away was explored by the Committee as this would prevent felling a large number of trees. The possibility of laying the pipeline along the entire stretch on RCC piers was also considered by the Committee. The concerned State Government officials have opined that technically both the options are not feasible. The main reason given by them are that:
 - a) the existing pipeline would carry water upto a pressure of 16 Kg/cm² and in case of any leak in the pipeline, the adjoining pipeline may be damaged due to water spouting with high pressure. The ground strata being rocky, digging of trenches would require blasting, which may damage the existing pipeline. In view of the above, the laying of new pipeline adjoining the existing pipeline was not found feasible; and
 - b) the use of piers to support the pipeline was not possible as the benefit of using the gradient / gravity by laying the pipes underground was found feasible. The option of using piers would also result in substantial increase in the cost which would make the project financially unviable. Pipelines supported by piers ranging from the height of 1-5 metres in the forest and through the wildlife sanctuary would destroy the landscape and the whole structure would become an eyesore in the sylvan surroundings, and therefore not desirable.

RECOMMENDATIONS

15. After considering the issue in totality and in view of the necessity of the project which is public interest, the Committee recommends that this Hon'ble Court, in relaxation of order dated 14.2.2000 in I.A. No. 548, may consider granting permission for use of 9.878 ha. forest land falling within

Ratapani Wildlife Sanctuary, on the following conditions:

- i) the project authorities will deposit in advance an amount equivalent to 5% of the project cost or the revised project cost, whichever is higher, to compensate for the use and damage that would be caused to the habitat in the sanctuary. The money should be deposited in the Compensatory Afforestation Fund to be set up by the MOEF pursuant to this Hon'ble Court's order dated 30.10.2002 in I.A. No. 566. The income accruing from the above amount may be used for protection and conservation works in and around Ratapani Wildlife Sanctuary, Bhimbethka World Heritage site etc. on perpetual basis. For this purpose, a scheme proposed for Rajaji National Park by the CEC for utilising Rs. 50.0 crore deposited by the Power Grid Corporation pursuant to this Hon'ble Court's order dated 3.10.2002 in I.A. No. 634, 635, 697 and 698 may please be considered, a copy of which is annexed hereto at **Annexure-A**;
- ii) the project has been already commenced and is being implemented in non-forest as well as in the forest area falling inside the sanctuary without statutory approvals and without permission of this Hon'ble Court. It is unfortunate that time and again the project proponents by deliberate action or design proceed with the execution of the project without obtaining mandatory statutory approvals and in the present case without even seeking permission of this Hon'ble Court as required in view of the order dated 14.2.2000. This is being done with the hope and confidence that once the implementation of the project has commenced and contracts have been executed all the statutory approvals / permissions would automatically be granted otherwise public money would be wasted. This is an extremely serious trend being adopted which indicates the casual and cavalier approach of the concerned Project Authorities / State Governments. It has, therefore, become necessary that responsibility for violation of the FC Act and this Hon'ble Court's order dated 12.12.1996 and 14.2.2000 should be fixed and action against the erring officials should be taken in a time bound manner. An Action Taken Report in this regard should be filed by the State Government through the Principal Secretary, Forests within a period of three months; and
- iii) that after this Hon'ble Court grants permission to the project, formal mandatory statutory clearances under the FC Act etc. shall be obtained by the Project Authorities / State Government from the MOEF and any other conditions that may be imposed while granting such clearances and the same would be in addition to the conditions which may be imposed while granting permission by this Hon'ble Court.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendation is pending.

(23)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

I. A No. 757

(Dated: 8.9.2003)

(IA filed by Mr. Harish Salve, Senior Advocate for declaring Mount Abu as eco-fragile area under the E. P. Act)

This I.A. has been filed by learned Amicus Curiae seeking appropriate orders from this Hon'ble Court to prevent indiscriminate destruction of forests in and around Mount Abu in Rajasthan. The main issue raised in the I.A. is that Mount Abu is an eco-sensitive zone in the Aravalli Hill Range having about 328 sq. km forest area. Rampant commercialisation and indiscriminate construction activity going on in the area is causing destruction of the forest in particular and the deterioration of the environment in general. The State Government has failed to take effective steps for the conservation and protection of the forest and the environment. Due to rampant destruction of forest, there has been a perceptible change in the climatic condition of the area resulting in erratic rainfall. Urgent effective steps need to be taken to protect the environment by declaring Mt. Abu and adjoining area as an eco-sensitive zone.

2. Following prayers have been made in the I.A. :
 - a) direct the union of India to take steps to declare Mount Abu as an "eco-fragile" area, and to set up a Committee under the Environment (Protection) Act, 1988 so as to do all that is necessary to protect the environment of this area;
 - b) direct the State of Rajasthan and its officers and in particular the Deputy Conservator of Forest or any other officer in charge of the forest in the area to immediately conduct a survey and report on the forest cover in the area of Mount Abu irrespective of whether the land is classified as forest or non-forest;
 - c) direct the State of Rajasthan and its officers particularly to the Collector in charge of the area not to grant or renew any lease of the property in Mount Abu till the survey is conducted and orders thereon passed by this Hon'ble Court;
 - d) direct the State of Rajasthan including the Conservator of Forest in charge of the area to ensure that there is no felling of trees whatsoever in Mount Abu without leave of this Hon'ble Court;
 - e) pending consideration of this matter relating to declaration of Mount Abu as an eco-fragile area, restrain the State of Rajasthan, its officers, servants and agents from sanctioning any building or construction activity; and
 - f) pass any other further orders as this Hon'ble Court may deem fit and proper.
3. The I.A. was heard on 9.5.2002 when this Hon'ble Court passed the following order:

11. The Expert Committee on eco-sensitive area constituted by the MOEF under the chairmanship of Prof. H. Y. Mohan Ram, Delhi University, after undertaking site visit of the area on 17.4.2003 has submitted its report. As per the report, the main observations made by the Committees that Mount Abu is the oldest mountain ranges in the Aravallis with altitude varying between 300 m to 1722 meters, most of the area of Mount Abu has been declared as a Wildlife Sanctuary except the Mount Abu Municipal area and other small villages, due to deforestation the temperature in the area has increased significantly and the rainfall has also become erratic, therefore water harvesting schemes should be planned in the area, many of the buildings in the Mount Abu city are in dilapidated conditions and the Committee also saw new constructions which are stated to be illegal. The proposal prepared by DFO, Mount Abu for notifying Mount Abu as Eco-sensitive Zone is accepted in principle. After necessary modification, revised proposal will be circulated to all the members and their expert comments would be considered before notifying the area as an eco-sensitive zone.

OBSERVATIONS AND RECOMMENDATIONS

12. After examining the issues raised in the I.A., views of the Rajasthan Forest Department, MOEF and report of the Expert Committee it is seen that there is a general consensus to declare Mount Abu as an eco-sensitive area. However, due to procedural delays, formal decision not been taken so far, although the matter is under active consideration of the State of Rajasthan as well as the MOEF for more than 15 months. Meanwhile, illegal construction work appears to be continuing in and around Mount Abu in flagrant violation of this Hon'ble Court's order dated 9.5.2002. A jaundiced view appears to have been taken by the municipal authorities that since the Hon'ble Court's order prohibits sanction of building plans for construction, any construction done without sanctioned plan does not violate this Hon'ble Court's order.
13. In view of the above, the CEC recommends that:
 - (a) the MOEF should issue draft notification to notify the Mount Abu as eco-sensitive area under the Environment (Protection) Act, 1986 within a period of two months. The process of issue of final notification should be completed without a period of six months thereafter;
 - (b) meanwhile, as already directed by this Hon'ble Court by order dated 9.5.2002, construction work of any type, including construction without sanctioned plan, should not be allowed;
 - (c) a Committee consisting of District Magistrate, Divisional Forest Officer and representative of the Municipal Board should carry out detailed survey to identify the fresh constructions done in the area after 9.5.2002 in violation of this Hon'ble Court's order and file an affidavit within four weeks;
 - (d) constructions done in violation of this Hon'ble Court's order dated 9.5.2002 should be demolished in a time bound manner;

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendation is pending.

(24)

RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
In
I. A. No. 727

(Dated: 10.9.2003)

(Regarding permission to exclude areas notified under section 4 & 5 of the Punjab Land Preservation Act, 1900)

This IA has been filed by Farmers' Welfare Association of District Ropar, Punjab seeking exclusion of the applicant association members land under cultivation / habitation from the "list of forest area" prepared by the State of Punjab pursuant to this Hon'ble Court's order dated 12.12.1996.

2. The applicant's case is that the Government of Punjab has notified the area of village Shoonk, Parach and Jayanti Majri under section 4 of the Punjab Land Preservation Act, 1900 (herein after referred to as PLPA) including cultivated and inhabited area owned by the villagers. The Punjab Forest Department in its Annual Administrative Reports, alongwith other notified area, has been showing these areas under the category " Area closed under PLPA, 1900" for the last 30 - 40 years. Pursuant to the para 5 of the Hon'ble Supreme Court's order dated 12.12.1996, details of the forest area were placed before the Hon'ble Court by the State of Punjab through the affidavit dated 21.2.1997, wherein the above mentioned area were also included. Since these area were under cultivation even prior to enactment of Forest (Conservation) Act, and did not have any characteristic of forest at any point of time they should be excluded from the 'list of forest'. After carrying out detailed field verification, the State of Punjab has already obtained MoEF's approval for exclusion of such areas from the purview of the Forest (Conservation) Act.
3. The applicants have referred to the subsequent affidavit of November, 1999 filed by the State of Punjab wherein it is stated that area under cultivation has been included under the category 'forest' in the earlier affidavit dated 21.2.1997 because such areas were closed under section 4 of the PLPA and were included in the Annual Administrative Report of the State Forest Department. Inclusion of cultivated area as forest is causing hardship and distress to people. The Affidavit states that with the view to rectify the mistake, a detailed exercise was conducted by the Revenue Department in Hoshiarpur, Roopnagar, Gurdaspur and Nawashahr under the supervision of the concerned Deputy Commissioners and afterwards village-wise and khasra-wise details of areas under cultivation / habitation, which have been closed under the PLPA has been prepared. Based on the proposal sent by the Financial Commissioner and Secretary, Department and Wildlife Preservation, Government of Punjab vide his D.O. dated 4.7.2000, the Ministry of Environment & Forests, vide their letter dated 10.11.2000 has given no objection for exclusion of the area under cultivation / habitation from the purview of the provisions of the Forest (Conservation) Act, subject to the permission of the Hon'ble Supreme Court.

OBSERVATION AND CONCLUSION OF THE COMMITTEE

4. In Punjab the area notified under section 4 of the PLPA are included in the records of the Forest Department under the category "area closed under PLPA 1900". The notification includes areas owned by individuals or communities. The State Forest Department has regulatory control over such area as provided in the PLPA and rules made thereafter. These areas are treated as 'forest' for the purpose of the Forest (Conservation) Act (FC Act). Non forestry use of such area is permitted only after obtaining prior approval of the Central Government under the FC Act.
5. Pursuant to this Hon'ble Court's order 12.12.1996, Expert Committees were constituted in various States / UTs including in Punjab to identify the forest area. Details of the areas identified as 'forest' were placed before this Hon'ble Court by the State of Punjab through an affidavit dated 21.2.1997 wherein 1,52,735 ha. area closed

under section 4 of the PLPA in Hoshiarpur, Roopnagar and Nawanshar districts was included as forest under the category “area closed under PLPA”. Subsequently an additional area of 15511 ha., closed under the PLPA in Gurdaspur district was also included in this category vide State Government’s affidavit dated 12.9.1998.

6. After receipt of large number of representations and after careful examination, the State Government decided in principle to exclude from the “list of forest areas” all those areas closed under the PLPA, which were under cultivation / habitation prior to 12.12.1996 and to continue to treat the other closed areas as ‘forest’ for the purpose of the Forest (Conservation) Act. For this purpose village wise details of area under cultivation / habitation were compiled by the respective Deputy Commissioners. The district wise details of the identified area as under:

	Area under cultivation	Area under habitation
Hoshiarpur	40235.67	1416.85
Roopnagar	6576.37	509.32
Gurdaspur	9737.89	570.54
Nawanshar	9616.89	703.37
Total	66166.82	3200.08

Grand Total 69,366.90 ha.

7. Thus out of 1,68,224 ha. area closed under PLPA and identified as “forest” by the State Government, an area of 69,367 ha. has been identified to be eligible for exclusion from the list of forest area. The field verification for area identified under cultivation / habitation in Mohali and Kharar Tehsil of Roopnagar district has been completed by the Expert Committee. Subsequently the MoEF vide letter dated 10.11.2000 conveyed its no objection to the exclusion of the area from the “list of forest area” subject to the permission of the Hon’ble Supreme Court.
8. After examining the submissions made by the applicant, affidavit filed by the State Government of Punjab and the ‘No Objection’ given by MoEF, the CEC is of the view that deletion of areas, which were under cultivation / habitation prior to 25.10.1980 i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon’ble Court’s order dated 12.12.1996, if such areas were included in the “list of forest area” on technical reasons alone. However, the areas closed under section 4 of the PLPA are recorded as ‘forest’ in the Forest Department’s records for the last 40 - 50 years. This Hon’ble Court by order dated 12.12.1996 has held that areas recorded as ‘forest’ in Government records are forest for the purpose of the section 2 of the FC Act. It would therefore be necessary to obtain prior approval of the Central Government under section 2 of the FC Act, for deleting such areas from the “list of the forest area” after following the procedure as laid down in the Forest (Conservation) Rules, 1981 and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the “list of forest area” without following the prescribed procedure and provisions of the Forest (Conservation) Act.
9. The CEC therefore recommends that the IA No. 727 may be disposed off with the clarification that the applicants / State of Punjab are at liberty to seek approval of the Central Government under section 2 of the Forest (Conservation) Act for deletion of their land from the “list of the forest area”. The Central Government may decide the application on merit after following prescribed procedure in accordance with the Forest (Conservation) Act, Forest (Conservation) Rules 1981 and the relevant guidelines.

The Hon’ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon’ble Supreme Court on the above recommendation is pending.

(25)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE
ON
AFFIDAVIT DATED 8-8-2003 FILED BY THE CHIEF SECRETARY, GOVERNMENT OF
KARNATAKA
ON STEPS TAKEN TO REMOVE ENCROACHMENTS
FROM THATKOLA RESERVED FOREST
IN COMPLIANCE WITH HON'BLE SUPREME COURT'S
ORDER DATED 30-10-2002.**

(Dated: 6.10.2003)

(Regarding progress made in removal of encroachments from Thatkola Reserve Forest)

BACKGROUND

The main I.A. 276 is about the encroachment by 148 persons of 611.20 acres of Thatkola Reserved Forest in Chikmagalur Division, District Chikmagalur, Karnataka in the ecologically rich and fragile area of Western Ghats. This Hon'ble Court on the basis of the survey conducted by the Survey of India, findings of the Court Commissioner Mr. R.M.N. Sahai and the recommendations of this Committee had passed an order in I.A. No. 276 on 30-10-2002 directing the encroachers of forest land to vacate the same voluntarily on or before 31-1-2003 and surrender the land to the Forest Department failing which they will be liable to pay penalty of Rs. 5,00,000/- per hectare per month to the Government for the period beyond 31-10-2002.

2. On 14-7-2003 the learned Amicus Curiae Mr. Harish N. Salve, Senior Advocate informed this Hon'ble Court that the orders of 30-10-2002 in I.A. No. 276 have not been complied with as possession of the encroached forest land has not been physically taken over and the plantations have not been removed when this Hon'ble Court directed the Chief Secretary to place on record the steps taken by the State of Karnataka to comply with the order dated 30-10-2002 and the present position of the land / encroachments.
3. The Chief Secretary State of Karnataka filed his affidavit dated 8-8-2003, and after considering the same this Hon'ble Court on 25-8-2003 passed the following order:

*“Let the response filed by the Chief Secretary of the State of Karnataka be transmitted to the Central Empowered Committee which shall send its recommendations to this Court within a period of two months.
List after the report is received.”*
4. Pursuant to above directions, this report is being filed by the CEC after carrying out site visit of the area on 3rd and 4th September 2003 through Mr. P. V. Jaikrishnan, Chairman and Mr. Mahendra Vyas, Member.
5. The main information given in the said affidavit is as under:
 - (i) by 31-1-2003, (i.e. the cut off dated fixed by this Hon'ble Court for voluntary surrender of the encroached forest land without payment of any penalty) 66 cases of encroachments in

- extent of 464.3329 acres in the category of coffee and paddy cultivation, houses and house site were voluntarily vacated from the forest land;
- (ii) by 26-2-2003, 80 cases covering 526.20 acres of forest land was made free from encroachment leaving a balance of 68 cases covering 85 acres;
 - (iii) between 31-1-2003 and up to 4-8-2003, 42 encroachment cases covering an area of 75.1285 acres have been removed;
 - (iv) all major encroachers having coffee plantations were evicted / have surrendered their land prior to 31-1-2003 and the remaining families are landless and belong to weaker sections;
 - (v) the remaining 40 cases covering 71.4745 acres of land are yet to be evicted. Only people have to be moved out of their houses and they are not allowed to carry out any operations on the land;
 - (vi) eight weeks of time would be required to shift the remaining 40 families in the houses which are being constructed for them;
 - (vii) all those who could not be moved out before 31-1-2003 are homeless persons who have no place to go. They also have no capacity to pay the penalty therefore the same may be waived; and
 - (viii) physical possession of lands evicted / voluntarily surrendered has been taken by the Forest Department.

SITE INSPECTION

6. During the site visit following encroached forest areas in the Thatkola Reserved Forest were inspected:-

- (i) Inspected survey no. 39 of Hesgal from where the encroachers have been evicted. Survey stones 73, 74 & 75 fixed by Survey of India were seen in the area. The Forest Department has carried out 'D' Line clearance and boundary trench work. The following six encroachers have surrendered / been evicted and their houses have been demolished:-
 - (a) Mr. Chenappa - 0.2471 acres
 - (b) Mr. Thamanna - 0.020 (House)
 - (c) Mr. Kitta - 5.4363 acres
 - (d) Mr. Sundra - 0.020 (House)
 - (e) Mr. Sundra - 0.7413 acres
 - (f) Mr. Rukmaiah - 0.3706 acres
 - (g) Mr. Shanthilal - 20.2626 acres
 - (h) Mr. Mukesh - 10.7003 acres

Coffee and areca nut plants were still found standing. They have not been removed so far.

- (ii) Inspected the forest land encroached by Mr. H. M. Sheshgowda involving 24.664 acres and Mr. C. M. Gopalagowda involving 26.9470 acres. The out house of Mr. Sheshgowda as well as of Mr. Gopalagowda were sealed. 'D' Line clearance and boundary trench work has not been done by the Forest Department on this site. These houses have not been demolished and coffee plants are still standing.
- (iii) Survey stones no. 46, 47, 44, 45, 43, 42 were inspected where Mr. Upendragowda has encroached 12.1104 acres and Mr. K.B. Pradeep has encroached 37.3194 acres. 'D' line clearance and boundary trench work has been done by the Forest Department in this area. Coffee plants were found standing.
- (iv) Inspected the area near Kenjige Gudda Coffee Estates Survey No. 4 where Mr. Manohar has encroached 26.4403 acres. Houses within the reserved forest area have been sealed but not demolished. 'D' line clearance and boundary trench work has been done in this area. Coffee, areca nut and banana plants were found to be standing.
- (v) Survey No. 306 of Palguni village was inspected where Mr. B.M. Ramesh and Mr. N.C. Vijayendra have encroached 7.5396 acres and 20.9596 acres, respectively. The Department has carried out 'D' line clearance and boundary trench work. Coffee and pepper plants were found growing.
- (vi) Survey No. 4 of Kenjigegudda Coffee Estate was inspected where Mr. H.P. Krishnegowda and Mr. H.P. Kenechemgowda (relation of Sri B.L. Shankar) had encroached 13.0966 acres and 27.6758 acres respectively. The Forest Department has carried out 'D' line clearance and boundary trench work in this area.

OBSERVATIONS OF THE COMMITTEE

7. The information made available by the State Government to the committee show that out of 611.2458 acre forest land encroached by 148 encroachers, 464.3329 acre forest land had been surrendered by 66 encroachers by 31.1.2003. Further, between 1.2.2003 and 31.8.2003, 91.6360 acre of forest land has been recovered from 53 encroachers. The remaining 55.2769 acre of forest land encroached by 29 persons is yet to be evicted.
8. The committee saw coffee, cardamom, areca nut plantations well preserved and intact. Large houses, out houses, water channels, fences etc. continue to remain intact and well preserved except in the cases of small encroachers whose abandoned houses have been demolished but there also coffee, coconut, areca nut cardamom plants were found still standing. Thus the 'possession' of the encroached forest lands were handed over by the encroachers and taken over by the Forest Department only on paper. The actual physical possession on the forest land and removal of encroachments has not taken place. A photographic Report is annexed hereto as **ANNEXURE-A** to this report.
9. In the present case the encroachment removal includes dismantling of the buildings and other structures standing on the encroached forest land, uprooting of the cash crops such as coffee, coconut, areca nut etc. and afforestation etc. to restore the forest land to its original condition. Section 64-A of the Karnataka Forest Act 1963 even provides for recovery of the cost to carry out above work from the encroachers. For the sake of convenience the relevant provisions of Section 64-A of the Karnataka Forest Act, 1963 are reproduced as under:-

"Section 64 A – Penalty for unauthorisedly taking possession of land constituted as reserved forest (District forest, village forest, protected forest and any other land under the control of the Forest Department).

- (1) *Any person unauthorisedly occupying any land in reserved forest.*

(District forest, village forest, protected forest and any other land under the control of the Forest Department) may, without prejudice to any other action that may be taken against him under any other provisions of this Act or any other law for the time being in force, be summarily evicted, by a Forest Officer not below the rank of an Assistant Conservator of Forests and any crop including trees, raised in the land any building or other, construction erected thereon shall, if not removed by him within such time as the Forest Officer may fix, be liable to forfeiture.

Provided that before evicting a person under this sub-section he shall be given a reasonable opportunity of being heard.

- (2) *Any property forfeited under sub-section (1) shall be disposed of in such manner as the Forest Officer may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition shall be recoverable from the person evicted in the manner provided in Section 109.*

The dismantling of building etc., uprooting of cash crop and afforestation etc. to restore the forest land to its original condition has not been done so far. Even the digging of the demarcation line ('D' line) and boundary trenched work only commenced recently. Thus the Supreme Court order remains uncomplished with the letter as well as in spirit.

10. As per the order dated 30.10.2002 of this Hon'ble Court Compensation @ Rs.5,00,000/- per ha. per month (i.e. Rs. 2,00,000/- per acre per month) was to be recovered from the encroacher if he failed to handover possession of the encroached forest land on or before 31.1.2003. The Forest Department has sent notices to 82 such encroachers and imposed penalty @ Rs.5,00,000/- per ha. per month totaling to Rs.11,23,11,702/- (Rupees Eleven Crore Twenty Three Lacs Eleven Thousand Seven Hundred Two Only). However, so far no money has been recovered from any of the encroachers. Instead, the Chief Secretary, Karnataka in his affidavit has pleaded for waiving of the penalty on the reasoning that these encroachers have no capacity to pay the penalty.

OTHER RELATED OBSERVATIONS

11. About 55,000 hectare compact block of thickly wooded forest area, which is under the administrative control of the Revenue Department was transferred by the Deputy Commissioner, Chikmagalur to the Forest Department vide his order dated 5.6.2002 and was to be declared as a Reserved Forest. However, the said order has been stayed vide State Government's order dated 3.7.2002. Large scale encroachments are taking place in this biodiversity rich area of Western Ghats. If immediate steps are not taken to protect it, it would soon be lost to encroachments and illicit felling.
12. The Committee has received several reports of large scale encroachment in the adjoining Reserved Forests in Sargod and Maskali Reserved Forests in Chikmagalur Division. The Committee was able to visit a small portion of the Sargod Reserved forest on 3.9.2003 and found it occupied by encroachers who have built houses and are growing paddy etc. Similar situation is reported to exist in the adjoining Madikeri and Koppa Forest Divisions also. The forest land encroached in Koppa Division alone is reported to be more than 9,000 ha. In all these places this Hon'ble Court's order have been violated as encroachers have destroyed dense forests and continue to illegally occupy valuable forest land for their personal financial gains.

RECOMMENDATIONS

13. The Committee after undertaking the site inspection of the Thatkola Reserved Forest and the adjoining areas is making the following recommendations:
- (i) physical removal of encroachments from Thatkola Reserved Forest in Chikmagalur District shall be carried out immediately by dismantling of houses and other structures, uprooting of

cash crops and afterwards the evicted forest shall be restored to its original condition by afforestation etc.

- (ii) responsibilities shall be fixed upon the officer(s) who did not comply with this Hon'ble Court's order dated 30.10.2002 to remove encroachments from Thatkola Reserved Forest;
- (iii) the state of Karnataka should recover the compensation amount payable by the encroachers for unauthorised use of forest land pursuant to this Hon'ble Court's order dated 30.10.2002 within a period of six months failing which the State should be made liable to deposit the said amount in a separate account. The amount recovered from the encroachers or deposited by the State Government should be used for restoration of the encroached forest land and for other forest conservation work in Chikmagalur District;
- (iv) the Chief Secretary, Government of Karnataka should be directed to file status report on an affidavit within a period of eight week giving details of the encroachments in Sargod and Maskali Reserved Forests within Chikmagalur District and in the adjoining Madikeri and Koppa Forest Divisions along with an action plan for removal of such encroachments in a time bound manner. The affidavit should also give the present status of implementation of the Deputy Commissioner, Chikmagalur's order dated 5.6.2002 vide which about 55,000 ha. of forest land under the control of the Revenue Department was to be transferred to the Forest Department and declared as reserved forest;

the status report about removal of encroachments from Thatkola Reserved Forest shall be filed by the Chief Secretary, Government of Karnataka every month before this Hon'ble Court and the CEC as per the directions given by this Hon'ble Court by order dated 30.10.2002.

This Hon'ble Court may please consider the above recommendations and please pass appropriate order / directions in the matter.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above report is pending.

(26)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

**In
I.A. Nos. 857 & 858**

(Dated: 6.10.2003)

(Regarding alleged allotment of forest land in Korba, Madhya Pradesh in favour of M/s Maruti Explochem Pvt. Ltd. for establishment of coal washery plant, without obtaining approval from the MoEF under the F.C. Act.)

These I.As. have been filed by Mr. Deepak Agarwal against alleged illegal allotment of forest land in Korba, Madhya Pradesh in favour of M/s Maruti Explochem Pvt. Ltd. for establishment of coal washery plant. Following prayers have been made in the I.A. :-

- A) Direct the respondents to stop felling of trees in the area allotted to M/s Maruti Explochem Pvt. Ltd. situated in Village Ratiza, Tehsil Hardi Bazar, Dist. Korba (Chattisgarh);
 - B) Direct the respondents to stop any sort of commercial / business activities in the forest area;
 - C) To take action against the concerned officers who in connivance with M/s Maruti Explochem Pvt. Ltd. have allowed business activities in the forest area;
 - D) Pass any further orders as the court may deem fit and proper.
2. After hearing the I.A. on 7.5.2003 Hon'ble Court transferred these I.As. to the CEC for examination and giving its recommendations. For the sake of convenience the operative part of Hon'ble Court's order is reproduced below: -

“..... Let these I.As be transferred to the Central Empowered Committee.....”

3. Pursuant to above directions of this Hon'ble Court, this report is being submitted after examining the I.A. during the hearings held on 3.6.2003, 9.7.2003, 25.7.2003 and 14.8.2003.

ISSUES RAISED BY THE APPLICANT

4. As per the Applicant M/s Maruti had submitted an application to the Chief Minister, Chattisgarh on 1.7.2000 for allotment of about 60 acres of land in Village Nawagaonkhurdh, Tehsil Pali, District Korba for setting up a coal washery plant. The application was forwarded to the Sub Divisional Officer (SDO) through the District Collector, Korba. After considering the recommendations of the revenue and forest officials, 37.91 acre of land was granted on lease in favour of M/s Maruti in Village Ratiza of Korba District.
5. The main allegations made by the applicant is that the area allotted to M/s Maruti actually falls in Khasra No.594/1 and 611/1 in Village Nawagaonkhurdh which is shown as forest in Govt. records. By manipulation of records the land is now being shown in the revenue records as part of Khasra No.850/23 to 850/29 of Village Ratiza. The land has been allotted without obtaining approval of the Central Govt. under Section 2 of the Forest (Conservation) Act by showing that the land is a non forest land. The area contained above 1000 trees. For establishing the coal washery plant, M/s Maruti had cut a large number of trees illegally.

4. During the hearings held before the CEC voluminous documents were submitted by the applicant to support his claim. The main submissions made by the applicant are summarised as under: -
- i) About 4000 acre of land were acquired by the Coal India Ltd. for its subsidiary the South Eastern Coal Fields Ltd. (SECL) in about 1985-86 under the provisions of the Coal Bearing Areas Acquisition and Development Act 1957. This included the land falling in Village Nawagaonkhurdh in total and about 2500 acres of land in Village Ratiza. This area are recorded as forest in Govt. records. The land allotted to M/s Maruti forms part of the said acquired land.
 - ii) In the proceedings drawn by Tehsildar Hardy Bazar and SDO Katghora, the land falling in village Nawagaonkhurdh were interpolated and shown in village Ratiza. Simultaneously by tempering with the records this land was shown to be outside the area acquired by the SECL.
 - iii) The records clearly establish that land allotted to M/s Maruti is actually a forest land. This has also been supported by Mr. Deepak Srivastava and Mr. D.D. Negi – from Regional Office of the Ministry of Environment and Forest. The dissenting note given by the other two members of the committee namely Mr. Kaushlendra Singh and Mr. Vivek Dewangan, cannot be relied upon as they had, like other officials in the State of Chattisgarh, gone out of way to promote the project of M/s Maruti Explochem Pvt. Ltd., ignoring and by passing various law, rules and regulations as well as this Hon'ble Court's order dated 12.12.1996.
 - iv) The area allotted to M/s Maruti was identified to be an orange area (undemarcated protected forest) and was found suitable by the Orange Area Survey and Demarcation Unit, Bilaspur for notification as Andikachher forest block. The report of the unit was also forwarded by the Chief Conservative of Forest (Land Management) to the State Govt. vide his letter dated 27.4.2002. The final notification was not issued due to technical reasons.
 - v) During the first meeting of the Inter Department Committee held on 17.10.2002 the allotment of land could not take place as the Forest Department had informed by letter dated 17.10.2002 that it was a forest land and contains 200 trees per hectare. During the meeting it was decided to get joint verification of the area done. The directions for joint verification were issued by the Revenue Department on 18.8.2002. On the same day (a) the intimation for the joint verification was given to the District Collector and the DFO; (b) both of them deputed their subordinate officers for the joint verification; (c) the officers so deputed went to the area which is about 40 kilometers away from their head quarters; (d) carried out the enumeration of the trees; (e) the site inspection was done and (f) after concluding their findings, submitted their joint report to the Divisional Forest Officer. Completion of all these activities in one day is physically impossible especially as there are no fax machine facilities available with the Sub DFO, SDM, Range Forest Officer, Tehsildar etc.
 - vi) The Ministry of Coal as well as MOEF have consistently taken a view that (a) the land allotted to M/s Maruti is a forest land; (b) is part of the land demarcated for SECL; and (c) approval under the F.C. Act is mandatory for any non forestry use of the land.
 - vii) a large number of trees have been illegally cut by M/s Maruti in the area allotted to them for which prosecution has been initiated by the State Govt.
 - viii) in the joint verification report also it is clearly mentioned that the land appears to be a forest land having 150 to 200 trees per hectare.
 - ix) Comparing the trees recorded in the enumeration list prepared by the Forest Department with the enumeration done earlier by the Revenue Department, it may be seen that there is wide variation between the two lists in respect of number of trees of different species as well as trees falling in different girth classes (though total number remains same). Further, if 399

trees were already illegally felled as agreed to by the State Govt., how the number of trees could have been found to be same in both the enumeration lists.

STAND OF THE STATE OF CHATTISGARH

7. The State of Chattisgarh vehemently denied that the land allotted to M/s Maruti was a forest land or that any undue favour was shown to them. It was emphatically mentioned that the land was allotted to M/s Maruti after it was clearly established that it was not a forest land. The main submissions made by the State of Chattisgarh are summarised as under: -
- i) The land allotted to M/s Maruti is not recorded either as a reserved forest area or as a protected forest land in the records of the Forest Department;
 - ii) no blanket Notification for the Bilaspur District could be located which establishes that the land allotted to M/s Maruti was notified as undemarcated protected forest.
 - iii) the proposal prepared by the Forest Department for inclusion of the land as part of Andikachher Forest Block was erroneous as such a proposal could have been prepared only in respect of undemarcated protected forest, the land not falling in this category should not have been included in the proposal. The return of the proposal by the State Govt. without specific mention of the fact that it was not undemarcated protected forest will not derogate from the above fundamental fact. This fact was not specifically mentioned while returning the proposal because it covered all the orange area in the state including the present land.
 - iv) the absence of a gazette notification clearly shows that the land is not a forest land. The requirement of Section 78 Indian Evidence Act regarding proof of Officials Documents has not been satisfied and hence there can be no conclusion to the contrary on presumptions as is being sought by the Applicant.
 - v) as per available traversing records for the year 1893-94, the land in dispute was traversed by Survey of India and it was named as Navagaon Khurd surrounded by villages Ratiza, SirkiKhurd and Chainpur and its area was measured to be 57.25 acres. Twelve boundary marks were fixed in 1893-94, which are found even now. Out of the 12 boundary marks, 7 are towards village Ratiza, 3 are towards village Chainpur and 2 boundary marks are towards village SirkiKhurd.
 - vi) the settlement operation carried out in 1929-30, did not cover the land in question in that the other two processes of Survey namely Rakbabarari (Khasra wise lands are measured thrice and average is taken out) and Khanapurti (the mismatch in the areas of different Khasra nos. are resolved) were not completed. Since the survey operation was not completed, no survey number was assigned to this piece of land. It remained unsurveyed till June 2002, when NTPC, Sipat applied for this land for its Merry Go Round (MGR) railway track and subsequently Maruti Explochem Ltd. also applied for allotment of this land to Collector, Korba.
 - vii) from July 2002 to 9.10.2002, the process of survey was completed by Collector Korba as per provisions of Chattisgarh Land Revenue Code and survey numbers (Khasra nos.) were duly assigned from 850/23 to 850/29 and the land was classified as Grass land (Grazing land). As out of 12 boundary marks fixed in 1893-94, 7 boundary marks were towards village Ratiza, the land was treated as part of village Ratiza and Khasra nos. 850/23 to 29 were allocated after the last Khasra nos. 850/21 of village Ratiza.
 - viii) the Collector of Korba classified the land as grassland U/s 247 of the Land Revenue Code on the basis of topographical and other features.
 - ix) the attempts of the applicant to confuse the identity and status of the land as being part of the lands allotted to South Eastern Coal Fields Ltd. Under Coal Bearing Act and being part of Bade Jhad Ka Jungle of Khasra No. 594/1 and 611 etc., is unjustified. The Survey of India

sheets of 1893 – 1894 gives the traverse data and station data (boundary marks called chandas are still found at the site) based on stellar / star observations thus the identity of land is fixed by scientific observation and traversing. Therefore the identity and location of the land is indisputable and the Applicant's attempt is only to confuse the issue.

- x) even the Chairman of the fact finding committee formed by the Ministry of Environment and Forests ('MoEF') for ascertaining the status of the land in question by verifying the original revenue records has reported at para 3, "after considering the facts and the revenue records, that it is evidently clear that 37.91 acres of land allotted to Maruti Explochem Pvt. Ltd. is not from these two Khasra Numbers."
- xi) further, the other two members of the fact finding committee have found that the land in question was not a forest land as per revenue and forest records and sent their final report to the MoEF and the CEC.
- xii) the erstwhile State of M.P. has, pursuant to the order of the Hon'ble Supreme Court dated 12.12.1996 in W.P. No.202/95, issued a notification dated 13.1.1997, providing that the lands with a minimum area of 10 ha. and with 200 trees/ha would be defined a "Forests". This definition has been adopted by the State of Chattisgarh to determine whether any land is a forest land or not.
- xiii) the lands in question do not come within the said requirement. At the material time, the land had a total of 926 trees and 513 stumps totaling 1439 trees/stumps/pollards at an average of 76 trees per ha. In fact the land is in two parts situated on either side of the road. (21 acres and 17 acres) and one side has only 177 trees in 17 acres meaning a density of only 25 trees per ha.
- xiv) indeed the Applicant has admitted both in the pleadings before the CEC and the Hon'ble Supreme Court that the land has about 1000 trees only. The attempts made by the applicant to contend that larger number of trees existed on the land in question by getting the enumeration done on the adjoining unallotted 21 acre of land and extrapolating the same is misleading.
- xv) the enumeration done on three different occasions have confirmed the total number of trees at 926 placing the matter beyond any pale of doubt. The doubt sought to be created by the Applicant about the enumeration of 17/18.10.2002 is baseless and the submissions made in the first Reply and the subsequent clarifications made in the Additional Statement are reiterated in this regard.
- xvi) out of the 926 trees, 399 trees felled by Maruti in December 2002 after depositing the evaluated amount for the 926 trees with the Collector Korba. Accordingly, the forest enumeration done by the forest department on 11th and 12th July 2003, has confirmed that there are 1040 trees / stumps / pollards (926 - 399 + 513 stumps / pollards) still standing on the land in question.
- xvii) As per the Hon'ble Supreme Court order dated 12.12.1996 the land will be considered to be a forest land if and only if it is legally notified as forest or recorded as 'forest' in Govt. records or has the characteristics of forest – whether recorded as forest or otherwise in Govt. records. Since in the instant case the land was never legally constituted as forest, or recorded as forest in Govt. records or it has the characteristics of forest (as per the guidelines issued by the State Govt.), it cannot be and should not be treated as 'forest' for the purpose of the Section 2 of the F.C. Act.

SUBMISSIONS MADE BY M/S MARUTI

8. Similarly M/s Maruti vehemently denied that any undue pressure was exerted for allotment of land to them. They also pleaded that the land allotted to them was not a forest land. It was strongly argued by them that the Application has been made but by his competitors though proxy litigation fearing

that their business interests may be adversely affected if the coal washery being setup by M/s Maruti becomes operational. The main argument of M/s Maruti are summarised as under: -

- a. Ministry of Environment and Forest vide its notification dated 19.9.1997 has prescribed that ash content of the coal should not exceed 34% and that the coal fired power plants should use only washed coal.
- b. In Korba, which is one of the biggest open cast coal mines in the country, there are two other coal washeries namely BSES and Aryans near the pit-head. M/s Maruti is establishing a coal washery of 5 million tones per annum as an integrated project costing Rs.250/- crores. Considering the huge bottleneck of transporting coal and the technical requirement, M/s Maruti sought allotment of land nearest to the pit-head. After making detailed inquiries, spot verification and after obtaining No Objection from various Departments including the Forest Department, 37.19 acre of non forest land has been allotted to M/s Maruti.
- c. During the joint survey carried out on 18.10.2002, it was established that the said land was a part of unsurveyed land, having 926 trees scattered all over.
 - i) M/s Maruti is committed to supply 6.75 lacs tone per month of washed coal to Gujarat State Electricity Board.
 - ii) Aryans, who is having a coal washery in the vicinity of M/s Maruti's project and is likely to be adversely affected after completion of M/s Maruti's project, has initiated proxy- litigation to protect their commercial interest. The present Application filed before Hon'ble Supreme Court is not a Public Interest Litigation but has been stage managed by the business rivals. In addition to moving the application before the Hon'ble Supreme Court, two other Public Interest Litigations were filed in the Chattisgarh High Court also and an ex-parte stay was obtained on 24.4.2003 with the sole purpose of delaying the project. After the factual position was brought to the notice of the Hon'ble Chattisgarh High Court, M/s Maruti were permitted to carry out construction on certain terms and conditions.
 - iii) The land allotted to M/s Maruti is unsurveyed revenue land and not a notified protected forest. It is not a forest land (deemed forest) as per the notification dated 13.1.1997 issued by the State Govt. as the number of trees per ha. are much less than the required number of 200.
 - iv) The land is not from Khasra Nos. 594/1 and 611 but from the Khasra Nos. 850/22 – 850/29. The revenue and other relevant records, the joint survey report dated 18.10.2002 as well as the majority report of the committee constituted by the MOEF categorically substantiates and accepts the above.
 - v) It has almost completed its civil work of the coal washery and has already placed required orders for plants and machinery. It had already spent over Rs.10.00 crores. Hundred of workers have been engaged by the company. Suspension / stoppage of the on going work will have disastrous consequences for the company.
 - vi) The coal washery would be using 10 million tones of raw material annually for which about 2500 trucks per day would be needed. In view of gigantic and mammoth transportation involved, a small distance also would make substantial difference in the cost of the washed coal and consequently the financial burden on the electricity boards which are the direct consumers.
 - vii) The establishment of coal washery is in conformity to the statutory requirement and is also in the larger public interest considering the environmental requirement.

- viii) As has consistently been laid down by the Hon'ble Supreme Court, for sustained development it is necessary to strike a balance between the environment and industrial development and the petitioners like the present one should be summarily dismissed at the threshold stage. Keeping the environmental benefit which would be derived by M/s Maruti's coal washery a more pragmatic and rational view needs to be taken as it is a step towards improvement and not degradation of environment.
- ix) Public interest whatsoever would be served by holding up / delaying this environment friendly project and it would rather be counter productive as the establishment of coal washery out weights even if there is minor loss in cutting not of a few scattered trees, shrubs and bushes.
- x) The present proceedings are at the behest of proxy-litigations fighting for personal / private interest to jettison the project.
- xi) The land could be treated as forest only if any of the following three conditions are fulfilled: - (a) the land has been notified as a reserved forest under Section 4 or protected forest under Section 29 of the Indian Forest Act; (b) the land has been shown as forest land in the revenue records or (c) the land in question is actually a forest as defined in the dictionary even though it is not notified or recorded as forest. It has been conclusively shown by the State Govt. that it does not fall in any or the above three categories and therefore cannot be treated as forest.
- xii) It is not a case where a private party have used certain forest land for non forest purpose against the wishes of the State. The State categorically asserting that the land is not a forest land.
- xiii) Since in the present case the State is stating that it is not a forest land, any doubt in the matter must be resolved in favour of the State and not in favour of a third party / interloper, who is claiming that it is a forest land.
- xiv) The three member committee constituted by Ministry of Environment and Forest has by majority taken a view that it is not a forest land. In fact all three members of the committee had concluded that this land is neither notified as forest under the non Forest Act nor recorded as forest in Revenue records. The difference of opinion was basically wheather the land is having characteristics of forest or otherwise, for which the committee by the majority report of two members has concluded that it is not forest land as there are much fewer then 200 trees per ha., which is the standard laid down by the undivided state of Madhya Pradesh and adopted by the State of Chattisgarh. The question of the land being as a forest land, the test of 200 trees per hec. has been submitted by the State to the Supreme Court and the Supreme Court has not dis-agreed with the same at any stage.

REPORT OF THE COMMITTEE CONSTITUTED BY MoEF

9. Ministry of Environment and Forest vide letter dated 10/11th June, 2003 had constituted a committee under the Chairmanship of the Chief Conservator of Forest (Central), Regional Office Bhopal (RCCF Bhopal) with Conservator of Forest, Bilaspur Circle and Joint Secretary, Revenue Department, Government of Chattisgarh as its members to enquire into alleged violation of the F.C.Act in the instant case. The Chairman of the committee has concluded that the land allotted to M/s Maruti is a forest land whereas the other two members have concluded that the land is a non forest land.

OBSERVATIONS AND CONCLUSIONS

10. The main issue examined by the CEC was wheather the land allotted to M/s Maruti is a forest land or otherwise. After considering the relevant records, submissions made by the State Govt., M/s Maruti as well as the Applicants, following observations are made by the CEC: -

- i) On an application made by M/s Maruti to the Chief Minister, Chattisgarh for allotment of land for setting up a coal washery plant 37.91 acre unsurveyed govt. revenue land in Village Ratiza, which was subsequently given new survey Nos. 850/22 to 850/29, was found to be suitable for allotment and for which a detailed report was submitted by SDO (Revenue), Katghora through District Collector, Korba to Govt. The report inter-alia included No Objection Certificate from Gram Panchyat and enumeration list of 926 trees standing on the area (annexed hereto as **Annexure A**).
- ii) The allotment of the land was discussed by the Inter Department Committee on 18.10.2002 during which the Forest Department informed that the land being considered for allotment to M/s Maruti contains a large number of trees and therefore may come under the purview of the Forest (Conservation) Act, 1980. This stand was taken on the basis of the DFO, Katghora's letter dated 17.10.2002, where in it was mentioned that as per the joint verification done by the Beat Guard Ratiza and Halka Patwari, the area comes under the category "Bade Jhar / Chote Jhar Ka Jungle" and contains about 200 trees per ha. A copy of the said letter is appended hereto as **Annexure B**. In the meeting, it was decided that the proposed land will be jointly inspected by the Forest Department, Revenue Department and Industrial Department and the inspection report will be provided by 22.10.2002.
- iii) Accordingly Joint Secretary in Revenue Department vide his letter dated 18.10.2002 asked

the Collector, Korba to send the joint inspection report after getting the site inspection done. A copy of the said letter was also endorsed by him to the Deputy Secretary, Forest Department who in turn endorsed it to the Conservator of Forest, Bilaspur and DFO, Katghora on 18.10.2002 itself.

- iv) On the instructions of DFO, Katghora a team consisting of Sub DFO, Pali, Naib Tehsildar and Assistant Manager, Chattisgarh State Industrial Development Corporation, Bilaspur jointly inspected the area on 18.10.2002. The joint inspection report dated 18.10.2002 along with covering letter of SDO, Pali is appended hereto as **Annexure C**. Based on above, DFO Katghora's forwarding letter dated 19.10.2002, Collector Korba's report and other documents the land was allotted to M/s Maruti.
- v) Subsequently, after receipt of the complaints against the alleged irregularities committed in allotment of the land to M/s Maruti, the State Govt. vide letter dated 20.1.2003 decided to enquire into the matter for which Dr. P. Raghwan, Chief Secretary, Commerce and Industry Department was made the enquiry officer. The CEC had specifically asked the State Government to file a copy of this report, however, the same was never filed nor any explanation about its alleged mysterious disappearance was given.
- vi) The land allotted to M/s Maruti was indeed an unsurveyed area of Ratiza Village and not part of the survey Nos. 594/1 and 611/1 of Village Nawagaonkhurdh (as is being claimed by the applicant).
- vii) Notwithstanding the non availability of any notification showing that the area was a notified reserved forest or protected forest, this area was continuously being considered by the Chattisgarh Forest Department to be "forest". In the DFO, Katghora letter dated 17.10.2002 (please refer Annexure B) it is clearly mentioned that the land comes under the category of Bade Jhar / Chote Jhar Ka Jungle (i.e. orange area / undemarcated protected forest) and contains about 200 trees per ha. In the joint site inspection report dated 18.10.2002, it is clearly mentioned that as per the records maintained by Forest Department, the proposed area was surveyed by Orange Unit, Bilaspur during 1997-98 and was proposed to be included under Andikachher Forest Block. After survey by the Forest Department, temporary pillars (for the proposed Forest Compartment) were also put in, however no gazette notification for the forest block was issued. It is also mentioned that the area is having Sal mixed forest; and it contains about 150 to 200 trees per ha.
- viii) The site inspection report had not concluded that the area was not a forest land. The report does not show that any enumeration was actually done. The report after dealing with the position on the ground and the views earlier taken by the Forest Department refers to the enumeration done earlier by the Revenue Department by stating that the survey no. wise details of trees have separately been prepared showing that the area contains 926 trees. It may be seen that the enumeration list of trees enclosed with the joint inspection report is actually a xerox copy of the enumeration list prepared earlier by the Revenue Department (please refer Annexure A and Annexure C). During the hearing, the State of Chattisgarh had earlier taken a view that the enumeration was actually done by the Joint Inspection Team on 18.10.2002. Later on, the stand was changed and it was stated that the earlier enumeration was only verified on the ground during the joint inspection. The CEC is unable to agree with the contention of the State Govt. especially as the joint inspection report does not show that the enumeration was physically done or verified by the team.
- ix) The reports given by the Sub Divisional Forest Officer, Pali and subsequently by DFO, Katghora and other Senior Officers do not correctly reflect the contents of the joint

inspection report. The CEC is of the considered view that the conclusion drawn on the basis of the joint inspection report that the land was a non forest land was totally erroneous. Such a conclusion could not have been drawn on the basis of the joint inspection report.

- x) It is physically impossible to complete the entire exercise of a) issue of instructions by the Govt. in revenue department; b) receipt of instructions by the Govt. in forest department; c) transmissions of instructions by the Govt. to District Collector and DFO; d) intimating the concerned official; e) movement from head quarters to the field and back to the head quarters; f) demarcation of the area; g) enumeration of the trees; h) physical inspection of the area and i) preparation of the joint inspection report in one day. The speed with which the entire exercise is reported to have been done casts serious doubts about authenticity and impartiality of the joint inspection report especially in the light of wrong conclusions drawn in the report.
- xi) The Orange Area survey and Demarcation Unit, Bilaspur had found the area allotted to M/s Maruti suitable for notification as demarcated protected forest. For this, after joint inspection, temporary boundary pillars were also erected on the ground. A detailed proposal for declaring the area as part of Andikachher forest block was submitted to CCF (land) survey vide letter dated 10.1.2002 who in turn submitted the proposal to the Govt. on 27.4.2002. The proposal was returned back by the Govt. with certain queries on 10.6.2002. The entire joint inspection of the area, demarcation of the area, preparation of the proposal by the unit, submission of the proposal by the forest department, return of the proposal by the State Govt. was done by treating the area as undemarcated protected forest and at no stage and at no level any contrary view was taken.
- xii) During the hearing, the State had strongly pleaded that merely forwarding the proposal does not make the area “forest” as no notification was issued. The Committee is unable to agree with the contention of the State Govt. as the proposal was sent for notifying the area as “Andikachher forest block” (a demarcated protected forest) with the clear understanding that the area already comes under the category of undemarcated protected forest. The Committee is also unable to agree with the contention of the State Govt. that the proposal was wrongly prepared as in such a case the proposal should have been rejected on this ground. In any case, atleast before allotment of the land to M/s Maruti this issue should have been sorted out.
- xiii) Though the number of trees enumerated by the Revenue Department and subsequently by the Forest Department are reported to be exactly same i.e. 926, there are wide variations in number of trees of a particular species as well as in their girth sizes.
- xiv) Though the land allotted to M/s Maruti was “forest” as per the records of the Forest Department up to 17.10.2002 (now claimed that it was wrongly being treated so), none of the senior officers right from the Divisional Forest Officer up to the top found it necessary to carry out site inspection, verification of records or enumeration of trees before agreeing that it was actually a non forest area. It was left to the discretion of the Sub DFO, Pali to decide the issue inspite of sensitivity of the matter.
- xv) The Forest Department vide DFO Katghora’s letter dated 17.10.2002 had reported that the area contains about 200 trees / ha. On the other hand the Revenue Department after remuneration had reported that the area contains in all 927 trees i.e. about 50 trees per ha. Such a wide difference in the number of trees / ha. was readily accepted by the Forest Department without verification by the senior officers.

11. From the above it is clear that since the land allotted to M/s Maruti was being considered to be “forest” it could not have been legally allotted to M/s Maruti without obtaining prior approval of the Central Govt. under the F.C. Act. If the land was indeed a non forest land, as now being made by the State Govt., and the Forest Department was wrongly treating the land as undemarcated protected forest (orange area), the issue of incorrect classification should have been thoroughly examined before allotting the land. Instead, at the time of the allotment of the land, the area was treated as “non forest “ by misrepresentation of the contents of the joint inspection report and by overlooking the consistent view being taken by the Forest Department in the past.
12. The CEC therefore concludes that the land allotted to M/s Maruti is a forest land and therefore prior approval of the Central Govt. under the F.C.Act was necessary before allowing setting up of the coal washery plant by M/s Maruti.

RECOMMENDATIONS

13. In view of above the CEC recommends that the land allotted to M/s Maruti should be treated as “forest” for the purpose of the Section 2 of the F.C.Act. The State of Chattisgarh and M/s Maruti should be directed to seek approval of the Central Govt. under the F.C.Act for setting up of the coal washery plant on it. The application, as and when moved through the State Govt. should be decided expeditiously by the Central Govt. on merit in a time bound manner. In case the Central Govt. approves the application, in addition to any other conditions that may be imposed by the Central Govt., M/s Maruti will be liable to pay net present value of the forest land pursuant to this Hon’ble Court’s order dated 30.10.2002 in I.A. No. 566.
14. Taking an overall view of the situation, the CEC is recommending that pending a decision under the F.C.Act, no further construction should be allowed. In case approval under the F.C.Act is refused by the Central Govt., M/s Maruti shall be liable to demolish building / structures constructed at its own cost.

GENERAL

15. During the hearings Additional Chief Secretary (Forest), Govt. of Chattisgarh and Principle Chief Conservative of Forest, Chattisgarh Forest Department were co-opted as Special Invitees. After conclusion of hearings, the observations and conclusions drawn by the CEC were discussed with them. Subsequently their written views have been received by the CEC vide letter dated 8.9.2003, which is appended hereto as **Annexure D.** Their written views are similar to the stand taken by the State of Chattisgarh during the hearings and therefore have not been discussed separately in the report.

The Hon’ble Court may please consider the above recommendations and may please pass appropriate orders in the matter.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon’ble Supreme Court on the above recommendation is still awaited.

(27)

**RECOMMENDATIONS
OF
THE CENTRAL EMPOWERED COMMITTEE**

In

I.A. Nos. 836 & 895

(Dated: 23.10.2003)

(Regarding appeal filed by the State of Bihar against the permission given by the MoEF for mining inside Valmiki Wild Life Sanctuary (Tigers Reserve), Bihar)

I.A. No.836 of 2002 has been filed by the State of Bihar against the order dated 20.8.2002 passed by the Additional Director General of Forests (Wild Life), Ministry of Environment and Forest restoring the mining leases of Sh. R.P. Verma and Sh. Rai Brij Mohan Sharma in Valmiki Wild Life Sanctuary, Bihar. Following prayers have been made in the I.A.:-

- a) quash the impugned order dated 20.8.2002 passed by Additional D.G.F. (Wild Life); OR
- b) pass such other order / orders as this Hon'ble may deem fit and proper in the fact and circumstances of the case.

2. After hearing the matter on 16.12.2002, this Hon'ble Court passed the following order:-

“Mr. Himanshu Shekhar, learned counsel accepts notice on behalf of Respondent No.4 and Mr. Rao, learned counsel accepts notice on behalf of respondent Nos.1-3.

Counter affidavit be filed within four weeks. Rejoinder affidavit, if any, be filed in another two weeks.

Till further order, the operation of the order dated 20th August, 2002 shall remain stayed. The above order will apply to similar other areas in the National Park. It would be the responsibility of the State Government to ensure the compliance of the same.”

3. I.A.No. 895 of 2003 has been filed by Sh. Ramesh Prasad Verma, Respondent No.4 in I.A.No.836 of 2002 seeking vacation of the above stay order. Following prayers have been made in the I.A.:-

- a) vacate the aid interim stay granted vide order dated 16.12.2002 by this Hon'ble Court in the aforesaid matter.
- b) pass such other and further orders as this Hon'ble Court may deem fit and present case.

4. These I.As were heard by this Hon'ble Court on 1.9.2003 when the following order was passed:-

“When the matter is taken up for hearing, it is agreed between the parties that these I.As may be sent to the Central Empowered Committee (CEC). We order accordingly. The CEC is requested to send its views within eight weeks. List thereafter.”

5. This report is being submitted pursuant to above directions after examining the matter during the hearings held on 16.9.2003 and 23.9.2003.

BACKGROUND

6. After considering the proposals received from the State of Bihar, Ministry of Environment and Forests (MoEF) accorded approvals under the Forest (Conservation) Act, 1980 (F.C. Act) for two mining leases in favour of Mr. Ramesh Prasad Verma (Respondent No.4 in I.A. No.836) and Mr. Rai Brij Mohan Sharma (Respondent No.5 in I.A. No.836) for a period of ten year each in Valmiki Wild

Life Sanctuary vide orders dated 15.2.1994 over an area of 42 ha. and 20 ha. respectively. Subsequently another mining lease was approved in favour of Sh. Vinay Verma over an area of 12 ha. vide MoEF's order dated 2.3.1998.

7. Pursuant to this Hon'ble Court's order dated 14.2.2000, the State of Bihar vide letter dated 21.9.2001 requested the MoEF to cancel the mining leases of the Respondent No.4 & 5 which were inside the Valmiki Wild Life Sanctuary. Based on above, MoEF vide letter dated 6.12.2001 cancelled the approvals granted under the F.C. Act for all the three mining leases falling inside the Valmiki Wild Life Sanctuary. The cancellation of the mining leases was challenged by Sh. R.P. Verma as well as Sh. Rai Brij Mohan Sharma before the Patna High Court on which the Hon'ble High Court vide order dated 11.4.2002 directed the Additional D.G.F. (Wild Life), MoEF to issue show cause notice to them and after hearing them dispose off the matter.
8. After issuing show cause notice and holding personal hearing the Additional D.G.F. (Wild Life) MoEF vide order dated 20.8.2002 restored the mining leases of both the respondents. The I.A.No.836 has been filed by the State of Bihar against the above order.

SUBMISSIONS MADE BY THE STATE OF BIHAR

9. The submissions made by the State of Bihar are summarized as under:-
 - (i) Hon'ble Supreme Court by order dated 14.2.2000 in I.A.No.548 has prohibited removal of dead, diseased, dying or wind fallen trees, driftwood and grasses etc. from any National Park or Sanctuary. Even the operation of the earlier orders made in this regard by the State Governments have been stayed. No mining can now be allowed inside the Valmiki Wild Life Sanctuary without obtaining prior approval from the Hon'ble Supreme Court. Therefore, the order passed by the Additional D.G.F. (Wild Life) allowing mining inside the sanctuary was in contravention to the orders of the Hon'ble Supreme Court;
 - (ii) Section 29 of the Wild Life (Protection) Act, 1976 prohibits destruction, exploitation or removal of Wild Life in a sanctuary unless and until it is permitted by the Chief Wild Life Warden after the State Government is satisfied that it is necessary for the improvement and better management of Wild Life. Allowing mining inside a sanctuary is highly detrimental to the Wild Life and its habitat and therefore is against the provisions of Section 29 of the said Act;
 - (iii) the MoEF is not competent to issue mining lease inside a sanctuary without the concurrence of the State Government;
 - (iv) as per the policy decision taken by the MoEF vide letter dated 4.12.1998, no development work is permissible inside a sanctuary. In addition MoEF vide letter dated 4.5.2001 has instructed the State Government that no proposal seeking use of forest land inside a National Park or a Sanctuary should be sent to the MoEF without getting the prior approval of the Hon'ble Supreme Court. The order of the Additional D.G.F. (Wild Life) is in violation of the MoEF's own policy decision;
 - (v) during monitoring the MoEF had found serious violations of the stipulated conditions on which the mining was earlier allowed in favour of Respondent No.4. It was also found that the quarry operations had disturbed Wild Life and the mining in the river beds had laid to the river changing its course. After considering the monitoring report the mining lease of Respondent No.4 was earlier cancelled by the MoEF vide order dated 9.7.1996. The resumption of mining will cause destruction of the habitat of the sanctuary;
 - (vi) the MoEF has opposed even allowing seasonal collection of Kendu (Tendu) leaves for livelihood by poor local inhabitants inside the National Park / Sanctuary for short periods of

2-3 weeks per year on the ground that it will have adverse effect on the Wild Life habitat. The mining being much more destructive should not have been allowed;

- (vii) before taking a decision views of the State Government and the Chief Wild Life Warden were not sought;

SUBMISSIONS MADE BY SH. R.P. VERMA

10. The main issues raised by Sh. R.P. Verma, Respondent No.4 in I.A. No. 836 and Applicant in the I.A.No. 895 are summarized as under:
- (i) The river Pandai, flows from the higher reaches of Himalaya's in Nepal and hits the plains for the first time near the site of Respondent's mining lease. It being a mountain river, continuously brings stones, pebbles etc. from the higher reaches. If these stones / pebbles are permitted to accumulate, it will lead to the rising of the river bed with consequent flooding in the area causing general disturbances to the ecology and the environment. To prevent floods etc. it is, therefore necessary to have a regular system in place for the removal of washed down stones and pebbles from the river beds. Removal of pebbles by hand picking from the river beds is beneficial in controlling floods and regulating the water flow in the rivers especially in the rivers adjoining hilly terrain;
 - (ii) the Chief Wild Life Warden vide his letter dated 18.3.1993 had given the opinion that the removal of stones from the river beds in the Valmiki Wild Life Sanctuary is beneficial for Wild Life Conservation and Protection and to train the course of the river (ANNEXURE R-4/3). The approval under the F.C. Act for the mining lease of the Respondent was accorded by the MoEF after taking into consideration the opinion of the Chief Wild Life Warden;
 - (iii) the Hon'ble Supreme Court has prohibited mining in a sanctuary unless it was for the benefit of the sanctuary. Section 29 of the Wild Life (Protection) Act permits mining in a sanctuary if it is for the benefit of the sanctuary. Since the collection of pebbles by hand from the river beds is beneficial for the sanctuary it does not violate Hon'ble Supreme Court's order or the said Act;
 - (iv) the lease area does not fall within a sanctuary declared in accordance with law as the statutory provisions with regard to determination of private rights have not been complied with and the final notification under Section 35 of the Wild Life (Protection) Act has not been issued till date;
 - (v) as per the monitoring report dated 7.6.2001 of the Regional Chief Conservator of Forest, MoEF no impact of the mining on forest and Wild Life was observed (ANNEXURE R-4/6);
 - (vi) Ministry of Environment and Forest vide order dated 28.5.1997 had constituted a committee comprising of Mr. P.K. Sen, Director, Project Tiger, Mr. Brijendra Singh and the Chief Wild Life Warden, Bihar to suggest the safeguard and stipulations subject to which mining could be allowed. The said committee recommended to allow mining subject to demarcation of 25 % of the river bed on either side as "no mining zone". The approval was accorded by the MoEF after considering the report of the said committee and incorporating the safeguards recommended by the committee;

VIEWS OF MINISTRY OF ENVIRONMENT AND FOREST

11. In the affidavit dated 27.1.2003 filed by Mr. Anurag Bajpai, Assistant Inspector General of Forests, MoEF the chronology of the events, details contained in the Additional D.G.F's (Wild Life) order, facts leading to the filing of the I.A. by the State of Bihar, process followed for sanction of the mining lease, details of the Hon'ble Patna High Court order dated 11.4.2002, issues raised in the

show cause notice dated 16.5.2002 issued by the Additional D.G.F. (Wild Life), explanations taken into consideration by the MoEF while granting the permission etc. have been dealt with. It is also mentioned that after receipt of the approval from the MoEF, the State of Bihar by order dated 20.8.2002 had permitted the Respondents to collect pebbles etc. from the sanctuary area. The State of Bihar had initially recommended grant of lease in favour of the Respondents on the ground that the Respondents had been working the lease since 1966 and that collection of boulder etc. by hand is very essential to train the course of the river. The present I.A. challenging the Additional D.G.F. (Wild Life)'s order dated 20.8.2002 has been filed by the State of Bihar for the reasons best known to itself.

OBSERVATIONS AND CONCLUSIONS

12. Hon'ble Supreme Court by order dated 14.2.2000 in I.A. No.548 has prohibited removal of trees, grasses etc. from any National Park or Sanctuary. For the sake of convenience the operative part of the order is reproduced below:-

”.....In the meanwhile, we restrain Respondent No.2 to 32 from ordering the removal of dead, diseased, dying, wind fallen trees, driftwood and grasses etc. from any National Park or game sanctuary or forest. If any order to this effect has already been passed by any of the Respondent States the operation of the same shall immediately be stayed.”

The word “forest” was subsequently deleted by order dated 28.2.2000. From the above it is absolutely clear that no mining can be allowed inside a National Park or Wild Life Sanctuary without obtaining specific permission from this Hon'ble Court. Even the approvals granted for mining leases inside a National Park / Wild Life Sanctuary before 14.2.2000 became invalid.

13. Any non forestry activity including mining can be carried out on a forest land only after obtaining prior approval of the Central Government under Section 2 of the F.C. Act. For this purpose the respective State Government submits the proposals in the prescribed proforma along with requisite details as per the provisions of the Forest (Conservation) Rules, 1981. There are no powers vested with the Central Government to suo moto permit non forestry use of a forest land unless and until the concerned State Government seeks specific approval for the same. In the instant case, since the State of Bihar itself did not want to grant mining lease inside the forest area, the MoEF could not have accorded approval under the F.C. Act for mining.
14. Section 29 of the Wild Life (Protection) Act prohibits removal of Wild Life or destruction the habitat of the Wild Life Sanctuary unless and until it is beneficial for Wild Life or the habitat and is permitted by the Chief Wild Life Warden. For the sake of convenience Section 29 of the said Act prior to the amendment is reproduced below:-

“29. Destruction, etc. in a sanctuary prohibited without a permit. - No person shall destroy exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary fro the improvement and better management of wild life therein, authorises the issue of such permit.”

Since the State Government was of the view that mining was not beneficial for Wild Life and habitat, no mining could have been allowed by the MoEF under the F.C. Act. It may be mentioned that Wild Life (Protection) Act as well as the F.C. Act are special Acts and therefore have to be independently complied with. Approval under the F.C. Act for mining in a Wild Life Sanctuary could be granted only if the relevant provisions of the Wild Life Act permits the same and vice-versa.

15. In the Wild Life (Protection) Act as amended with effect from 20.1.2003 the Section 29 of the Act has been substituted as under:-

“29. No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose.

Explanation – For the purpose of this section, grazing or movement of livestock permitted under clause (d) of section 33 shall not be deemed to be an act prohibited under this section.”

Thus no forest produce can now be removed from a wild life sanctuary for any commercial purpose. In view of above, even if removal of boulders etc. is beneficial for Wild Life and habitat or for training the course of the river, such removals are not permissible for commercial purposes.

16. Considering the legal position and this Hon'ble Courts order dated 14.2.2000, the CEC is of the view that no mining activity can be allowed within a National Park or Wild Life Sanctuary. The MoEF's order dated 20.8.2002 by which the mining leases inside the Valmiki Wild Life Sanctuary were restored in favour of Respondent No.4 & 5 was, therefore, not in conformity with this Hon'ble Courts order dated 14.2.2000, Section 2 of the F.C. Act as well as Section 29 of the Wild Life (Protection) Act.

17. In view of above the CEC recommends that :-

- (i) the MoEF's order dated 20.8.2002 allowing mining leases inside the Valmiki Wild Life Sanctuary may be set aside;
- (ii) the State of Bihar may be directed to ensure immediate closure of all mining activities inside National Parks and Wild Life Sanctuaries including within the safety zone around the boundaries of the National Parks and Sanctuaries;
- (iii) the MoEF may be directed to ensure that no mining lease inside any National Park or Wild Life Sanctuary is approved under the F.C. Act without obtaining specific permission from this Hon'ble Court in view of the order dated 14.2.2000 passed in I.A. No.548;
- (iv) I.A.No.895 may please be dismissed;

The Hon'ble Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendation is pending.

(28)

CENTRAL EMPOWERED COMMITTEE

ORDER

IN

APPLICATION NO. 16

(Dated : 28.2.2003)

(Regarding mining in Alwar District in violation of the Hon'ble Supreme Court orders)

The present application has been filed by Sh. Ambuj Kishore and others who are residents of village Mallana, Rajgarh Tehsil, District Alwar alleging that mining activity continuing in the village is in violation of the notification dated 7.5.1992 issued under sections 3(1) and 3(2)(5) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules 1986, known as the Aravali Notification. Under the said notification mining and other activities have been restricted and is allowed only after obtaining clearance under the said act.

2. The area covered under the said Aravali notification includes parts of Gurgaon District in Haryana and parts of Alwar District in Rajasthan is applicable to areas notified as forest or recorded as forest in land records by the State and also areas shown as Gair Mumkin Pahar, Gair Mumkin Rada, Gair Mumkin Behed, Banjar Beed or Rundh, in the land records.
3. The case of the applicant is that the mining activity is continuing in violation of the restrictions imposed by the Aravali notification and is affecting the villager's right to livelihood, habitat, the environment and also threatening the Mangalsar Dam by the blasting being done by the mining operations. It has been pointed out that the said dam irrigates the agriculture lands of several villages such as Mallana, Tilwad, Palpur, Thapa, Dhudpur, Gordhanpur etc. It has been pointed out that the indiscriminate mining activity is destroying the canal and even the PWD village road is being affected. Besides, blasting activity is posing threat to life, limb, property and cattle of the villagers. It has been pointed out that lands which are in Khasra No. 195, 192/855, 187, and 189 are the residential area in the vicinity of which mining activity is being carried on.

FIRST REPLY OF THE DEPARTMENT OF MINES AND GEOLOGY, RAJASTHAN

4. In its reply dated 26th December, 2002, the Director Department of Mines and Geology, Rajasthan which states as under:
 - i) it has been denied that mining activity is not being permitted in Mallana village in violation of any provisions of any acts, rules, Court order or any notification issued by the Central or the State Governments;
 - ii) all mining activity has been stopped in leases which are covered under the 7.5.1993 Aravali notification till requisite clearance is obtained;
 - iii) that mining activity is not adversely affecting the livelihoods of the villagers as has been alleged by the applicants on the contrary it is providing them employment in times of severe drought conditions prevailing for last four years in the State;
 - iv) mining lease have been given only after obtaining no objection from the Zila Parishad;

- v) that Mangalsar Dam is located more than 500 meters from mining area in Mallana village and has been going on for last 10 -12 years and no damage to the Dam as been reported;
- vi) no mining is reported in Khasra no. 195, 196, 197, 198, 203, 170 and 160;
- vii) mining activity within 45 meters of the PWD road has already been stopped;
- viii) mining activity in this area is being done by modern machines an blasting has been restricted to minimum and instructions have been issued that blasting should be done 300 mts. beyond from residential area of the village to ensure safety of the villagers;
- ix) overburden by some of the lessees has been thrown outside of their lease area and to prevent that officers of the area have been asked to strictly prevent such violations;

HEARING ON 23-11-2002 AT DELHI

5. On 23-11-2002 i.e. on the date of hearing the applicants, officers of State Mining Department, representatives of the MoEF were present. Keeping in view the safety and security of the villagers and their property, the State Government was directed to close down the mines of the following lessee's, till site inspection is done:
 - i) M/s R.K. Marbles
 - ii) Shri Suresh Kalra
 - iii) M/s Garg Marbles
 - iv) Shri Subhash Chand
 - v) M/s Triveni Marbles
6. It may be pointed out that the Hon'ble Supreme Court in Writ Petition (Civil) No. 202 / 95 has already passed an order dated 31.10.2002 closing down mining activity in the entire Aravali Hill Range, both in Haryana and Rajasthan, although the said order till 23.11.2002 had not been fully enforced, therefore, the direction of the Committee had reiterated the order of the Hon'ble Court.
7. The mine-wise factual position stated in the States reply is as under:
 - i) M/s Triveni Marbles ML 859/88:
The lease was sanctioned on 7-3-89 i.e. prior to Aravali Notification dated 7-5-1992 and falls in Khasra No. 192 in *Gair Mumkin Rada* on non forest land. Since the lease was renewed it would require environmental clearance under the Aravalli Notification. No mining activity will be permitted till such clearance on pending application is obtained by the lessee.
 - ii) M/s Garg Marbles ML 108/2000
Lease sanctioned on 20-7-2001 in Khasra No. 185 in Mallana Village in land status recorded as *Niji Khatedari Bhoomi*, therefore, it is neither a forest land nor does it fall in the Aravali Notification.
 - iii) Shri Suresh Kalra ML 728/88
Lease sanctioned on 17-3-1989 in Khasra No. 192 & 189 in Mallana Village in *Gair Mumkin Rada* a part of the lease also falls in some portions of Khasra No. 853, 191, 189 and 190, which is a residential area where no mining activity is being done. The lease was renewed on 26-6-1998. Although the land is not a forest land, it is covered by the Aravali notification of 7-5-1992, therefore, environmental clearance is required and the application for the purpose is pending.
 - iv) Shri Subhash Chandra ML 680/88
Lease was sanctioned on 17-3-1989 and is prior to 1992 Aravali Notification, therefore,

environmental clearance is required before it became due for renewal on 26-6-1998. It falls in Khasra No. 192, which is not a forest land.

v) M/s R. K. Marmo Stone Pvt. Ltd. PL1/2002

This is a Prospecting License (PL) and not a lease. No mining activity is being carried on an area of 13.2835 Ha. in Khasra No. 192 and 192/855. Since it is a P.L. for prospecting minor mineral the Aravali notification is not applicable to it even though the land is *Gair Mumkin Rada*.

8. The Mining Department in its affidavit has asserted that the Mining Department has granted any new mining lease without prior sanction of the Competent Authority under the Aravali Notification nor renewal of any mining leases have been given without prior environmental clearance. Further, the Department of Mines and Geology, the Indian Bureau of Mines, Directorate of Mines Safety are all implementing various laws and rules which relate to safety aspects of mining and none of these authorities have reported any violations.

SITE INSPECTION / HEARING AT SARISKA ON 1-2-2003

9. Site visit was undertaken by the Members of the Committee on 1-2-2003 morning and the hearing was conducted in the afternoon and the Committee's had observed the following:

General Observations

In general, the mining of marble around Mallana Village is a disgrace by all environmental standards. Canals have been mined, the edges of roads excavated and with no regard for human safety. The edges of Sariska Tiger Reserve have been blasted and the general scene is one of devastation with a blatant disregard for any rules or guidelines that conform to environmental standards. The responsibility of this must be on the shoulders of the miners and the mining department. The situation must change rapidly to ensure a compliance with environmental standards.

- i) as has been stated in the affidavit of the State Government the mines owned by Subhash Chandra, M/s Triveni Marbles and Shri Suresh Kalra presently fall within the 1992 Aravali notification and till date not a single clearance has been given to any mine under the said notification. The Committee found that no mining activity was going on in these mines;
- ii) the Committee observed that the location of the mine owned by Garg Marbles adjoining the right of way on private land and is close the house of one Shri Ram Chandra Meena. Some cracks were observed in the house, but there is no documentary proof whether the house was constructed before mining activity was started in the area or thereafter;
- iii) the mine owned by Shri Suresh Kalra is dangerously close to the PWD road. The deep pit has been dug up which is close to the road and mining activity has been going on within 45 meters of the PWD road without obtaining permission from the Directorate General of Mines Safety, which is a violation of the mines safety rules. The officials of the DGMS have in their report handed over to the Committee after the site inspection have confirmed violation of the safety norms as well as Rule 109 (1) of the MMR Rules of 1961;
- iv) the mine owned by Shri Neeraj Purohit falling in Khasra no. 150, 151, 152/763, 153 and 150/ 602, as per the record of the mining department, although was not included in the six mines by the applicants in their application, however, the State Government had ordered its closure in view of its proximity to other mines and it would have been difficult to exclude and permit one out of several to operate in the said area;
- v) the Committee observed that the canal which brings water from Mangalsar Dam which was alleged to have been filled with overburden etc. appeared to have been freshly cleaned,

Similarly, the PWD road which was alleged to have been strewn with rocks and boulders and overburden also showed sign of fresh clearing;

- vi) the state government and the DGMS has failed to take effective steps to ensure the compliance of various statutory requirements with regard to blasting, working close to the road, dumping of overburden, and other environmental considerations such as afforestation and ground water aspects; and
- vii) a comprehensive plan must be drawn out at the earliest for all the mines in the Vicinity of Mallana to ensure that the situation improves.
- viii) photographs of the area taken during the site inspection are annexed hereto as **ANNEXURE – A**, to this report.

VIEW OF THE MINE OWNERS

10. The affected mine owners have filed their detailed objections along with relevant documents including copies of land revenue records, consent from the Gram Panchayat before commencing mining, etc. during the course of hearing on 1-2-2003, their objections in brief are as under:

- i) M/s Garg Marbles: That in the Tarun Bharat Sangh v. Union of India & Ors. (WP(C) 509/1991) the said mine was identified as one of the 144 which were outside the Sariska Tiger Reserve and were allowed to continue its operations i.e. were not found within the said area as per the Hon'ble Supreme Court's order dated 6-5-1992. Being a Khatedari land it does not fall within the area notified under the under the 7-5-1992 Aravali notification, therefore, no clearance is required under the said notification. The mine also does not fall in the restrictions imposed by the Hon'ble Supreme Court's order dated 10-12-2002 passed in I. A. No. 827 in W.P.(C) No. 202/95, T. N. Godavarman Thirumalpad v. Union of India. That it is doing mining activity in a sophisticated manner with a wire saw without resorting to blasting and is not causing any danger to any person or to his property nor to the Mangalsar Dam which is more than half km. away.
- ii) Shri Subhash Chand : That in the Tarun Bharat Sangh v. Union of India & Ors. (WP(C) 509/1991) the said mine was identified as one of the 144 which were outside the Sariska Tiger Reserve and were allowed to continue its operations i.e. were not found within the said area as per the Hon'ble Supreme Court's order dated 6-5-1992. The mine does not fall in the restrictions imposed by the Hon'ble Supreme Court's order dated 10-12-2002 passed in I. A. No. 827 in W.P.(C) No. 202/95, T. N. Godavarman Thirumalpad v. Union of India. That at present the mining activity has been stopped as it falls within the area notified in the 7-5-1992 Aravali Notification and its application under the said notification is pending with the Rajasthan Pollution Control Board.
- iii) M/s R. K. Marmostones Pvt. Ltd.: It has been stated in their representation that there is the case of Prospecting License for minor minerals and not a mining lease in an area of 13.2835 Ha. granted for a period of one year w.e.f. from 22-3-2002. No mining activity is being carried on in their area. Since the area falls within Aravali notification, mining activity would be undertaken only after lease is granted and environment clearance under Aravali notification is obtained;
- iv) M/s Triveni Marbles : That in the Tarun Bharat Sangh v. Union of India & Ors. (WP(C) 509/1991) the said mine was identified as one of the 144 which were outside the Sariska Tiger Reserve and were allowed to continue its operations i.e. were not found within the said area as per the Hon'ble Supreme Court's order dated 6-5-1992. However, the land being *Gair Mumkin Rada*, it falls within the area notified under

the under the 7-5-1992 Arravali notification, therefore, clearance under the said notification is required till such time the mining activity has been stopped;

- v) Shri Neeraj Purohit: It has been stated that there is no complaint by the applicants against the mining activity undertaken by Shri Neeraj Purohit as the land within the leased area does not fall within the category of forest, Sariska Tiger Reserve, Aravali Notification neither it is prohibited by any of the orders of the Hon'ble Supreme Court's. His land lies within Khasra No. 151,150, 152 and 152/763 of revenue village of Mallana for which the Village Gram Panchayat has given its prior written consent. Since latest technology / equipment is being employed such as wire-saw, chain saw, JCB, etc. blasting is not resorted to as it destroys the marble resulting in cracking of the stone.

10. Besides, it has been stressed that the most of the villagers find a source of employment in these mines and in view of severe drought faced by the State for last several years; the majority of people are in favour of continuing mining in Mallana area.

REPORT OF THE DIRECTORATE GENERAL OF MINES SAFETY

Site inspection report of 1-2-2003

11. The officers present during the site inspection have reported that the provisions of sec. 109(1) of the MMR, 1961 in so far as mines within 45 meters of any public road or other permanent structure not belonging to the mine owner cannot be allowed to operate without the prior written permission of the Director General of Mines Safety (DGMS). Besides, as per the provisions of sec. 164 (1B) (a) of the MMR Act, 1961 no blasting can be done within 50 meters of any building or structure of permanent nature not belonging to the mine owner except with the written permission from DGMS. According to the report of the DGMS officials all the mines were operating in violations of the above two Rules. The DGMS officials have informed the Committee that it will carry out a technical study on the impact of blasting on the safety of the Mangalsar Dam and submit its report within two months.

Second report of the DGMS dated 17-2-2003

12. The DGMS, Gaziabad Region have filed a Technical Report along with their letter dated 17th February, 2003, on the effect of blasting on stability of Dam and copies of old inspection reports in respect the mines under consideration. The report indicates violations of various Rules and Regulations of Mineral Rules of 1955 and Mines and Mineral Rules, 1961 by most of the lessee's. The Technical Report of the DGMS, Gaziabad has found that regulated and controlled blasting does not have any adverse effect on the Dam structure or the residential house in vicinity of the mining area. The Committee is concerned with the violations of Rules with regard to blasting and mines working without permission near public structure i.e. PWD road.

REPORT DATED 10-2-2003 OF COLLEGE OF TECHNOLOGY AND ENGINEERING, UDAIPUR, DEPARTMENT OF MINING ENGINEERING

13. A study by monitoring of ground vibration, airblast and flyrock at marble mines near village Mallana, has been done by the College of Mining Engineering, Department of Mining Engineering, at the request of the Deputy Director Mines Safety, Udaipur Region in the Mallana mining area. The purpose of the study was to evaluate the impact of blasting operations carried out on the Mangalsar dam and houses of the local inhabitants. This report also gives a finding that there is no danger to house or to the structure of the dam from blasting. However, it has made the following recommendations on blasting:

- (i) maximum charge per day should not be more than 2 kg., in case higher charge is used in a single blast, delay detonators may be used with a view to contain ground vibrations and flyrock within safe limits;

- (ii) fixed time schedule of blasting should be observed so that people living in the vicinity of mining area may take proper shelter;

15. In response to the suggestion of the Committee an Environment Impact Assessment and Environment Management Plan in respect of the 5 working mines lease have been prepared and submitted with the view to minimize the impact of mining activities in the area. The salient facts and features of the plan are as under:
- Three mining leases and prospecting license falls in Government wasteland and two in agriculture land;
 - Minimum distance of mine leases from nearest forest boundary is 25 meters except in the case of Subhash Chandra;
 - three mines belonging to Shri Suresh Kalra, M/s Triiveni Marbles and Shri Neeraj Purohit are operating within 5 – 15 meters of the Tehla to Gordhanpura Road. The license boundary of M/s R. K. Marmostones (P) Ltd. also passes parallel to the road at distance from 5 to 7 meters;
 - there are three dams around mining lease area Mangalsar (330 to 800 meters from actual working), Misrala (2.75 km.) and Talab Dam (3.75 km.);
 - the mine pits in the case of Shri Subhash Chand, Triveni Marbles and Shri Neeraj Purohit have reached the ground water which varies in depth between 25 to 30 meters;
 - noise level varies from 65 to 85 db in day time due to mining activity;
 - mining activity is economically beneficial to the people of the area. The Government is planning to give 1% of royalty generated to the Panchayats. The Panchayat will be getting at least RS. 20 lakhs per year when the mining activity in the area reaches full swing; and
 - Mallana village is about 0.75 km. from the nearest habitation from the mining area, however, 35 persons of five families are residing between 50 to 160 meters from the mining area. They had moved in this area during 1991-92 when the mining was closed down by the orders of the Hon'ble Supreme Court. These are the villagers who are likely to be affected by the vibrations of flying rocks due to blasting which may cause injury to them or damage their houses for which protective measures are required to be put in place.
16. The Management Plan provides for the following measures which would take into account aesthetic, land, vegetation / forest, water and air environment etc. of the area:
- soil and overburden;
 - plans for backfilling of excavated areas and reclamation measures;
 - management of waste dump;
 - retaining wall around dumps and at various other places;
 - plan for public place and village road;
 - pollution control measure for pumped out mine water;
 - air pollution control measures including control of dust pollution;
 - construction of water tanks individually or jointly near leased area for storing water and removing slurry and using it for irrigation or other purposes;
 - regulating blasting by following prescribed procedure;
 - safety of employees by providing them with helmets, boots and other safety equipments;
 - medical check up of employed persons to be got done once in 2 years, etc.

CONCLUSIONS AND DIRECTIONS:

17. After considering all the relevant information including the details provided by the applicants, the

State Government, DGMS and the mine owners, the Committee had reached the conclusions that following three mines namely:

- (i) M/s Triveni Marbles ML 859/88
- (ii) Shri Suresh Kalra ML 728/88 and
- (iii) Shri Subhash Chandra ML 680/88

are covered by the Aravalli notification and therefore would require environmental clearance as provided in the notification before mining operations are undertaken. In view of the above, no mining shall be allowed to be resumed till required environmental clearance is accorded by the Competent Authority in respect of these mines.

18. M/s R. K. Marmostone Pvt. Ltd PL1/2002 is only a Prospecting License (PL), however, the area is also covered under the Aravalli notification, therefore, no mining activity shall be permitted here also without requisite environmental clearance.
19. In respect of these four mines, clearance from the DGMS shall also be obtained and no mining shall be allowed, if it is found that mining is not permissible as per the relevant mines safety rules.
20. In respect of the following two mines viz. M/s Garg Marbles and Shri Neeraj Purohit prima-facie the area falls outside the Aravalli notification area and therefore environmental clearance under the said notification is not required. However in respect of these two mines, before allowing resumption of mining, the State Government shall ensure that all requisite approvals including from DGMS are obtained. No mining shall be allowed pending receipt of requisite approvals.
21. The Committee is of the view that all the measures laid down in the Environment Impact Assessment and Environment Management Plan prepared for the mines should be strictly implemented with special reference to the following:
 - (a) safety of the residential houses and lives of the local residents and their cattle;
 - (b) prevent dumping of overburden in canal, stream, community grazing lands; road and agricultural fields of the villagers;
 - (c) prevent any destruction of the ground water sources;
 - (d) prevent mines operating too close to the road;
 - (e) ensure reclaim mined area after operations have ceased;
 - (f) ensure afforestation in the mining area and also in the reclaimed area; and
 - (g) ensure compliance of all the statutory rules and regulations applicable.
22. There appears to be some discrepancy in the claim made by M/s Neeraj Marbles, according to which its lease does not fall in Khasra No. 150/802, which is contrary to what is stated in the second reply dated 17-2-2003 of the state government. This fact may be reconciled from the Governments records.
23. The Committee expects that the DGMS, Gaziabad will continue monitoring of these mines and ensure that all the rules and regulations with regard to safety are observed by the lessee's. Similarly the state government should ensure compliance of all the statutory conditions;

The application is disposed off with the above directions.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Encl: **ANNEXURE -A** (not included)

(29)

CENTRAL EMPOWERED COMMITTEE'S

INTERIM ORDER

IN

APPLICATION NO. 46

(Dated: 7.3.2003)

(Regarding protection of Olive Ridley Sea turtles in Orissa)

THE ISSUE

1. Application No.46 dated 19.12.2002 has been filed by Mr. Alok Krishna Agarwal, A-56, Gulmohar Park, New Delhi before the Committee raising the issues regarding protection of Olive Ridley Sea turtles, its nesting beaches and coastal waters of Orissa where they congregate in large numbers every year. That every year between January and April the turtles display an awesome sight, seen may be in one or two other places in the world, as hundreds and thousands of them come to the beaches in Orissa for nesting –an event called Arribada, named after the Spanish term – Armada, meaning assemblage of naval fleets. Thousands of turtles die after getting trapped in the nets of the Fishing Trawlers and gill net fishing boats. The petitioner has alleged that the Orissa Forest Department and the Fisheries Department have done precious little in implementing the provisions of the Wild Life (Protection) Act, 1972 and Orissa Marine Fishing Regulation Act, 1984, thereby threatening the Olive Ridley Turtles, which enjoy the highest degree of protection by being placed in Schedule-I of the Wild Life (Protection), Act 1972.

SITE VISIT

2. The Committee nominated Shri S. K. Chadha, Assistant Inspector General of Forest, MOEF as a Special Invitee of the Committee, who had earlier worked in the area as Wildlife Warden between September 1993 – October 1994, and December 1999 – September 2002, and Shri R. K. Tuli to make a quick site visit from 31.01.2003 and 03.02.2003 and suggest immediate measure that could be taken to provide favourable conditions for mass nesting during the current season. The Team was to suggest measures that should be taken to prevent their high mortality to which they are prone to. The team has filed its report giving several suggestions after it visited some of the coastal areas where turtles congregate and nest and held meetings with the concerned government officials, NGO's, Fishing Trawler Owners, conservation NGO's and other persons.

ABOUT OLIVE RIDLEY TURTLES

3. The Olive Ridley Sea turtles come to the Orissa Coast every year for mass-nesting mainly at three nesting sites– Gahirmatha, Devi River Mouth and Rushikulaya. The mass nesting or Arribada in a good year may attract more than half a million turtles on the beaches. A large congregation of turtles remain in the shallow coastal waters from mid - October to April / May. Hundreds and thousands, specially the females who are about to lay the eggs get entangled in fishing nets and die from drown. Their carcasses get washed ashore and one can see dead turtles all along the beaches, miles upon miles on beaches as shown in the photographs filed along with the applications.

THREATS

4. The entry of mechanized fishing trawlers is prohibited up to 10 kms. from the shore under the Orissa Marine Fishing Regulation Act, 1984. The highly vulnerable turtles get entangled in the fishing nets of the fishing trawlers and in gill nets of the fishing boats, in the process suffer high mortality. Due to a lack of infrastructure and required manpower with Forest and the Fisheries Department, the enforcement is poor except in Gahirmatha Marine Sanctuary where the Coast Guard and Forest Department are jointly enforcing the law. The use of Turtle Excluder Device (TED), which is mandatory is not being used by the fishing trawlers. In view of the continuous violation of Orissa Marine Fishing Regulation Act, 1984 (hereinafter referred to as OMFRA) large numbers of turtles will go on dying if immediate preventive steps are not taken.

MEETING WITH THE STAKEHOLDERS:

5. The team met senior officials of the Forest Department, Fisheries Department, Coast Guards, representatives of local fishermen's associations and NGO's. On a meeting on 31.1.2003, the Chief Wildlife Warden of the State explained that the steps taken by the State and the difficulties faced by the department. The Wildlife Warden of Puri Forest Division, was unable not meet the team, however, the Divisional Forest Officer, Rajnagar Division under whose jurisdiction Gahirmatha Coast lies, gave a detail of the steps taken for protection of turtles in Gahirmatha Marine Sanctuary inspite of various difficulties faced by them. The officers of Indian Coastguard, Paradeep District gave a detailed account of the role played by the Coastguard in protecting vulnerable turtles.
6. The representatives of the Fishermen's Associations met and gave their views in a brief note. The Assistant Director of Fisheries of Balasore, Dhamra, Kujang and Puri explained the steps taken by the Fisheries Department over last two years in enforcement of OMFRA jointly with the Forest Department. The Honorary Wildlife Warden of Puri, some NGO's and media representatives also presented their point of view on the matter.

VIEWS OF FOREST DEPARTMENT :

7. The following was the response of the Forest Department on various specific issues raised in the application:-
 - i) there is a shortage seaworthy vessels necessary for enforcing protection of turtles in the coastal waters;
 - ii) there is a shortage of manpower as large number of Forest Guards level posts are lying vacant;
 - iii) large number of unlicensed boats are operating and the problem is aggravated by illegal entry of fishing trawlers water from West Bengal and Andhra Pradesh. A total of about 1,000 mechanised trawlers out of which 80% are operating illegally during the season;
 - iv) some steps have been taken to stop raising casuarina plantations on the nesting beaches;
 - v) illumination from defence establishments at Wheeler's Islands is affecting the turtles. The hatchlings become disoriented and move shorewards towards the light instead of going seawards, causing heavy mortality to the tiny hatchlings;
 - vi) special funds should be provided by the Government of India for Turtle Conservation on the lines similar to the Project Tiger and;
 - vii) a sum of Rs. one crore provided by India Oil Corporation, lying in a separate savings account bank since last four years, has not been utilised on the plea that no approval of accounting procedure has been obtained from the Accountant General although State Finance Department has given approval. ;

THE VIEWS OF FISHERIES DEPARTMENT

8. The officers of the Fisheries Department informed the team that the following steps have been taken for protection of turtles.
- i) area of operation of vessels and carrying capacity of harbours has been fixed under OMFRA;
 - ii) fishing is prohibited within 5 km. of costal waters under the OMFRA;
 - iii) fishing is prohibited up to 20 kms from high tide line from Jatadhar River mouth to Devi River mouth and from Chilika Mouth to Rushikulaya river mouth;
 - iv) use of TEDs has been made mandatory and 540 TEDs have been distributed to the trawler owners free of cost;
 - v) DFO Rajnagar and the A. C. F. have been declared Authorised Officer under OMFRA;
 - vi) model trials for use of TEDs was conducted in the presence of fishermen;
 - vii) hoardings have been put up at harbours for creating awareness about turtle conservation;
 - viii) three Fisheries Department boats are engaged in turtle conservation work and have seized 20 fishing vessels so far;
 - ix) two patrol boats which are under construction would be deployed for patrolling as soon as they are delivered; and
 - x) sufficient funds and manpower is required to carry out patrolling along 480 km. long coast.

THE VIEWS OF THE TRAWLER ASSOCIATION

9. The representatives of the Trawler Owner's Association have presented their following views:-
- i) they have been using this trawlers for last 25 years and have made significant contribution of foreign exchange for the country;
 - ii) about 35,000 people are directly and indirectly engaged in this business;
 - iii) turtle Conservation has deprived them of the fishing along large part of the Orissa coast;
 - iv) the area falling within Marine Sanctuary Area should be reduced to 10 km. from 20 km.; and
 - v) 20% fish catch is lost due to use of TEDs which should be compensated by the Government.

HEARING ON 4.3.2003:

10. The Coast Guards are engaged in off shore security, marine safety and national defence, however, the efforts made by them for last two decades in protection of turtles in Orissa jointly with the Orissa Forest Department are laudable. Every year they have been deploying their ships and even their air

crafts for turtle conservation work around Gahirmatha and other important beaches. Commandant M. T. Gore, Deputy Director, Head Quarters, explained the steps taken by their organisation for protection of turtles every year. It has been pointed out that their vessels / boats are not in a position to negotiate and move around the shallow waters near Devi and Rushikulaya coasts. Besides, they are not legally empowered to seize any boats entering the restricted areas under the OMFRA, therefore they can only assist the agencies which have the power of seizure.

11. It has been pointed out that there is no secure and proper place for keeping the boats seized by the Forest Department. In a recent tragic incident the crew of one of the seized boats attacked the staff guarding the boat during which one forest guard was killed and thrown into the sea and the other two seriously injured were rescued just in time.

VIEWS OF NGOs / APPLICANT

12. Soon after conclusion of hearing the Applicant informed the Committee that they could not appear as no notice was received. The applicant and the other NGO's have alleged that the State Government is unable to enforce the existing laws to ensure protection of turtles. The State enforcement agencies also suffer from inadequate infrastructure facility to enforce the laws as a result only the Gahirmatha Sanctuary has been given good protection whereas there is hardly any protection given to other important nesting beaches. One of the important measures of using TEDs has not been enforced by the trawlers. The State Fisheries Department does not recognise gillnet boats in the category of mechanised boats when is one of the main cause for heavy mortality of turtles. The Forest Department has raised casuarina plantations along main nesting beaches reducing the area available for nesting. The DRDO establishments on the wheelers Islands have put up bright lights causing disorientation to the nesting turtles. The hatchlings get attracted to the bright lights and move towards the shore instead of going to the sea. This causes heavy mortality to tiny hatchlings on account heavy predation by birds, jackals, snakes, monitor lizards and a host of other animals including domestic dogs. They have stressed that immediate steps must be taken to ensure protection of this rare species and prevent it from extinction. The NGO's have requested that following steps should be taken immediately for the protection of Olive turtles.

- i) three fast moving 'sea going' boats which can remain in sea at least for a couple of days should be deployed sea or stationed at Gahirmatha, mouth of the Devi river during turtle nesting season and at mouth of the river Rushikulaya from November to April, every year;
- ii) round the year patrolling should be carried out in Gahirmatha Marine Sanctuary;
- iii) the license of all the fishing trawlers operating without TEDs should be cancelled;
- iv) no further casuarina plantations should be undertaken on nesting beaches;
- v) artificial illumination should be stopped near the nesting beaches.

13. The Committee draws strength and guidance from the judgment dated 14.5.1998 in the case of Centre for Environment Law, World Wide Fund for Nature (WWF), India, Petitioner v. State of Orissa and other, Respondents. (O.J.C. No. 3128 of 1994) reported in AIR 1999 Orissa 15, wherein in the Hon'ble Mr. Justice. Arijit Parayat and Hon'ble Mr. Justice. P. C. Naik, had given several directions, some of these are reproduced below:

“All possible attempts should be made to curb the influx of migratory human population of the surrounding area. Sea-going vessels with required staff and police should be stationed at vantage points during 1st of November to the end of May, every year to ensure that trawlers do not enter the Gahirmatha area. The points where the staff and police are to be stationed are to be decided by the Forest Department in consultation with the police authorities. Though the Committee has suggested the restriction period to be from October 15 to May 15, considering the fact that the nesting session is normally between December to April, we have modified the

period suggested.

More check gates and additional staff with equipment be provided to the concerned D.F.O for having effectively strengthened protection net-work.

It is matter of grave concern that there is large scale unauthorised fishing in the high turtle congregation of Gahiramatha. It is pointed out that during the period from 13.12.1997 to 26.1.1998, 55 trawlers and 23 gill centers were apprehended. On 30.1.1998, 6 trawlers and 3 gill netters were apprehended from the core area of the Garhiramatha (Marine) Wildlife Sanctuary. It would be appropriate if the State Government and the Central Government take statutory measures for conferring powers of confiscation of vehicles, vessels, tools, weapons etc. connected with wildlife of offences.

Immediate steps be taken to evict the unauthorised occupants of forest land, including rivers and creeks within the boundary of Bhitarkanika Wildlife Sanctuary. The encroachers should be legally dealt with, and if any lease has been granted it should not be renewed after expiry of the period of lease.

No new leases for land, and water bodies should be granted within the Sanctuary.

The aquaculture farms (semi-intensive the intensive should not be allowed within the Sanctuary boundary.

All trawlers operating in the area shall be required to use devices like Turtle extrusion Device (TED) to avoid entanglement to sea turtles. Poaching or netting of sea turtles should be seriously dealt with. The coast guard operation system should be strengthened to prevent poaching and netting the sea turtles.”

OBSERVATIONS AND CONCLUSIONS:

14. The legal position of the Orissa Marine Fishing Regulation Act, 1984 and the Wildlife (Protection) Act, 1972 is very clear. Fishing in restricted areas within 5 km. is prohibited. Illegal fishing being done in this area is causing immense damage to the population of Olive Ridley turtles even though it has been given the highest degree of protection under the Wild Life (Protection), Act, 1972.
15. The Committee is of the view that sufficient steps have not been taken by the State Government for safeguarding the turtles. Unfortunately, the detailed directions given in the judgment of the Orissa High referred to above, have by and large remained uncomplied with. But for the involvement and dedication shown by the Coast Guards, the turtles would have been in a precarious situation. Under these circumstances immediate steps are required to be taken in order to safeguard the present congregations of turtles at Gahirmatha, Devi river mouth and Rushikulaya mouth and favourable conditions should be created to facilitate the mass nesting which we are informed - has already began. Meanwhile media reports about deaths of about 8,000 turtles this season is disturbing. The following interim steps shall immediately be taken:-

INTERIM DIRECTIONS

16. All the directions given in the Judgment dated 14th May, 1998 delivered in the CEL – WWF case by the Orissa High Court should be strictly enforced. A copy of judgment of the Orissa High Court is annexed here to at **Annexure – A** for ready reference. In overall conformity to the said directions the State Government is directed to immediately take the following measures:
 - i) the Forest Department shall establish permanent camps one each, at Devi river Mouth and Rushikulaya Mouth within 15 days and provide all necessary equipments such temporary tented accommodation, communication, etc.
 - ii) a sum of rupees one crore land earmarked exclusively for turtle conservation in a is lying

unused with the Chief Wildlife Warden since last four years. The expenditure for establishment of camps, hiring of boats, protection of beaches etc., should be met from the fund without any further delay and progress should be reported to the Committee within ten days of receipt of the directions;

- iii) one sea worthy boat shall be hired out of the funds lying with the Chief Wildlife Warden for each of the above mentioned camps with immediate effect;
- iv) at least 10 Armed Police Personnel drawn from the Orissa State Armed Police should be posted at each camp for patrolling in restricted areas along with staff of the Forest and the Fishers Department. This should be a continuous coordinated operation;
- v) the Coast Guard is requested to intensify patrolling in the coming three months and arrange to establish two boat stations between Paradeep and Rushikulaya suitable for shallow water patrolling. These stations are vital for the protection of turtles in the next few months.
- vi) the officers of the Coast Guard at Paradeep should be notified as Authorised Officer under the Orissa Marine Fishing Regulation Act, 1984 within with in 7 days. The application in this regard is already pending with the Orissa Fisheries Department. This would empower the Coast Guards to seize and impound trawlers operating in restricted zone;
- vii) the State Government shall provide land for boat stations , helipads and such other facilities to the Coast Guards at the earliest, to the extent feasible;
- viii) the Fisheries Department should suspend the licenses of the boats found not using TEDs . Besides, hundreds of mechanised boats including gill net boats are operating without valid documents. Immediate action should be taken against such defaulting boats as per the law;
- ix) all seized trawlers, boats should be kept in a secure well guarded place on dry land and confiscation proceedings initiated against them. Armed guards should be placed around the area to prevent owners from escaping with their boats away as had recently happened. Places for parking the seized boats must be identified within 3 days of the receipt of these directions and follow up action to make these sites usable be immediately taken;
- x) in view of the excessive fishing being done in the area, for the next 3 months all gill net boats operating within 5 km. of the three nesting sites should be banned;
- xi) wireless communication must be enhanced between Coast Guard and the Forest Department for ensuring better enforcement. Base sets from the forest department can be given to the Coast Guard boats immediate meetings between them should held to streamline communications;
- xii) in order to protect the turtle eggs being incubated on the beaches, extra volunteers and daily wagers should be appointed;
- xiii) The Chief Wildlife Warden should immediately consider providing adequate facilities and incentives to the staff engaged in patrolling.

The Action Taken Report shall be made available to the Committee within 15 days.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

(30)

**CENTRAL EMPOWERED COMMITTEE's
REPORT ON MINING IN
JAMUA RAMGARH WILDLIFE SANCTUARY
IN VIOLATION
OF THE HON'BLE SUPREME COURT'S ORDERS.**

(Dated: 27.5.2003)

(Regarding mining in Jamua Ramgarh Wildlife Sanctuary in violation of the Hon'ble Supreme Court orders, FC Act and Wildlife (Protection) Act, 1972)

The Central Empowered Committee (CEC) has received number of representations regarding continuing mining activity in Jamua Ramgarh Wildlife Sanctuary in alleged violation of the Hon'ble Supreme Court's orders. The response of the State Government was sought by the CEC vide letters dated 24.3.2003, 1.4.2003, 2.4.2003 and 28.4.2003, however, no response has been received from the State Government.

2. A meeting was convened by the CEC at Jaipur on 24.5.2003 to discuss the issue about alleged illegal mining in Jamua Ramgarh Sanctuary with the State Government in Mines Dept. and Forest Dept. and thereafter site inspection was carried out. The CEC comprised of Shri P. V. Jaikrishnan, Chairman, Shri Valmik Thapar, Member, Shri M. K. Jiwrajka, Member Secretary along with Shri Rajendra Singh, NGO, Shri R. C. Soni, PCCF, Rajasthan, and Shri A. K. Garg, Principal Secretary, Government of Rajasthan who were co-opted as Special Invitees. The State Government was represented by Shri Rakesh Verma, Secretary Mines, Shri G. L. Vyas, Addl. Director, Mines, Shri V. K. Sharma, Superintendent Mining Engineer, Shri D. P. Sharma, Mining Engineer, Vigilance, Shri R.N. Mehrotra, CCF, Shri Sankatha Prasad, C.F. Wildlife, Shri Sundhanshu Panth, Collector, Jaipur and A.D.M., Jaipur.
3. The Chairman and the Member Secretary, CEC initiated the deliberations with the remarks that the mining operations in Aravalli hill range, which were earlier stopped as per the Hon'ble Supreme Courts order dated 30.10.2002, have been restarted by subsequent order dated 16.12.2002. While allowing the resumption of mining activity in the Aravalli range, the Hon'ble Court had directed that no mining is to be permitted in areas notified as Sanctuary, National Park or Game Reserve etc. under any relevant Act or Rules. Further, no mining activity is to be allowed in respect of area where there is a dispute about applicability of FC Act, till such time the dispute is resolved or approval under the FC Act is accorded. In the light of the above order two specific cases namely, mining activity in Sankotda and Thali area and Golcha Soapstone Mine were examined.

A - Mining in Sankotda and Thali area of the sanctuary:-

- 4.. The Committee informed that as per the information available with it, number of mines are operating in Sankotda and Thali area inside forest / within sanctuary in violation of the Hon'ble Supreme Court's order as well as the FC Act and the Wildlife (Protection) Act, 1972. The said sanctuary was notified in the year 1982 and settlement of rights were completed by the Collector in accordance with the provisions of Section 24 of the Wildlife (Protection) Act, 1972, vide order dated 21.8.1998.
5. Perusal of the Collector's order reveal that requests / objections were made to keep Sankotda and

Thali villages outside the sanctuary area (objection No. 3 and 7). Similarly, the mining areas / mining leases area were also requested to be kept outside the sanctuary (objection No. 9 and 10), however, these were not accepted by the Collector and these areas continued to remain inside the sanctuary. The Collector has thus included the said areas within the limits of sanctuary in accordance with the provisions of Section 24 (2)(c) of the Wildlife (Protection) Act 1972. On the basis of the conclusions of the proceedings under Section 24 of the said Act, the Forest Department had earlier taken a view that the mining activity continuing in these areas is in violation of FC Act and Wildlife (Protection) Act as well as the Hon'ble Supreme Court's orders dated 12.12.1996 and 14.2.2000. Accordingly, notices were also issued to about eleven mine owners. In spite of the above, the mining activity in these areas have been allowed to be restarted with effect from 16.12.2002.

6. The Forest Dept. in pursuance to the Collector's order dated 21.8.1998 should have demarcated the area of the sanctuary. Under the provisions of the Section 24 of the Wildlife (Protection) Act, 1972, the Forest Dept. has no option but to carry out the demarcation on the basis of the settlement order passed by the Collector in exercise of the statutory powers conferred upon him under the said Act. It may be relevant to mention that these powers are not subject to appeal, revision or modification by any administrative order. Pending demarcation exercise, the mining should not have been allowed to continue in the disputed area. The continuance of mining is all the more surprising as the then DFO in charge of the sanctuary had taken an unequivocal stand that these mines fall within the sanctuary area.
7. During the meeting, the Forest Dept. as well as the Mines Dept. took a view that the area where mining activity is continuing is not in the disputed area as it falls outside the sanctuary and is a non-forest land. It was further stated that the then DFO had taken an incorrect view that mining area falls within the sanctuary by mis-interpreting the notification as well as the settlement order of the Collector. It was also argued that the Collector has no authority to decide the boundary of the sanctuary as he is competent only to settle the rights in the sanctuary.
8. The Forest Dept. also informed the CEC that a Committee constituted under the Chairmanship of Shri R. N. Mehrotra, CCF (Admin.) had concluded that the area where mining is continuing is not a part of the sanctuary. It was stated that the topo map cannot form the basis to decide whether an area is forest or non-forest and the forest area shown on the topo sheet is only indicative and not conclusive. The dispute about legal status of any area - whether it is a reserved forest or otherwise, is settled on the basis of original village settlement maps.
9. The CEC observed that the findings of the Mehrotra Committee cannot be taken as a conclusive proof that the area is a non-forest land and falls outside the sanctuary especially when the documents give an entirely different picture. The Collector's order dated 21.8.1998 as mentioned above clearly establishes that Sankotda and Thali area are within the sanctuary. The present stand of the Forest Department is at variance with its earlier stand and is not supported by valid documents.

SITE INSPECTION

10. After the meeting, the CEC conducted the site inspection of the area along with special invitees and the representatives of the State Government. During the visit, it was found that the boundary demarcation work of the sanctuary area has not been completed till date. The Dhigota forest block was notified as Reserved Forest vide notification No. 52 dated 30.4.1961. The details of various boundary pillars and distance between them are mentioned in the said notification. Pillar No. 409 onwards fall in Sankotda and Thali area where mining activity is alleged to be continuing. **It was seen that on the spot the boundary demarcation between the sanctuary and the mining area does not exist and the survey and demarcation is yet to be completed.** The CEC was informed that the work of demarcation of the sanctuary boundary vis-à-vis area under mining was started by the Forest Department. After following triangular method of verification, pillar No. 41, 40, 39, 38 and 36

were fixed along the boundary and with their reference, pillar No. 425, 423, 422 and 421 were also fixed along the boundary. **However, further demarcation work could not be continued as the area adjoining pillar No. 421 is surrounded by big heaps of mined material.** The Collector has provided sophisticated survey equipments to survey the mining lease area. Once this work is completed, it will be known where the mine area is outside the sanctuary or otherwise.

CONCLUSIONS & DIRECTIONS

11. The Committee concludes that the stand of the State Government that the mining area is outside the sanctuary and is not a disputed area is not acceptable because:
 - a) demarcation between forest / sanctuary area vis-à-vis mining area does not exist on the ground and the survey work is yet to be completed;
 - b) in view of the specific view taken by the Forest Dept. through its Divisional Forest Officer and other officers that the mining is being done in the forest area without proper demarcation on the ground, there was no way the State Government could have concluded that mining was not being done inside the forest area;
 - c) Collector Jaipur's order dated 21.8.1998 while settling the rights under Section 24 of the Wildlife (Protection) Act, 1972 clearly shows that Sankotda and Thali area fall within the sanctuary. There is no provision under the said Act to review / reverse the said settlement order by any administrative order / decision;
12. In view of the above, the Committee hereby directs that:
 - i) the demarcation of the Jamua Ramgarh Sanctuary shall be done on the ground on the basis of the 1982 Notification and the Collector, Jaipur's order dated 21.8.1998. Pending completion of the demarcation, no mining activity shall be allowed to be continued in the disputed area i.e. in and around Sankotda and Thali villages in compliance of the Hon'ble Supreme Court's order dated 16.12.2002;
 - ii) once demarcation is completed, the mines falling outside the sanctuary may be allowed to resume mining operation only if they have requisite environmental clearances, approved mining plan including EMP, have carried out reclamation work as per the approved mining plan, have not done mining in violation of the FC Act and are at a safe distance from the notified forest / sanctuary boundary as decided by the State Government;
 - iii) details of mines which are found to be inside the sanctuary – whether operational or presently closed, shall be listed and action be initiated against such erring mine owners / officials in a time bound manner.

B- GOLCHA SOAPSTONE MINE

13. During the meeting, the CEC was informed by the State officials that Dagota Jharna Soapstone Mine, commonly known as "Golcha Mines" are having underground mine and open cast mine. The underground mine, which is inside forest area as well as within the sanctuary area, has been closed since December 1996 and presently the mine is not functioning. The mine had remained functional between 1982 to 1996.
14. The open cast mine, which is functioning since 1997 onwards, is completely outside the forest area. It has been allowed to continue as it is neither in forest nor inside the sanctuary.
15. During the site inspection, the boundary pillars of the forest area were shown to the CEC to establish that the open cast mine is outside forest / sanctuary area.

16. After perusal of relevant records, the observations of the CEC are as under::
- i) the Dagota Jharna Soapstone mine has been working since 1936. The second renewal of the lease was granted for 20 years w.e.f. 20.5.1981. The renewal application for third renewal is pending with the Government since 19.5.1999. Since the mining lease area includes forest area and also partly falls within the sanctuary, mining lease renewal cannot be approved without approval under the FC Act, Wildlife (Protection) Act and specific approval of the Hon'ble Supreme Court;
 - ii) total mining lease area is 1,000 ha consisting of 762.628 ha. forest area and 237.372 ha. non-forest area;
 - iii) in the lease area, open cast mining was done upto 1968. Between 1968 to 1996 underground mining activity continued in the forest area. No approval under the FC Act was obtained at the time of renewal of mining lease w.e.f 20.5.1981. Since, December 1996 underground mining has been stopped. **Thus the mining activity had continued almost for more than 15 years in violation of the FC Act, 1980;**
 - iv) the open cast mining as well as underground mining have been done in the same mining lease area;
 - v) presently, mining is being done by two open cast pits. Both are claimed to be in the non-forest area. However, the pits form part of the same mining lease which has already expired;
 - vi) the proposal for diversion of 675.404 forest land submitted in 1997 has been rejected by MOEF under the FC Act. A revised proposal for diversion of 170.648 ha forest area for underground mining has been moved by the user agency on 12.3.2003, which is under consideration of the State Government;
 - vii) as per the guidelines issued under the FC Act, if a project involves non-forest area as well as forest area, pending approval under the FC Act, the project work cannot be started in the non-forest area also. In the instant case, the mining operation on the non-forest area has been started and continued even though the initial proposal has been rejected under the FC Act and the revised proposal is still under consideration of the State Government; and
 - viii) the work of open cast mining was started in 1996-97. This being expansion of an on going activity requires environmental clearance under the notification issued under the Environment (Protection) Act, 1986. The environmental clearance, prima-facie, does not appear to have been taken.

CONCLUSIONS AND DIRECTIONS

17. After considering the above, the CEC is of the considered view that Dagota Jharna Soapstone mining has continuously operated for 16 years in violation of the FC Act as well as the Wild Life (Protection) Act, 1972 in forest area / sanctuary for which punitive action as provided under the FC Act and the Wild Life (Protection) Act has to be taken. Necessary action in this regard, if not already started, shall immediately be taken by the State Government. After the punitive action has been taken mining activity may be allowed to be undertaken in the area only after the following conditions are fulfilled:

- a) the mining lease is sanctioned by the competent authority after requisite clearances are obtained;
- b) environmental clearance for the mining operations is granted;
- c) the mining lease area is demarcated on the ground distinctly showing forest and non-forest area;
- d) the mine is at a safe distance from the boundary of the sanctuary and decided by the competent authority; and
- e) reclamation of the already mined area has been done to the satisfaction of the competent authority

Pending these actions, it shall be ensured that no mining activity is allowed to be continued in the said mine.

Sd/-
(M. K. Jiwrajka)
Member Secretary

(31)

**REPORT OF THE
CENTRAL EMPOWERED COMMITTEE
ON
APPLICATION NO. 108
FOR USE OF 0.981 HECTARE FOREST LAND
IN MOUNT ABU WILDLIFE SANCTUARY, RAJASTHAN
(Use of forest land within Mt. Abu Wildlife Sanctuary for laying of optical fibre)**

(Dated: 25.4.2003)

This present application has been filed before the Committee by the Bharat Sanchar Nigam Ltd. through the Divisional Engineer, Telecom Projects seeking approval of use of 0.981 hectare forest land falling within the Mount Abu Wildlife Sanctuary declared under section 18 of the Wild Life (Protection) Act, 1972, for laying optical fiber for improving telecommunication connectivity of the area.

BACKGROUND

2. The Hon'ble Supreme Court by order dated 14.2.2000 in I.A. No. 548 as inter-alia had directed as under:

*“Issue of notice to all the respondents. In the meantime, we restrain respondents No. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary.
.....”*

3. Further the Hon'ble Supreme Court by order dated 9.5.2002 in I. A. No. 18 of 2002 in Writ Petition (Civil) No. 337 of 1995 while dealing with destruction of the habitat in the National Parks and Sanctuaries declared under the Wild Life (Protection) Act, 1972 has directed as under:

“I.A. Nos. 15, 17, 20, 22, 23, 24, and 25 be first placed before the Standing Committee of the I.B.W.L. for its consideration. In the meantime, no permission under Section 29 of the Wild Life Act should be granted without getting the approval of the Standing Committee.”

4. In view of the above orders, the MOEF is not examining the proposals received by it under the Forest (Conservation) Act, 1980 for diversion of forest land for non-forestry use within any National Park or Sanctuary until and unless a specific approval for the same is accorded by the Hon'ble Supreme Court. The present application has been filed for seeking approval in compliance with the aforesaid order.
5. The proposed used of forest land falling within Mount Abu Wildlife Sanctuary was examined by the Standing Committee of the Indian Board for Wild Life in its meeting held on 8.11.2002. The relevant abstract of the Minutes of the Meeting of the Standing Committee of the Indian Board for Wild Life is reproduced below:

“.....(iv) Diversion of 0.981 ha. In Mt. Abu Sanctuary, Rajasthan for laying of optical fibre telecommunication transmission cable. The Chief Wild Life Warden, Government of Rajasthan informed the committee hat

he has asked the user agency to pay an amount of Rs. 17.62 lakhs for construction of retaining structures so as to prevent uprooting of trees during the process of trench digging by the user agency. This amount would be in addition to Rs. 76,304/- meant for compensatory afforestation in 1.962 ha. He also informed that the user agency has also agreed to pay the aforesaid amount. The Committee recommended the proposal subject to the following condition:

The user agency would pay an amount of Rs. 17.62 lakhs for construction of retaining structures and an amount of Rs. 76,304/- for compensatory afforestation in 1.962 ha. The amount will be deposited in the specially created "Trust fund" for this purpose."

A copy of the MOEF's letter dated 27.11.2002 in this regard is annexed herewith at **ANNEXURE-A**.

6. During the hearing, held before the Committee on 28.3.2003, the applicant requested the Committee to consider the recommending the proposal to the Hon'ble Court as the project is in public interest and it is already examined and recommended by the Indian Board of Wildlife, the Counsel appearing for MOEF also supported his application.
7. This Committee for the limited purposes of I.A. 548, after taking into consideration the recommendations of the Standing Committee of Indian Board of Wild Life, which is the highest advisory body on Wild Life matters in the country, recommends that the Hon'ble Court may consider approving applicant's proposal for use of 0.981 hectare forest land in the Mount Abu Wildlife Sanctuary, Rajasthan for laying in optical fibre subject to the conditions imposed by the Standing Committee of the Indian Board for Wild Life, besides any other stipulations which the MOEF may impose while considering the proposal for diversion of forest land for non-forest use under the Forest (Conservation) Act, 1986. The Committee also recommends that the funds to be provided by the applicant may be deposited in the "Compensatory Afforestation Fund" to be established as per the directions given by the Hon'ble Court by order dated 30.10.2002 in IA No. 566.

The Hon'ble Court may please consider the above recommendations of the Committee and may please pass appropriate orders in the matter.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

The report of CEC has been accepted by the Hon'ble Supreme Court by order dated 6.5.2003.

(32)

CENTRAL EMPOWERED COMMITTEE

ORDER IN

Application No. 10

(Application against refusal to allow Research in Protected Areas of Karnataka)

(Dated: 10.9.2003)

This application has been filed by Dr. Ullas Karanth (hereinafter referred to as the Applicant) requesting this Committee to issue appropriate direction to the Chief Wild Life Warden, Karnataka to give him permission for a Research Project titled "Distribution and Dynamics of Tiger Populations in Karnataka" under the Wild Life (Protection) Act, 1972.

2. The Applicant is aggrieved by order dated 18th March 2002 issued by the Under Secretary to the Government, Forest, Environment and Ecology Department, Government of Karnataka refusing his application giving reasons that since he has already done research involving radio collaring tigers and leopards in Karnataka between 1989 – 1995, in the interest of the project he should choose some other for better comparative studies. The said order of refusal was communicated to him after 18 months, against which this application has been filed.

SUBMISSIONS OF THE APPLICANT

3. The Applicant: has submitted that long term scientific research is necessary to understand and ensure the proper functioning of forest ecosystems. Since the forests and wildlife are intricately linked with each other through natural ecological processes such as herbivory, pollination, seed-dispersal, parasitism and predation therefore clear understanding the functioning of animal communities through long-term scientific research is vital for understanding and preserving natural forest ecosystems. Besides, it is recognized that animal communities in the forest ecosystems, particularly the large predators such as the tiger being at the top of the food chain, are the best indicators of the health of the forest in which they live.
4. The Applicant is a qualified wildlife scientist with a Masters degree in forest resources and conservation and a Doctorate in Applied Zoology. He is a scientist of international repute and associated with several reputed national and international organisations such as the Wildlife Conservation Society, New York, Fellow of Zoological Society of London, Research Associate of the Smithsonian Institution, Washington D.C., Adjunct Associate Professor at the University of Minnesota, Member Steering Committee of Project Tiger, Ministry of Environment and Forests, Government of India, Member Board of Trustees of World Wildlife Fund -India and Scientific Advisor to the Bangalore based NGO-Wildlife First and also a been member of the State Wildlife Advisory Board since 1982.
5. The Applicant has been conducting research on ecology of tigers and prey species in Karnataka since 1988, and has been instrumental in developing techniques for monitoring tiger and other animal populations through innovative camera – trap sampling and line transect sampling methods that he pioneered in India. His research work on tiger has so far resulted in over 50 scientific papers and technical reports and two books. It has been also stated that in view of his knowledge and experience he has been recognized as an international authority on wildlife and has been invited to conduct research on tigers in many states of India such as Assam, Arunachal Pradesh, Assam, Maharashtra, Madhya Pradesh, Rajasthan and West Bengal.

6. He has also advised tiger conservation projects in Tiger Range Countries such as Cambodia, Bangladesh, Indonesia, Nepal, Thailand in his capacity as research scientist. He has shared his scientific knowledge and experience in several international scientific symposia and at important places of learning such as the University of Columbia, Princeton, Duke, Minnesota, Massachusetts and Florida.
7. The Applicant has conducted research monitoring on prey, predators, and forests habitats specifically in Nagarhole in Karnataka since 1988 and the Management Plan prepared by the Wildlife Wing of the Karnataka Forest Department recognizes the need for long term for research on monitoring of prey and tiger populations in Nagarhole on priority basis. The Management Plan also acknowledges the inputs of the Applicant on the basis of research and monitoring done by him.
8. The Applicant has also given several examples of long term scientific research continuing for the last four or five decades which are being actively promoted and encouraged all over the world in the well known national parks such as the Yellow Stone National Park in the USA, Serengeti in Tanzania, Krueger National Park in Africa and similarly on research projects on tiger ecology have been conducted in the Royal Chitwan National Park in Nepal since 1972, Russian Far East since 1992, and Panna National Park I India since 1994.
9. He has explained that the earlier research project titled “Karnataka Tiger Conservation Project” had ended in November, 2000 thereafter a new research proposal was developed by the Applicant incorporating the findings of the past studies, with a view to generate new data and to develop new landscape-level tiger monitoring protocols and to train the forest department and local volunteers in wildlife monitoring techniques. This new project proposal is titled “Distribution and Dynamics of Tiger Populations in Karnataka” was submitted to the Chief Wildlife Warden, Karnataka on 28-10-2000 seeking permission under Section 28 of the Wild Life (Protection) Act, 1972. This proposal was approved by the Ministry of Environment and Forests, Government of India vide letter dated 26-3-2002.
10. According to the Applicant the research proposal was submitted by him to the Chief Wildlife Warden (CWLW) who is the statutory authority under the Wild Life (Protection) Act, 1972. Instead of taking a decision himself, he had forwarded it to the State Government. The matter was apparently with the Minister for Forests, Government of Karnataka and at his request a note was prepared by the PCC (Wildlife) / CWLW. Thereafter the decision rejecting the applicant’s proposal was conveyed to the PPC(Wildlife) vide letter dated 18-3-2002 issued by the Under Secretary to Government, Forest, Environment and Ecology Department which in turn has been forwarded along with the covering letter dated 8-4-2002 by the PCCF(Wildlife) Karnataka to the Applicant. The letter of the Under Secretary states that since the Applicant has been conducting research in Nagarhole National Park peacefully uninterrupted since 1985 with the assistance of the Karnataka Forest Department, however, in the interest of the project and it is better if he chooses some other area of the forest in the country for a better comparative study of Tigers and their behaviour pattern including the required prey population. The Applicant has stated that the Chief Wildlife Warden has not applied his mind and exercised his statutory authority by not taking a decision which he lone is competent to do under the said Act.
11. The Applicant further states that extensive research outputs on ecological, biological and socio-economic parameters are urgently required for sound management of the Protected Areas and biodiversity conservation in the Nagarhole National Park. He has filed a copy of the Management Plan for Rajiv Gandhi (Nagarhole) National Park (2000-2010) which states that the Park does not have any Research Officer or a Research Laboratory and therefore the Forest Department encourages research carried out by the individuals, Scientific Agencies and Organisations. The Management Plan at page in Chapter-5 dealing with Plan Objective and Problems at 75 under the sub-heading ‘Objectives of Management’ in paragraph no. 5.1 sub-clause (v) as one of the stated objective is “To promote and

encourage Wildlife research and ecological studies in consonance with the management objectives.”

12. In response to the allegation that the Applicant had interfered in the functioning of the Forest Department the learned counsel for the Applicant Mr. P. K. Manohar, Advocate has categorically denied that the Applicant has ever interfered in the working of the Department. It was further stated at no time he was informed by the Chief Wildlife Warden or any other Officer that he has been interfering in the working of the Forest Department and not a single instance has been pointed out by any person. It has been pointed out that the Applicant in his capacity as member of these important Committees / bodies has been voicing his concern for the protection of the wildlife and habitat of the State of Karnataka and also of the Tiger project areas and the wildlife and habitat of the entire country. This has been treated by the State of Karnataka as interference in its functioning, which is indeed surprising. It is true that on many issues the stand taken by the Applicant is different than what has been taken by the State Government, which is based on his expertise, vast experience and knowledge. It must be understood that the purpose for including eminent and knowledgeable persons on important Committees / bodies is to get their opinion on various conservation and management issues and not have them as mere ornaments. Besides, the purpose of including NGO's as members of such bodies is to ensure free and fair exchange of new and different ideas and views, which may not be the same as the official view on various conservation issues and matters. It is therefore quite normal for the NGO's having view different from the official and the criticism of the Government action or inaction is with a view to bring about improvements and remove short comings.

REPLY OF THE STATE GOVERNMENT

13. The State of Karnataka has filed two replies - para-wise reply and remarks to the rejoinder filed by the Applicant, wherein it has been admitted that the Director Project Tiger, Ministry of Environment and Forests, Government of India had permitted the Applicant to do research in Karnataka, however, after obtaining the opinion of the Chief Wildlife Warden, Government of Karnataka decided not to accord approval to the proposal.
14. In para no. 5 and 6 of the para-wise reply it is admitted by the State Government that the Management Plan acknowledges the research work done by the Applicant and is also aware of the importance of the long-term scientific research on wildlife species and it is for this very reason he was permitted to carry out research in Nagarhole National Park.
15. In para no. 7 of the reply it has been stated that the Chief Wildlife Warden is free to exercise his discretion under the provisions of section 28 of the Wild Life (Protection) Act, 1972 and he is not obliged to grant permission routinely to any proposal for research received by him as has been stated by the applicant.
16. In para no. 8 and 9 it has been stated that in the past certain studies carried out by the Applicant had become controversial with regard to the methodologies adopted namely, the use of tranquilizers, radio collaring, etc. besides the Director Project Tiger, Ministry of Environment and Forests, Government of India had only requested the State of Karnataka to approve the Applicants research proposal. However, it was necessary for the State to consider the proposal and the Chief Wildlife Warden was justified in referring the matter to the State Government along with his opinion.
17. In para 10 the State Government has stated that it is not bound to give extension to the permission accorded in the earlier projects which had expired on 15-11-2000. The state had to consider the new proposal on merits besides it also had to examine the report of the Committee specially constituted to go into the working of various agencies carrying out research and other activities in the forest area of the State.
18. In para 11 of the reply it has been argued that keeping in view the opinion of the Chief Wildlife

Warden the State has decided not to accord permission to the Applicant. It has also been argued that it is the prerogative of the State Government whether to make available its national parks or wildlife sanctuaries to any person and no one has any right to demand these areas for carrying out research as per ones liking. The reasons given for refusing the permission to the Applicant are stated in the opinion of the Chief Wildlife Warden which has been filed as an Annexure to the said reply.

OPINION OF THE CHIEF WILDLIFE WARDEN

19. During the course of hearing the Chief Wildlife Warden (CWLW) Mr. S. K. Chakrabharthi admitted that the Applicant is an eminent wildlife Scientist of international repute and that he had in his written opinion recommended allowing Applicant's research proposals with certain conditions. The CWLW in his opinion given to the Minister acknowledges the useful management oriented research work done by the applicant by adopting camera trap method for accurately identifying each individual tiger over specific territories and therefore help in keeping a tab on their populations. Further states that the study will also include application of modern Distance Sampling method used for monitoring herbivore prey base with a view to monitor prey predator balance, the population dynamics other important species such as the Elephant, Leopard, Wild dogs and the Lion-tailed macaque, besides the tiger would also be done which will be very informative and useful to the Forest Department, the study through population dynamics which as an index of wildlife management and the management would be able to respond to any changing pattern in the populations, and finally the preparation of a tiger distribution map envisaged in the study would be a very useful information indicating the distributional status of tigers in the State.
20. The CWLW in his opinion sent to the Minister states that in the past the Applicant had interfered in departmental management matters by raising issues such as destruction caused to the forests by forest fires, illegal grazing etc. and complaining about our functioning to outsiders which has not been appreciated by the Department. In his report he has recommended to the State Government to consider the proposal favourably for a period for three years subject to the following conditions:
 - i) the studies would be allowed to carried on in all other national parks and sanctuaries except in Nagarhole and Bandipur areas where studies for long periods have been done and therefore it is not necessary to repeat them in the same area;
 - ii) the Applicant will not interfere with any departmental matters nor will he suggest any transfer postings in any cadre in the said department;
 - iii) the Applicant will not complain about the management to anyone outside the Chief Wildlife or the Forest Department and will not speak to the media. Any problem can be brought to the notice of the Chief Wildlife Warden or his subordinate officers about any shortcomings found at any place;
 - iv) the Applicants organisation will give the details of all the persons working in the areas permitted by the State Government and they would be given entry permits as per rules on application. The movement of the researches will have to be known by the local Forest Range Officers;
 - v) the findings of studies must be brought to the notice of the Conservator of Forests, Wildlife in whose jurisdiction the studies would be conducted once every month and to the Chief Wildlife Warden of the State once in three months; and
 - vi) the Forest Department must be kept informed at least 3-4 weeks in advance before anything is published by the Applicant and the Karnataka Forest Department is also acknowledged.

OBSERVATIONS AND CONCLUSIONS

21. The CWLW's opinion at various places acknowledges the useful management oriented research work done by the applicant by adopting camera trap method for accurately identifying each individual tiger over specific territories which will help in keeping a tab on their populations. According to him the preparation of a tiger distribution map envisaged in the study would be very useful information indicating the distributional status of tigers in the State.
22. On the allegation of the Chief Wildlife Warden about interference of the Applicant in Departmental management matters and raising issues such as destruction caused by forest fires, illegal grazing, etc. the Committee has noted the contention of the counsel for the Applicant that not a single instance of interference was brought to the notice of the Applicant by way of any letter and none was produced before the Committee therefore the allegations made are not substantiated. The Committee has also perused the documents filed by the Applicant and the State and in particular to the letter of the CWLW dated 29-3-2001 wherein it is stated that the matter was discussed with the Hon'ble Minister for Forest and at his request a note was submitted which according to the Applicant is to make out a case for refusing permission him. On the other hand the Applicant's research project earlier has been arbitrarily interrupted on several occasions by the Forest Department on one pretext or the other and the Applicant had to move the High Court of Karnataka to obtain orders in his favour to continue his work. Even the Expert Committee constituted by the Karnataka Government has found that the State Governments interference was totally unjustified and has resulted in loss of valuable research data.
23. The applicant has in support relied upon the National Forest Policy specifically in 4.10 dealing with Forestry Research which the Committee finds as relevant in the present context and the extract of the same is reproduced under:

“With the increasing recognition of the importance of forests for environment health, energy and employment, emphasis must be laid on scientific forestry research, necessitating adequate strengthening of the research base as well as new priorities for action. Some broad priority areas of research needing special attention are -

(i)

(vi) Research related to wildlife and management of national Parks and sanctuaries.”

24. Reliance has also been placed by the Applicant upon the National Wildlife Action Plan (2002 – 2016) prepared by the Ministry of Environment and Forests, Government of India in which the whole Chapter VI deals with Monitoring and Research. Although the whole chapter is relevant, however, the following opening paragraph is significant:

“Monitoring and Research are tools for a better understanding of nature, its functions and to enable optimum or sustainable utilization of its resources, as well as to evaluate the conservation status of the species and habitats and the extent of impact of conservation endeavours undertaken. Such understanding will also help reduce the man – animal conflicts. There is marked deficiency in baseline biological data and on information we need to manage and monitor PAs. “

25. The Committee is of the considered view that long term Research and monitoring is a universally accepted tool for understanding the forests, the flora and fauna and the interaction between them and between various species found therein. This is recognized and specifically provided in the National Forest Policy of 1988, The National Wildlife Action Plan of 2002 and also provided in the Wildlife (Protection) Act, 1972. Besides, wildlife research and monitoring has always been inadequate in India which is necessary for ensuring proper scientific management of the forests and wildlife in the country. It is in this background, the Committee at the very outset is constrained to observe with sadness that the Applicant, who is a distinguished scientist / wildlife biologist of international repute, has to

approach this Committee to allow him to do research in Nagarhole National Park, after it was refused by the State Government, on what could best be described as frivolous grounds. The decision of the State Government is therefore, arbitrary and without any basis. The State Government's allegation that the Applicant has been interfering in the functioning of the department has not been supported by an instance therefore it cannot be accepted.

26. The Committee is also of the view that the Chief Wildlife Warden has not exercised the statutory powers conferred upon him under Section 28 of the Wild Life (Protection) Act, 1972. He has merely conveyed the decision of the State Government refusing to allow the Applicant to conduct research in the State of Karnataka. It is strange that the Chief Wildlife Warden in his note submitted to the Minister of Forests, Government of Karnataka, on one hand acknowledges the stature, scientific knowledge, experience and contribution of the Applicant in the management of wildlife of the state as well as in the country and on the other hand denies him permission to do research in Bandipur and Nagarhole for the reason that he has been interfering in the functioning of the department. If that is the reason for denying him the permission in these two parks, how is it that the same will not hold good against him if he is allowed to do research in other national parks and sanctuaries of the State. It is obvious that the opinion of the Chief Wildlife Warden and decision of the State Government smacks of arbitrariness and the refusal to allow him to do research is not based on any cogent reasons. Some of the conditions suggested by the CWLW in his note to the Minister while allowing him to do research in other parks and sanctuaries of the State sound harsh, punitive, oppressive and overall humiliating in nature, which is extremely unfortunate.
27. We have carefully examined all the documents filed before us by the parties and we find that the contentions of the Applicant that earlier also he was not able to carry on his research peacefully and had to face needless harassment thereby resulting loss of valuable research data. He had to seek the intervention of the Hon'ble High Court of Karnataka to continue with his research work at Nagarhole National Park. That even the Expert Committee appointed by the State of Karnataka has disapproved the constant interference with the Applicant's research who is a wildlife biologist of international repute.
28. In conclusion the Committee is of the view that the Chief Wildlife Warden of the State of Karnataka has not exercised the statutory powers conferred upon him under section 28 of the Wild Life (Protection) Act, 1972, the Committee therefore advises the CWLW to consider the Applicants application and give a decision by exercising his statutory powers under the said Act, within three weeks of the receipt of this order. The Committee expects that the Chief Wildlife Warden will consider the Applicants research proposal dispassionately and judiciously and pass appropriate order on terms and conditions which are just, fair and reasonable.

The Application stands disposed off.

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

Based on the CEC's order, the Chief Wildlife Warden, Karnataka has accorded the permission sought by the applicant vide his order dated 29.10.2003.

(33)

**REPORT OF THE
CENTRAL EMPOWERED COMMITTEE**

In

Application No. 148

(Dated: 14.8.2003)

(Regarding grant of licences to saw mills by Shri Pravakar Behera, DFO, Puri, Orissa in violation of the order of the Hon'ble Supreme Court)

This Hon'ble Court by order dated 30.10.2002 had directed closure of all unlicensed saw mills and prohibited opening of any new saw mills without prior permission of the Central Empowered Committee. For the sake of convenience, the relevant portion of the said order is reproduced below:

“No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.”

2. During examination of the application No. 148 filed before the Central Empowered Committee by Shri Ashok Paikray, Advocate regarding contempt of orders of this Hon'ble Court passed in I.A. No. 777 In I.A. No. 754 – 755, it was brought to the notice of the CEC that Shri Pravakar Behera, DFO, Puri Division, Orissa had issued licences to five saw mills in violation of this Hon'ble Court's order dated 30.10.2002. The hearings were held by the CEC on 4.6.2003, 30.6.2003 and 10.7.2003. Shri Pravakar Behera, DFO was present during the hearing held on 30.6.03 and 10.7.03. After considering the issues raised in the application, details made available by the State Government and the submissions made by Shri Pravakar Behera in his defence, the CEC is submitting the following report about violation of the Hon'ble Court's order dated 30.10.2002.
3. Section 4 of Orissa Saw Mills and Saw Pits (Control) Act, 1991 (hereinafter referred to as the Act), which prohibits setting up and operation of saw mills within 10 km of boundary of any forest in Orissa reads as under:

“Section 4. No person shall establish or operate any Saw Mill or Saw Pit within Reserved Forest, Protected forest or any forest area or within 10 K.Ms from the boundary of any forest or forest area.”
4. The Hon'ble High Court, Orissa by order dated 2.12.1996 in IGC No. 11164/96 has directed that for the purpose of Section 4 of the Act the distance of 10 km is to be calculated with reference to radial distance. Thus in Orissa no saw mill can be established or operate within a radial distance of 10 km from the boundary of any forest area.
5. The licenses of the following five saw mills were rejected / cancelled by the then DFO, Puri – the Licensing Authority, as they were found to be within a radial distance of 10 km from the boundary of the nearest forest:

- i) Laxmi Saw Mill, Lingipur
 - ii) Bhawani Saw Mill, Lingipur
 - iii) Gopinath Timber Saw Mill, Balakati
 - iv) Sidheswari Saw Mill, Balakati
 - v) Siula Saw Mill (now named Maa Tarini Timber Trades)
6. Against the decision of the DFO, Puri appeals were made before the Conservator of Forests, Behrampur (CF, Behrampur) by Saw mills listed at serial no. (i), (ii) and (iii). The CF, Behrampur, referred the matters to the DFO, Puri to reconsider the cases. After reconsidering the cases, the DFO Puri again rejected the licenses. Against this, saw mills listed at serial no. (i) and (ii) filed appeals before CF, Behrampur which were rejected by him by order dated 20.8.2002. No appeal was filed by the saw mill listed at serial no. (iii) after its licence was again cancelled by the DFO. Similarly, no appeal was filed before the CF, Behrampur by saw mills listed at serial no. (iv) and (v) against the cancellation of their licenses.
7. Subsequently, all these five saw mills were granted licences during January / February, 2003 by Shri Pravakar Behera, DFO, Puri Division.
8. The saw mill wise details of the dates of cancellation of the licenses, appeals filed, decisions thereon and other details are given in the statement appended hereto at **ANNEXURE-A**.
9. The main submissions made by Shri Pravakar Behera, DFO in his defence are summarised below:
- i) the licences were issued by treating these cases as renewal cases, and not fresh cases. The licences were issued under the bonafide belief that he was competent to issue the licences and that the Hon'ble Court order dated 30.10.2002 is not applicable in such cases;
 - ii) the Hon'ble Court's order dated 30.10.2002 was received in his office on 16.1.2003 through PCCF, Orissa's letter dated 6.1.2003 whereas licences to M/s Laxmi Saw Mills and Bhawani Saw Mills were issued by him on 13.1.2003 i.e. two days before receipt of the Hon'ble Supreme Court's order by him;
 - iii) M/s Laxmi Saw Mill had filed a review appeal before the Principal Chief Conservator of Forests (PCCF), Orissa who vide letter dated 27.12.2002 remanded the matter to him for disposal as envisaged in the Act and Rules. The decision in respect of M/s. Laxmi Saw Mill was taken by him in compliance with the directions of the PCCF, Orissa. The decision in respect of other saw mills was taken on similar lines;
 - iv) in the meanwhile, Tehsildar, Bhubaneswar had sent a report dated 16.11.2002 (in continuation to earlier joint verification report) which reads as under:

“The lands under plot No. 501 & 534 having the ‘Kissam Gramya Jungle’ are under the water flow of branch river of Bhargavi and plot No. 519 & 526 are completely under the water flow of river Bhargavi”.

 - i) the licence of M/s Laxmi Saw Mill, Lingipur and other similarly placed saw mills were renewed by him after considering the report of the Tehsildar, provisions of saw mill Act and other relevant information;
 - ii) in Orissa it is a general practice to sanction saw mill licences which were earlier cancelled by treating them as renewal cases and not as new cases;
 - iii) he was not aware that the Conservator of Forest (CF) had already rejected the appeal filed by the saw mill, otherwise he would have never overruled the decision taken by his superiors; and

- iv) the licences were given in public interest and not on any personnel consideration. In any case all the licenses have now been cancelled.

10. During the hearing held on 30.6.2003, Shri G. B. Mukherji, Principal Secretary Forests, Government of Orissa, who attended the hearing as a Special Invitee, made the following submissions :

- i) these cases cannot be treated as renewal of licences. All the saw mills, after cancellation of licences were closed. The appeals made by them were rejected by the Appellate Authority i.e. CF, Behrampur. Hence, these have to be treated as cases of fresh licences;
- ii) a decision taken by superior officer cannot be overruled by his subordinate DFO, Puri had no authority to issue licenses, when the appeals made against cancellation of the license was already rejected by the CF, Behrampur;
- iii) the joint verification report had established that the saw mills were within a radial distance of 10 Km. from the forest area. The joint verification was done by a team consisting of representatives of the Forest Department and the Revenue Department. The joint verification report cannot be overruled on the basis of the report of the Tehsildar. It can be modified / overruled only if the subsequent verification is done by the officers of higher rank or at-least equal rank;
- iv) the PCCF had merely forwarded the applications to the DFO for doing the needful as per the relevant Act / Rules. It did not empower the DFO to grant licenses in violation of Hon'ble Supreme Court's order dated 30.10.2002 or supercede his superior's orders and to grant licenses in violation of the Act;
- v) under the Act, DFO is the Licensing Authority and CF is the Appellate Authority for deciding the appeal against the decision of the Licensing Authority. Once a decision is taken by the Appellate Authority, such decisions, until and unless overruled by the Court can not be modified.
- vi) the DFO had acted beyond his jurisdiction by overruling the decision of the CF; and
- vii) the CF Behrampur by his letter dated 12.5.2003 has already taken a view that the DFO, Puri has not complied with the directions of the Hon'ble Supreme Court and had not followed the provisions of the Act and Rules while giving license to the saw mills. Accordingly, he was directed by the CF to immediately cancel illegal licenses granted by him. (A copy of the CF's letter dated 12.5.2002 is enclosed hereto at **ANNEXURE-B**).

11. After considering the issues raised in the Application, the submissions made by Shri Pravakar Behera, DFO Puri and the views of the State Government, the CEC is of the firm view that Shri Behera had issued saw mill licenses to five saw mills in Puri Division in violation of the Orissa Saw Mill and Saw Pit (Control) Act, 1991 and this Hon'ble Court's order dated 30.10.2002. No valid explanation has been given to justify his action. The licenses of all the five saw mills namely, i) Laxmi Saw Mill, Lingipur, ii) Bhawani Saw Mill, Lingipur, iii) Gopinath Timber Saw Mill, Balakati, iv) Sidheswari Saw Mill, Balakati and v) Siula Saw Mill (now named Maa Tarini Timber Trades) were cancelled by the Licensing Officer and appeals made by the saw mills rejected by Appellate Authority after it was established that these saw mills were situated within a radial distance of 10 km from the nearest forest and therefore as per the Act cannot be allowed to continue. The PCCF Orissa by its letter dated 27.12.2002 had merely forwarded the representation to him. He didn't empower the DFO to reopen the case if the Rules or the Act did not allow to do so.

12. This Hon'ble Court's order dated 30.10.2002 prohibits reopening of any unlicensed saw mill or grant of license to such saw mill. Even if Shri Behera was not aware of this Hon'ble Court's order, the saw mill licenses issued in violation of this Hon'ble Court's order should have been

cancelled by him as soon as the orders were received by him. Instead licenses to three more saw mills were given by him.

13. In view of above, the CEC is of the view that Shri Behera has issued licenses to five saw mills in violation of Section 4 of Orissa Saw Mills and Saw Pits (Control) Act, 1991 and this Hon'ble Court's order dated 30.10.2002.
14. In view of the above, the CEC recommends that this Hon'ble Court may please consider initiating contempt proceedings against Shri Pravakar Behera, DFO Puri Division, Orissa for willful violation of this Hon'ble Court's order dated 30.10.2002.

The Hon'ble Supreme Court may please consider the above recommendations and may please pass appropriate orders in the matter.

(Annexures are not included)

Sd/-
(M. K. Jiwrajka)
Member Secretary

Note :

(Based on the CEC's report, the Hon'ble Supreme Court has initiated contempt proceedings against Shri Pravakar Behera, DFO, Puri for violating Hon'ble Supreme Court)

(34)

**REPORT
OF
THE CENTRAL EMPOWERED COMMITTEE
ON JAMBUDWIP**

(Dated: 20.12.2002)

(Regarding non-forestry use of the Reserved Forest in Jambudwip Island in violation of the Hon'ble Supreme Court order dated 12.12.96)

An Application dated 21-11-2002 has been filed before the Committee by the Executive Director of Wildlife Protection Society of India Ms. Belinda Wright raising the issue about encroachment and destruction of mangrove forests in Jambudwip Island in Sunderbans region.

2. A team of the Central Empowered Committee headed by Chairman Shri P. V. Jayakrishnan, Shri Mahendra Vyas, Member and Shri Sidharth Choudhry, Advocate and representative of learned Amicus Curiae Shri Harish Salve visited Jambudwip Island on 3rd December to get a first hand account of the incursion into Jambudwip Island.
3. Prior to the visit a letter dated 15th Nov. 2002 was issued by the Member Secretary addressed to the Chief Secretary State of West Bengal whereby he was informed about the violation of the Hon'ble Supreme Court's order dated 12-12-1996 by unauthorised use of forest land had taken place in Jambudwip Reserve and to take immediate steps to enforce the said order.

ABOUT JAMBUDWIP ISLAND

4. Jambudwip Island was declared as a Reserved Forest on 29th May, 1943 covers an area of 1,950 ha. Presently it is under the control of 24 Paragnas (South) Forest Division. It lies in the estuary of Hooghly river along the coast of Bay of Bengal and is one of the Southern most Island away from the mainland.

ISSUE

5. Jambudwip Island is being used by fishermen setting up transient fishing camps from the adjoining Islands such as Kakdwip, Sagar, Namkhana, Pathar Pratima, Mausumi seasonally to dry their fish. The use of the Island gradually increased from a small number of fishermen in the sixties to presently to about 4,000 as per the Committees estimate and 10,000 according to the fishermen. Large areas of mangrove forests of the islands have been cleared, approx. 350 ha., to make way for dry land for fish drying. Since Jambudwip Island was an uninhabited island ever since its notification as Reserved Forest in 1943, there are no recorded rights of any fishermen / person in the area. However, after the Hon'ble Supreme Court's order dated 12-12-1996 in T. N. Godavarman Thirumalpad Vs. Union of India, diversion of forest land for non forest use has been strictly prohibited unless it prior approval by the Ministry of Environment and Forests has been accorded under the Forest (Conservation) Act, 1980.

CASE OF THE FISHERMEN

6. Representations have been received by this Committee on behalf of the concerned fishermen from National Fish Workers Forum (NFF) which is a Federation of State level Trade Unions, Paschim Banga Rajya Matsyajeebee Samity and others. A meeting with the fisherment and their representative Shri Harekrishna Debnath, Chairperson of the National Fishworkers Forum (NFF) was held by the Committee mebers at Jambudwip Island on 3rd afternoon. Subsequently, on 4th evening another meeting

was held with the representatives of the fishermen at Calcutta when a copy of the memorandum signed by President of the Jambudwip Dryfish Fishermen Association, Secretary, Kakdwip Fishermen Association besides Shri Harekrishna Debnath of NFF, where the Fisheries Minister Shri Kironmoy Nanda was also present.

7. According to them the traditional and transient fishing community of Islands around Jambudwip been using this island what has been described as an age old customary practice and they should be allowed to use the Island for fish drying purposes without which they would not be able to survive. In their support they have filed copies of fishing permits (seasonal) issued by the Forest Department of 26-11-78, 29-1-78, 16-10-98 etc. Besides, the Wild Life (Protection) Act, 1972 and the Coastal Regulation Zone (CRZ) issued under the Environment (Protection) Act, 1986 also permits them the right of passage and recognises customary rights of the local fishermen.
8. Construction of 12 heavy RCC pillars across the creek in early November, 2002 by the Forest Department was in violation of the CRZ notification and the eviction of fishermen by use of force was uncalled for and destroyed our transient camps. These RCC pillars according to the fishermen had become a death trap when they tried to enter the creek to take shelter from the cyclone that hit the area on 12 th November, 2002.
9. Shri Harekrishna Debnath stressed before the Committee that the *moplas* (money lenders) from Kerala who are financing the fisheries business are lending money at exorbitant rate of interest i.e. between 8 to 12 % per month!! They also supply the boats to the local fishermen. This is adding to the hardship already faced by the fishermen in this area. The eviction of the fishermen from Jambudwip will directly affect the livelihood of 10,000 fishermen and indirectly to about 1,000 persons who are engaged in ancillary such as net making, boat building and repairing, transport and trade of the fish, fishmeal and poultry industry etc.
10. According to the fishermen, they have not destroyed any mangrove forest in Jambudwip Island. To an allegation that the fishing and the fish drying activity is controlled by a handful of traders who bring a few thousand labourers to this Island between October and February. Reliance has also been placed on the anthropological background given in the book “THE MOON AND THE NET” – Study of a Transient Community of Fishermen at Jambudwip’ authored by Bikash Raychaudhuri published by the Anthropological Survey of India.

MEETINGS WITH THE OFFICIALS OF THE STATE GOVERNMENT

11. The Committee had received a letter dated 22nd Nov. 2002 from the Secretary Fisheries Department stating that the State Government has already decided to permit fishing activity in Jambudwip Island on the ground that it has been continuing for last 40-50 years. The letter justifies this stand with arguments which are similar to those advanced by the Fishermen.
12. A meeting was held with the Chief Secretary of the State of West Bengal, Secretary Fisheries, Secretary Forests and the Principal Chief Conservator of Forests at Calcutta on 4th afternoon, and the matter was discussed at length. The Secretary Fisheries strongly supported the cause of the fishermen who according to him were carrying on age old vocation and they deserved full sympathy and help. Subsequently we had a brief meeting with the Minister of Fisheries Shri Kironmoy Nanda, who also expressed deep concern about the plight of the fishermen.

FOREST DEPARTMENTS CASE

13. The following information was provided by the officials of the Forest Department against specific queries made by the Committee.
 - Jambudwip Island including waterways is a Reserved Forest (RF) notified on 29th May, 1943. Since there were no inhabitants there are no recorded rights.
 - The R F with an area of 1950 ha. falls within 24 Paragnas (South) Division.

- Till 1981 there was no encroachment of the R F. In 1986 20 ha. encroached for fish drying purpose.
- Over the years large parts of the island encroached. Hutments, godowns for storing fish and implements constructed, exotic trees planted.
- Satellite Imagery between 1981 and March, 2001 shows large areas of RF encroached by destroying mangrove and other forest, which is an irrefutable proof.
- The Island is remote and is difficult to reach. Besides, out of the sanctioned strength of 57 Forest Guards nearly 55% of the posts i.e. 31 or more than half are lying vacant, which has hampered protection of the RF from encroachment.
- After 12-12-96 order of the Hon'ble Supreme Court in Godavarman (Forest Matter), the officials had series of meeting with the District authorities, Police, *Zila Parishad* and local public representatives with a view to evict encroachers and find alternative site.
- Between 1996 to Oct. 2001 no action could be taken due to several factors and due to non-availability of police force.
- In Nov. 2001 Chief Minister Government of West Bengal approved steps proposed by the Forest Deptt. to remove encroachments.
- Between Dec. 2001 to July 2002 modalities framed in consultation with the District administration to remove encroachments and notices were issued to encroachers.
- Between 30th July and 25th Aug. 122 temporary hutments occupied by 109 families and 42 unclaimed godowns demolished and 2,13,000 seedlings of mangrove and other native species planted in the evicted area.
- Between 14th Sept.2002 and November 2002 Senior Police officials, Fisheries and Forest Minister along with their respective senior officials and officer of the District and others visit the Island.
- November 2002 availability of Haribhanga dwip (Lower Long Sand Island) and Amravati char near Bakkhali suggested for use of fish drying.
- 21st Nov. 2002, 20 Trawlers with about 400 people approach Jambudwip Island and by 22nd their no. increases to 40. Forest and Police staff prevent entry of fishermen into the Island.
- 24th Nov. 2002 Fish merchants with workers enter the creek of Jambu Island and damage the pillars, lock gates and foot bridge. Additional Police force rushed.
- 25th Nov/ No. of trawlers in the creeks increase to 50 and later beyond that upto 100, 150-200 people disembark on Jambu Island, abuse forest staff, cause damage to departmental boat, uproot about 1,000 seedlings planted by the Forest Department.
- 27th – 30th Nov. 2002, Trawlers / Boat owners have blocked the creek and are refusing to move out and threatening the Forest Dept. staff.

On being asked if there is any alternate site, the Forest officials suggested Haribhanga Island (Lower Long Sand Island) which offers about 500 ha. of land which is already used by about 140 families for fish drying activity.

CASE OF THE APPLICANT / NGO's

14. Representatives of Nature Environment & Wildlife Society Shri Biswajeet Roy Chowdhury and Ms. Indira Bhattacharyaa, Shri Mrinal Chatterjee of Project Lifeline and Shri Shakti Bannerjee of WWF-I met the Committee at Calcutta. They have expressed grave concern about the future of mangrove forests of Jambudwip. According to them the forests would be totally destroyed by the fishermen just for meeting their fire wood requirements as none of them will bring LPG's from their homes in

located in Kakdwip, Namkhana or other islands. They have also suggested Haribhanga Island as an alternative site which could be used by the fishermen. They have advocated that basic facilities such as drinking water, electricity through solar power and better landing jetties should be provided for the benefit of the fishermen so that they can continue their work peacefully without any hindrance.

SAFEGUARDS AND RESTRICTIONS PROPOSED BY THE NGO'S

15. The NGO's have expressed concern that in the event the State Government moves a proposal to the Central Government for diversion of forest land for non-forest use under the F.C. Act then the MoEF must take into consideration the following safeguards to ensure that the Jambudwip Island is not used by non-Indians for clandestine activities such as smuggling contraband items such as drugs, fire arms, and even illegal migrants coming from Bangladesh sneaking into India through what is described as 'Unofficial Gateway to India'. The safeguards / restrictions to meet the attendant risks suggested by them are listed as under:
 - i) The area to be used for fish drying should be clearly demarcated and fenced with funds for which should be made available by the Fisheries Deptt.
 - ii) No forested area or an area where root stock is still present, should be cleared for the purpose and only blanks / char lands allowed to be used.
 - iii) Fisheries Deptt. should pay for the cost of replanting seedlings in the vandalized forest areas. They should also pay for the cost of increased vigilance/maintenance by the Forest staff, during dry fish season @ Rs 5 lakhs per annum
 - iv) All trawlers / mechanized boats entering Jambu Island should first apply for Registration with the DFO. The dry-fish merchants / trawler owners should submit list of persons / labourers engaged for the job and of all those persons who would stay on the island for four months. The DFO should issue Identity slips to these people. No unregistered trawlers / boats will be allowed to enter Jambudwip. A fee will be charged for Registration and fish-drying permission.
 - v) No permanent structures should come up beyond the demarcated zone. All temporary structures erected within the demarcated area should be dismantled at the end of each fishing season and all related materials should be removed from the island.
 - vi) Fisheries Dept. should make available funds for the cost of one barrack to accommodate police personnel.
 - vii) One permanent police camp should be established, along with the Forest camp, with at least six police personnel from April to September and twelve police personnel from October to March. This is necessary to prevent unauthorized entry of foreign Nationals and foreign trawlers.
 - viii) BSF and Coast Guards should carry out regular checks around this island as the place is now well known as smugglers' den under the cover of dry fish business.
 - ix) Usual restrictions will have to be imposed for dry fish trading with Bangladesh.
 - x) The permission for seasonal fish drying should be on year to year basis
 - xi) A Monitoring Team consisting of the following members, should be constituted by the CEC to monitor the compliance of stipulated conditions:-
 - a. PCCF/WL & BD ——— Chairman
 - b. Director, SBR ——— Member
 - c. Director, Fisheries, GOWB ——— Member
 - d. District Magistrate, 24 Pgs(S) ——— Member
 - e. Regional CCF, E.R., GOI ——— Member

- f. Joint Director, S.B.R. & C.F.(S) — Member Secretary, and
- g. One NGO.

Permission for temporary fish drying during subsequent years should be granted only after getting satisfactory monitoring report.

ALTERNATIVE SITE

- 16. The Forest Department has also suggested Haribhanga Island (Lower Long Sand Island) which offers about 500 ha. of land for use of fish drying activity. About 140 families are already engaged in his activity on this Island where fresh water is also available. The Government of West Bengal should develop infrastructure facility such as construction of jetties and fresh water supply etc. to promote Haribhanga Island as an alternative site to Jambudwip.

CONCLUSION

- 17. The legal position about the applicability of the Forest (Conservation), 1980 (F. C. Act) and the Hon'ble Supreme Court's order dated 12-12-1996 is clear. The occupation of Island RF by fishermen even for a few months and fish drying activity is a non forest activity not permissible under the F. C. Act unless prior approval of the Central Government is taken. The Hon'ble Court's order of 12-1-2-1996 prohibits any non-forest use of forest land without prior approval of the Central Government under the F. C. Act.
- 18. The Committee was disturbed to see fresh destruction of large areas of mangrove forests in the Island and also construction of dykes (bunds) preventing inundation of mangroves with a view to destroy this forest. Besides, the floral composition of the forest has also been disturbed by planting cultivated plant varieties in areas occupied by the fishermen. The Committee has no doubt that any further occupation of this Island will completely destroy the mangrove forest of the entire Island. The occupation of over hundred of families in the area will require vast quantities of fuel wood for their cooking and construction of their hutments. The Committee suggests West Bengal Government to develop Haribhanga Island as an alternate site for promoting fish drying activity before the onset of the next season.
- 19. The Committee hereby directs that the State of West Bengal to take all necessary steps to remove all traces of encroachment on Jambudwip Island by 31st March, 2002. This would include remains of old hutments, removal of all exotic trees and cultivars etc.
- 20. The Committee further directs the State of West Bengal to make required funds available to the Forest Department for rehabilitation of the damage caused to the mangrove forest and also the seedlings which were uprooted by the agitating fishermen.
- 21. The Committee expresses serious concern about the security of the Jambudwip Island. Being remotely located and not far from the Bangladesh border, the area is prone to incursions by aliens, illegal migrants from Bangladesh, smuggling of drugs and arms and other contraband items, reports of illegal fishing by trawlers from countries such as Thailand and other countries through what is aptly described as "Unofficial Gateway to India". The problem is compounded by remoteness of the island where District Administration and the Forest Department due to resource constraints and shortage of staff have not been able to check people's movement in this area. In view of the security concern and sensitivity of the area, it is desirable that any proposal for non-forest use under the F.C. Act, should be considered only after it is cleared by the Ministry of Home Affairs as well as Ministry of External Affairs. A copy of this report is therefore being forwarded to the Ministry of Home Affairs and the Ministry of External Affairs for information and appropriate action.

APPRECIATION

22. The Committee records its appreciation for the effort put in by the Forest Department Officials / staff in clearing the encroachments in the Jambudwip Island and putting the area under plantation in a short time. The Committee also appreciates the District Administration Officials including the Police Officers and staff for all assistance rendered in clearing the encroachments and ensuring the implementation of the order of the Hon'ble Supreme Court. Their effort is laudable as they have worked under difficult conditions in remote area in the said Island.

Sd/-

(M.K. JIWRAJKA)

MEMBER SECRETARY

Note :

An I. A. has been filed before the Hon'ble Supreme Court against the directions given by the CEC. After hearing the matter, Hon'ble Supreme Court has passed an interim order prohibiting movement of mechanized trawlers for fishing around Jambudwip Island.

(35)

**REPORT
OF
THE CENTRAL EMPOWERED COMMITTEE
REGARDING
ENCROACHMENT OF FOREST LANDS IN
WAYNAAD WILDLIFE SANCTUARY**

(Dated : 16.4.2003)

Introduction

This report is regarding the encroachment of forest land in Muthanga range of Wyanad Sanctuary in the first week of January, 2003 and the the early eviction of the encroachers from this ecologically fragile and biologically rich forest eco-system.

Background

2. The Committee has been closely monitoring the unfortunate developments relating to violation of the orders of the Hon'ble Supreme Court in Waynad Wildlife Sanctuary. The Wyanad Sanctuary, notified in May 1973, extends over an area of about 473 Sq. kms. The Sanctuary is contiguous with Mudumulai Sanctuary in Tamil Nadu and Bandipur Sanctuary in Karnataka and together constitute a vast contiguous land mass crucial for migration of several species of wild animals in their natural habitat. It also forms part of the Nilgiri Biosphere Reserve, the largest protected forest tract in South India. The Wyanad Sanctuary also forms part of one of the largest Elephant Reserves in terms of Elephant population and the land area.
3. The Union Minister of Environment & Forests had vide his letter dated 24th January, 2003 requested the Chief Minister of Kerala to have the encroachers evicted immediately from the Muthanga Range of the Wyanad Sanctuary. Meanwhile, an application was also filed by the Wildlife Trust of India, which was forwarded to the Chief Secretary.
4. The Chief Secretary, Government of Kerala vide his letter dated 31.1.2003 (**ANNEXURE-I**) has informed that on 5th January, 2003 around 500 activists of Adivasi Gothra Sabha under the leadership of Ms C K Janu encroached in the Amboothy and Thakarappady areas of Muthanga Wildlife Sanctuary, Wyanad District. On 15th January, around 800 activists of an organisation called Adivasi Kshema Samithy encroached forest lands at around 15 places in Wyanad North and Wyanad South Divisions.
5. Subsequently reports appeared in the press and electronic media about the eviction of encroachers from the Muthanga Range of the Wyanad Sanctuary on 19.2.2003. The relevant details and the circumstances leading to the eviction is in the letter of Secretary Forests and Wildlife, Government of Kerala dated 24.2.2003 and which is at **ANNEXURE-II**.
6. Keeping in view of the seriousness of the matter, Shri P. V. Jayakrishnan, Chiarman, Central Empowered Committee alongwith Shri S. C. Sharma, Addl. DG (Retd.), Special Invitee, visited the forests in Wyanad District on 4th and 5th March, 2003 to get a first hand knowledge of the extent of encroachment and the damage caused by the encroachers to the forests of the ecologically fragile and biologically rich and important forest ecosystem. The Committee visited the areas of Wyanad North and Wyanad South Forest Divisions on 4th March, 2003 and the Muthanga Range of Wyanad Sanctuary on 5th March, 2003. During the visit the Committee was accompanied by Sri Bharat Bhushan Secretary

Forest and Wildlife Government of Kerala and others as listed at **ANNEXURE-III**. On 4th March 2003, the Committee was briefed at the Calicut Forest Guest House by Sri V.K. Nair, Inspector General of Police. The Committee also heard the representatives of Prakruti Samrakshan Samithy, Wyanad at Sultan Batteri Guest House on 5th March, 2003.

Visit to encroachment sites in Wyanad North and Wyanad South Division on 4.3.2003

7. The Committee, after reaching Mananthwade, visited S Valave Vested Forest, Begur Range, North Wyanad Division, and inspected the site where encroachments had taken place. There were about 400 temporary sheds spread over 81 hac. of forest land. The Committee was informed that poles and bamboos for construction of the sheds was procured by encroachers through illegal fellings in the encroached forest area. The land was also being cleared for cultivation. The Committee spoke to some of the encroachers namely S/Sri Sukumaran, Sidhan, Maniyan and Kuttan all of whom stated that they are residents of villages located about 20-22 km away from the encroached area and where they already are in possession of houses provided by the Zila Panchayat. According to them, they had encroached the vested forest area at the instance of Adiwasi Kshema Samithy whose office bearers/members have apparently told them that through such encroachments they can pressurise the State Government to allot the encroached land to them for agricultural purposes. The Committee was informed that the motivation for such an illegal action has primarily come from the encroachments under the leadership of Ms C. K. Janu in Muthanga Range of Wyanad Sanctuary. The encroachers appeared to be aware that clearing the forest land for agricultural purposes was illegal but were reluctant to leave the area for the present. They were reportedly awaiting the outcome of the meeting scheduled to be held between the representatives of Adivasi Gothra Sabha and the Minister of Forests, Government of Kerala on 6th March, 2003. It was seen that members of the family stayed at the encroached site by rotation so that the family could continue the normal activities at their villages/permanent places of stay. The Committee during the visit saw a large number of illegally felled bamboo clumps and trees of other species.
8. From S Valave the Committee proceeded to CC Mukke Vested Forests in Wyanad South Division. This area which was planted with teak in 1969 and has a good density crop has been encroached upon by around 500 people from about 200 families and who have constructed nearly 174 temporary sheds in the area. One Sri Jayan, who claimed to be Secretary CPI(M) Local Committee was the chief spokesman for the group. He informed that they have come from about 70 different colonies located within a radius of about 5 to 6 km from the encroached site. These colonies included Athirattapady, Variat, and Chirattayambam. Most of the encroachers had houses allotted to them by the Zila Panchayats at their permanent places of stay but did not have any agricultural land. Sri Jayans stand was that the Vested Forests are the property of the people and they have the right to use the same for agricultural purposes. On the other hand according to the forest officials the Vested Forests in Kerala have already been given the status of Deemed Reserved Forests. The villagers while being aware of these facts have resorted to encroachment on this forest land after seeing the encroachments in Muthanga Range of Wyanad Sanctuary.

Visit to Muthanga Range Forests on 5.3.2003

9. The Committee along with forest and police officials left Sultan Batteri Guest House for Muthanga Range at 6 a.m. on the morning of 5.03.03. As there was dense fog and visibility was poor the Committee waited for sometime at the Range office. As soon as the visibility improved the Committee proceeded towards Amboothy area where the eucalyptus plantations are in the process of being converted by the Forest Department into forests of native species and maintenance works in this regard have been carried for the 3rd year. It was observed that there is good grass and bamboo growth all around interspersed with the seedlings planted by the forest department. This area was encroached by the activists of Adivasi Gothra Sabha on 5.1.2003 and many sheds had been constructed.

The Committee while inspecting the area on foot had hardly walked for about a kilometer when loud sounds of trumpeting by elephants were heard from two directions. The Committee then saw two herds of elephants and decided to return and traverse the rest of the area in vehicles. The area no doubt is exceedingly rich in wildlife. While taking a round in vehicles the Committee saw many elephants, bison, cheetal and sambhar.

10. The Committee next visited Thakarappady Kakkapadam and Kundonvayal areas of the Sanctuary. The Committee during the visit observed that many trees had been felled and extensive damage had also been caused to the encroached area through fires. Remnants of temporary shelters erected by the encroachers were also seen. The encroachers had cleared about 130 hectares of forest land and felled about 2,000 trees during the period of their unauthorised stay in the area. The Committee noticed that, after the eviction of encroachers on 19.2.2003, the site has been frequented by elephants and other species of wild animals and the large quantities of fresh elephant droppings were standing testimony to this. At Koundon Vayal the Committee came across two machans erected by the encroachers inside the thick tall bamboo clumps. The Committee was informed that these machans were used by the encroachers as vantage point/observation posts. The space under the machan was used to store rations and other daily essential terms.

The Committee next visited the trijunction pillar where the boundaries of Bandipur Sanctuary, (Karnataka) Mudumulai Sanctuary (Tamil Nadu) and Wyanad Sanctuary (Kerala) converged. The importance of Wyanad Sanctuary also stems from the fact that during the summer months (Feb.- March to May-June) there is a large scale migration/movement of animals from Karnataka and Tamil Nadu to Wyanad Sanctuary in Kerala where water is generally available in plenty. The Committee returned to Sultan Batteri Guest House by around 10 a.m. on the same day i.e. 5th March, 2003.

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

11. The Committee after having the first hand information, is of the view that the order of the Hon'ble Supreme Court dated 12.12.1996 and 14.2.2000 have been violated by hundreds of persons.
 - (a) It was seen that the encroachments in Muthanga Range had begun on 5.1.2003 and were finally cleared on 19.2.2003. Given due protection and with suitable conservation measures the encroached area may recover to its original status in due course of time.
 - (b) The initial reluctance of the State Government to take action against the encroachers in Muthanga area spurred a fresh wave of encroachments in Wyanad South and Wyanad Northern Division. The detailed list of encroached sites as obtained from Kerala Forest Department is at **ANNEXURE-IV**. A similar encroachment has taken place in the Nelliyanpathi Orange and Vegetable farm of the Department of Agriculture falling in the reserve forest in the area of DFO, Nemmara in Palghat district of Kerala. No perceptible action seems to have been taken so far by the State Government to clear these encroachments. This is a matter of grave concern as it is in violation of the Hon'ble Supreme Court's order dated 12.12.1996. Urgent steps need to be taken to remove these encroachments. To expedite matters it is suggested that a Committee at the State level headed by the Chief Secretary should closely monitor the progress made in this regard and should send a monthly report to the Ministry of Environment & Forests, Government of India. The regional representative of the Ministry located at Bangalore should also be a member of this Committee.
 - (c) The recent encroachments on forest land is said to be a sequel to the

clearance given by the by the State Government in October, 2001 to allot non-forest land to the landless tribals. However, all such persons have not benefited as the progress of allotment of land to them has been slow. The State Government should consider carrying out a quick detailed survey of non-forest land available in the State for finding a viable solution to this vexed problem within the framework of existing laws and regulations. It is vital that the State finds a harmonious and sympathetic solution so that the genuine tribal communities can be peacefully settled on non-forest land.

- (d) It is seen that the State Government has from time to time been taking action to evict the encroachers from forest lands. The problem however remains unabated. It is therefore imperative that the State Government immediately tackles the “genesis of the problem” of the tribals of the State becoming landless, so that such unfortunate incidents are not repeated and the orders of the Hon’ble Supreme Court are not violated.

Sd/-
(P. V. Jayakrishnan)
Chairman

(Annexures not included)

(36)

**REPORT
OF
THE CENTRAL EMPOWERED COMMITTEE
ON
APPLICATION NO. 121**

(Dated: 22.9.2003)

(Regarding alleged illegal mining in Choursil reserved forest, Lalitpur, Uttar Pradesh by Mr. Pooran Singh Bundela, M.L.A.)

Mr. Pratap Singh Patel, editor, Saptahik Bundaili Dhara - a local weekly of Bundail Khand, Uttar Pradesh had filed Application No.121 before the Central Empowered Committee (CEC) regarding alleged illegal mining being done in the Choursil reserved forest area of Lalitpur by Mr. Pooran Singh Bundela, M.L.A. During the hearing of the Application held before the CEC, the applicant expressed desire to withdraw the Application, however the same was not permitted as the issues raised in the Application are regarding violation of this Hon'ble Court's orders as well as of public interest. This report is being filed by the CEC after considering the issue raised in the Application, observations made during the site visit undertaken by the CEC, examination of the relevant records and after considering the views of Mr. Bundela.

2. An area of 230.56 acre land in Choursil Village of Lalitpur District, Uttar Pradesh has been notified as reserved forest (hereinafter referred to as Choursil reserved forest) vide Government of Uttar Pradesh Gazette Notification No.7662/14-Kha-20 (243)-70 dated 29.12.1970. A granite stone mining lease over an area of 14.10 acre of revenue land in Kalapahar Village has been sanctioned in favour of Mr. Pooran Singh Bundela, M.L.A. for a period of 15 years. After execution of the lease agreement on 4.2.1997, the mining activity was started. The Western boundary of Choursil reserved forest is common to the eastern boundary of the Kalapahar Village as well as to the boundary of the above mining lease.
3. During July 2002, primary Forest Offence Reports bearing Range Case Nos.6/2002-03 and 8/2002-03 were issued by the Forest Department against Mr. Bundela for alleged illegal mining activity being done in the Choursil reserved forest. After protracted correspondence and joint inspection by the Forest and Revenue Department a decision was taken to demarcate the boundary of reserved forest on the ground on the basis of the reserved forest notification, by a team comprising representatives of the Forest Department, the Revenue Department and the Mining Department. Since the Western boundary of the Choursil reserved forest is contiguous with the western boundary of Choursil Village and the eastern boundary of the Kalapahar Village, the demarcation of the boundary of the reserved forest would also result in demarcation of the village boundary between Choursil and Kalapahar Villages. This exercise would also demarcate the boundary between the Choursil reserved forest and mining lease area of Mr. Bundela.
4. Pending demarcation, mining activity was allowed to be continued in the area by Mr. Bundela notwithstanding the stand of the Forest Department that the area wherein mining was being done was a forest area.
5. The demarcation of the reserved forest area boundary was done between 25th and 26th September 2002 by a team consisting of the following officers: -
Ø Forest Department: - i) Mr. S.P. Yadav, DFO, Mahoba, ii) Dr. K.L. Meena, DFO, Orai, iii) Mr. S.L.

Yadav, DFO, Lalitpur, iv) Mr. Ramesh Chandra, SDO, Forest Mahoba, v) Sh. Umesh Bihari, Range Officer and vi) Sh. Ashutosh Pandey, Range Officer, Mata Tila.

Ø **Revenue Department:** i) Sh. Gaya Prasad, A.D.M. Lalitpur, ii) Sh. Ram Singh, S.D.M. Lalitpur, iii) Sh. Jitendra Kumar, S.D.M. Lalitpur and iv) Sh. Suresh Chander, Naib Tehsildar.

Ø **Mines Department:** ii) Sh. P. Prasad, Survey Officer in the office of the Director of Mines, Lucknow, Utter Pradesh, ii) Sh. S.K. Das, Mines Officer, Lalitpur, iii) Sh. V.P. Singh, Mines Officer, Lalitpur and iv) Sh. Apoorva Kumar, Asstt. Geologist, Jhansi.

6. The District Magistrate, Lalitpur vide his letter dated 24.9.2002 intimated Mr. Bundela about the scheduled survey work and requested him to remain present either personally or through a representative. However, Mr. Bundela was not present during the survey work.
7. As per the joint survey report signed by all the members of the Committee, the survey work was started from Araji No.364 of Choursil reserved forest after verifying its location. The boundary of the Village Kalapahar and Choursil was surveyed on the ground by the Revenue Department Officials, which was also found to be correct by the Mining Department officials. During the survey it was found that mining was actually being done by Mr. Bundela within the Choursil reserved forest area. The illegal mining was found to be done in about 1.7425 hectare forest area spread over seven pits admeasuring about 9892.125 cubic meter. Based on above, the boundary of Choursil reserved forest from Araji No.371 to 377 was demarcated on the ground on 26.9.2002 by fixing and painting boundary pillar nos. 123 to 132.
8. The machinery and the mining equipments along with the mined granite stones, which were found to be inside the boundary of Choursil reserved forest, were seized and Primary Offence Report bearing Range Case No.51/2002-03 was issued. Simultaneously an FIR bearing Crime No.1014/02 was lodged in Thana Kotwali, Lalitpur under Section 26 of the Indian Forest Act, 1927. The District Magistrate, Lalitpur referred the matter to the State Govt. on 27.9.2002 with a recommendation to cancel the mining lease of Mr. Bundela as he was found to be involved in illegal mining in the reserved forest area and for violating terms and conditions set out in the mining lease.
9. Subsequently, on the basis of the representation dated 19.10.2002 made by Mr. Bundela, the Secretary, Industrial Development, Uttar Pradesh vide his letter dated 23.11.2002 asked the District Magistrate, Lalitpur to carry out re-demarcation of the forest area and the lease area in the presence of Mr. Bundela by taking the common point of village Choursil, Kailwara and Surwara as the starting reference point (as per the request made by Mr. Bundela). The demarcation was directed to be done by two officers nominated by the Director, Mines along with one representative each of the Revenue and the Forest Department. Pursuant to above, a committee consisting of Mohd. Jameel, Geologist, Mr. Fenku Prasad, Survey Officer, (both nominated by Director, Mines), Mr. Arvind Kumar, SDO, Mahroni Forest Division (nominated by DFO Lalitpur) and Mr. Gaya Prasad, Addl. D.M., Lalitpur (nominated by D.M., Lalitpur) along with Mr. Bundela visited the site during 27-28th November 2002 to start the demarcation work.
10. As per the request made by Mr. Bundela the team tried to commence the survey from the central point of the village Choursil, Kailwara and Surwara. However, the above reference point was found to be marooned under water, therefore the re-survey work could not be undertaken. A report to this effect was sent by the District Magistrate, Lalitpur on 28.11.2002 to the Secretary, Industrial Development, U.P.
11. Thereafter, on the request of Mr. Bundela, Secretary, Industrial Development, U.P. vide his letter dated 11.12.2002 directed the District Magistrate, Lalitpur to constitute a new committee for re-demarcation of the forest area and the lease area comprising officers other than Mr. Gaya Parsad,

Addl. District Magistrate, Mr. Jitendera Kumar, Deputy District Magistrate and Mr. Arvind Kumar, Sub-Divisional Officer, Forest Department as Mr. Bundela had made an allegation that they were biased against him and therefore they were not co-operating in the re-demarcation work. It was also directed that the re-demarcation work was to be done in the presence of Mr. Bundela and the survey should commence from only those points / reference points which have been suggested by Mr. Bundela. The D.F.O., Lalitpur nominated Mr. Ashok Kumar Gupta, A.C.F., Jhansi Forest Division to represent Forest Department in the new committee in place of Mr. Arvind Kumar. The re-survey work was started by the new Committee under the Chairmanship of Mr. Mohd. Jameel from 16.12.2002 onwards.

During the re-survey, Mr. Bundela argued that none of the reference points North of Lalitpur – Rajghot Road, from where earlier survey was done, were acceptable to him. He insisted that the re-survey work should commence from any of the three reference points suggested by him. After considering the ground situation the mid point of river Betwa, one of the reference points suggested by Mr. Bundela, was taken as a reference point, and the re-survey work was started.

The representative of the Forest Department was not in agreement with the methodology adopted for the re-survey work on the ground that (i) the mid point of river Betwa, stated to be the border line of the State of Uttar Pradesh and Madhya Pradesh, fluctuates and therefore not being a fixed point should not be accepted as the reference point; (ii) the correctness of the starting reference point has not been established by cross checking its distance with other fixed points and (iii) the survey had commenced in the absence of the representative of the Forest Department.

The DFO Lalitpur vide letter dated 18.12.2002 asked the survey team to dis-continue the survey work till the objections raised by the representative of the Forest Department in the survey team were clarified. These objections were also brought to the notice of Secretary, Industrial Development, U.P. by Mr. Gaya Parsad, Addl. District Magistrate, Lalitpur vide his letter dated 19.12.2002 who in his reply dated 20.12.2002 asked the District Magistrate to instruct the survey team to ensure that the demarcation was done after it was satisfied about the correctness of the permanent reference points.

The survey work continued under controversial circumstances without the presence of the Forest Department officials when the Mines Minister, U.P. telephonically instructed the Chairman of the committee to continue the work (ignoring the objections of the Forest Department). The re-survey was completed on 23.12.2002 wherein it was concluded that the mining is being done by Hon'ble M.L.A. was outside the forest area. The report was jointly signed by Mr. Mohd. Jameel, Mr. Fenku Parsad, Mr. Parkash Kumar Srivastava, Surveyor and Mr. S.P. Singh, Deputy Collector, Mahroni (representatives of Revenue Department), however it was not signed by the officials of the Forest Department.

Based on the re-survey report, the Secretary, Industrial Development, U.P. by his order dated 4.1.2003 decided to withdraw the show cause notice issued to Mr. Bundela and directed release of the mined material, machinery etc. seized from him.

Several Public Interest Cases are reported to have been filed in the matter before the Hon'ble Allahabad High Court, Lucknow bench, a list of which is as under:-

- (a) PIL Civil misc. Writ Petition No.1176/2993: Van Evam Paryavaran Suraksha Samiti through its Adheyaksh – Shri Om Prakash Gupta Vs. State of Uttar Pradesh & Others;
- (b) PIL Writ Petition No.41792 of 2002: Paryavaran Suraksha Samita, Lalitpur through its Adheyaksh – Shri Om Prakash Gupta, son of Late Shri Babu Lal Gupta, resident of 334 Civil Lines, Lalitpur Vs. State of Uttar Pradesh & Others;
- (c) PIL Notice No.M-798 (MB) of 2003: Sujan Singh Bundela Vs. State of Uttar Pradesh & Others; And

- (d) PIL Civil Misc. Writ Petition No.5750 of 2003: Bramha Raj Dubey Vs. District Officer, Lalitpur & Others.

SITE INSPECTION BY CEC

12. The site inspection of the area was undertaken by the CEC through Mr. P.V. Jaykrishnan, Chairman, Mr. Mahendra Vyas, Member, and Mr. M.K. Jiwrajka, Member Secretary on 30.4.2003, during which the representatives of the Forest Department, Revenue Department, Mining Department and Mr. Bundela were present. During the visit the methodology used for the survey / re-survey, reason for ordering re-survey, demarcation done in the field, reference point(s) used, identification and verification of the starting reference points vis-à-vis fixed points, maps used etc. were examined. During the visit Mr. Bundela was given an opportunity to give his views.
13. The starting reference point of the earlier survey was found to be missing though tell tale signs of its recent removal were clearly visible. The forest boundary pillar nos. 123 to 129 (showing boundary of Choursil reserved forest vis-a-vis mining lease area of Mr. Bundela), which were erected by the Forest Department after carrying out survey between 25th -26th September 2002 were also found to be removed. Mr. Bundela informed the committee that these boundary pillars were removed by the Range Officer. On the other hand the committee was informed by the Forest Department that these boundary pillars were illegally removed by Mr. Bundela for which forest offence case No.79/02-03 has been booked in Lalitpur Range Office.

RESPONSIBILITY FOR DEMARCATION OF BOUNDARIES OF RESERVED FOREST

14. The maintenance and demarcation of the boundary of the reserved forest is the responsibility of the Forest Department. The demarcation of the forest boundary vis-à-vis revenue land is normally done jointly by the Revenue Department and Forest Department. Secretary, Industrial Development is not the competent authority to direct demarcation / re-demarcation of the boundary of the reserved forest. Such demarcation work could not be directed to be done in the absence of the officials of the Forest Department. In any event the lessee holding a mining lease on revenue land has no authority to decide how and in what manner the boundary of a reserved forest is to be determined. On the other hand, if the land of the lessee is found to be inside a forest area, the lease is liable to be cancelled as per this Hon'ble Court's order dated 12.12.1996.

CONCLUSIONS AND RECOMMENDATIONS

15. After examining the relevant records, site visit, issues raised during the hearing and after considering views of Mr. Bundela, following conclusions have been drawn by the CEC: -
- i- The initial survey done to demarcate the boundary of the Choursil reserved forest was in accordance with the established principles of survey. The correctness of the starting reference point was established by triangular method. The survey was done in a scientific and transparent manner in the presence of senior officers of Forest Department, Revenue Department and Mining Department in which Mr. Bundela chose to remain absent. The survey and demarcation had established that the area where mining was being carried out by Mr. Bundela falls within the reserved forest land;
 - ii- the re-survey of the reserved forest could have been done only if some procedural lapses or

- errors are pointed and not merely on the basis of objections raised by a mining lease holder. Even if the re-survey was to be done, it should have been done by using the same reference points unless and until the earlier reference points were found to be defective or unreliable and the new reference points are likely to impart greater accuracy in the subsequent survey;
- iii- in the objections raised by Mr. Bundela against the first survey, no valid defects or errors were pointed out; the Secretary, Industrial Development directed to re-survey the area only on the request of Mr. Bundela;
- iv- the Secretary, Industrial Development is not a competent authority to direct survey or re-survey to demarcate boundaries of a reserved forest vis-a-vis revenue land. His decision to allow Mr. Bundela to dictate the composition of the re-survey team and to decide which fixed reference point should be taken as a starting point had vitiated the entire exercise and was aimed to ensure that the result of the re-survey should favour Mr. Bundela;
- v- the re-survey of the reserved forest boundaries undertaken in the absence of the officials of the Forest Department, was patently wrong;
- vi- the manner in which re-survey was done casts serious doubts about its correctness and impartially especially because: -
- (a) The re-survey was not started from the nearest available fixed reference points, as was done earlier, but from a far off point without any valid reason;
 - (b) the selection of the starting reference point was solely left to the discretion of Mr. Bundela.
 - (c) the correctness of the starting reference point was not established;
 - (d) the re-survey was undertaken by junior officers as compared to the officers who were involved in the original survey. In the original survey three officers of the Indian Forest Service (IFS) were involved, whereas in the re-survey only one officer of the rank of Sub DFO was nominated, who also did not participate in the re-survey;
 - (e) the composition of the re-survey team was dictated and changed as per wishes of Mr. Bundela;
 - (f) the survey work was continued in the absence of the representatives of the Forest Department (on the telephonic instruction of Minister of Mines, U.P);

RECOMMENDATION

16. In view of above the committee recommends that the (i) the mining lease of 14.10 acre sanctioned in favour of Mr. Pooran Singh Bundela, M.L.A. in Kalapahar Village adjoining the Choursil reserved forest should be suspended; (ii) the boundary of Choursil reserved forest should be demarcated on the ground by the Survey of India; (iii) mining activity in the mining lease area of Mr. Bundela should be allowed to be resumed only after survey and demarcation by Survey of India establishes that the area under mining lease is outside the reserved forest; and (iv) the funds required for rehabilitation of the mined area are secured from the mine owner.

The Hon'ble Court may please consider the above recommendations and may please pass appropriate orders in the matter.

Sd/-
(M.K. Jiwrajka)
Member Secretary

Note :

The decision of the Hon'ble Supreme Court on the above recommendations is still awaited.

(37)

**INTERIM ORDER OF THE
CENTRAL EMPOWERED COMMITTEE
ON APPLICATION NO. 209**

(Dated: 19.8.2003)

(Regarding felling of bamboo in Shoolpaneshwar Wildlife Sanctuary, Gujarat)
(Copy of the letter Communicating the order of the CEC)

File No. 1-26/CEC/2003

Dated : 19.8.2003

To

The Chief Secretary
Government of Gujarat
Gandhinagar

Repeat

The Principal Chief Conservator of Forests
Government of Gujarat
Gandhinagar

Sub : Interim order of the CEC on Application No. 209

Sir,

The Application No. 209 filed by Action Research in Community Health and Development (ARCH) before the Central Empowered Committee regarding removal of bamboo by Central Pulp Mills Ltd., Songadh, Surat from Shoolpaneshwar Wildlife Sanctuary, Bharuch district was heard on 19.8.2003. During the hearing, the State of Gujarat was represented by Ms Aruna Gupta, Advocate. During the course of the hearing, Shri Ritwick Dutta, Advocate for the applicant alleged that the State of Gujarat has permitted felling and removal of bamboo by / for Central Pulp Mills Ltd. in violation of the Hon'ble Supreme Court's order dated 14.2.2000 in I.A. No. 548 in Writ Petition (Civil) No. 202 / 95. The MOEF and the State of Gujarat have been asked to file their detailed response to the application through an affidavit within seven days. The matter will come up for hearing on 15.9.2003 at 3:00 PM onwards.

2. The Hon'ble Supreme Court by order dated 14.2.2000 had prohibited removal of dead, diseased, dying or wind-fallen trees, driftwood and grasses etc. from any national park or game sanctuary. Pursuant to above, the State Government can allow felling and removal of bamboo from a sanctuary area only after obtaining specific approval for the same from the Hon'ble Supreme Court.
3. The CEC hereby directs that in the meanwhile no felling or removal of bamboo shall be undertaken from Shoolpaneshwar Wildlife Sanctuary by Central Pulp Mills Ltd. or any other agency including the State Government.

4. In view of above directions passed by the CEC, it shall be ensured that felling or removal of bamboo is stopped forthwith from Shoolpaneshwar Wildlife Sanctuary. Compliance report may please be sent to the CEC immediately.

Yours faithfully,

Sd/-
(M. K. Jiwrajka)
Member Secretary

Copy to :-

- i) Applicant / Respondents through their Advocates on record / Standing Counsel.
- ii) M/s Central Pulp Mills Ltd., Songadh, District Surat. The applicant has been asked to serve a copy of the application to you. You are permitted to intervene in the matter and you're your response to the application through an affidavit.
- iii) The Secretary to the Govt. of India, MOEF.
- iv) All Members of the CEC.

Sd/-
(M. K. Jiwrajka)
Member Secretary

(38)

**REPORT OF THE
CENTRAL EMPOWERED COMMITTEE
ON IMPLEMENTATION OF THE
HON'BLE SUPREME COURT'S
ORDER DATED 7.5.2003
REGARDING ANDAMAN & NICOBAR ISLANDS**

The Central Empowered Committee visited the Andaman & Nicobar Island between 23rd June 2003 to 27th June, 2003 to review progress of the implementation of the Hon'ble Supreme Court's order dated 7th May, 2002 in IA No. 502 in Writ Petition (Civil) No. 202/95. The Committee was represented by Shri P. V. Jaykrishnan, Chairman, Shri M. K. Jiwrajka, Member Secretary and Shri Mahendra Vyas, Member. During the visit, the Committee was accompanied by Shri Pradip Singh, Chief Secretary, A & N Island, Shri S. S. Patnaik, PCCF, Shri Parimal Rai, Revenue Secretary and other senior officials. The Committee visited the Red Skin Island, Havelock, Diglipur, Aerial Bay, Ganesh Nagar, Mayabunder, Austin-II, Middle Strait, Baratang, Andaman Trunk Road etc. Meetings were held with Government officials, people's representatives, encroachers and other affected persons at Port Blair, Ganesh Nagar, Diglipur, Austin-II, etc. Shri Vishnu Pada Roy, Member of Parliament was present during most of the meetings and site visits. During the visit, the Committee also visited the de-reserved block of forest land at Ganesh Nagar where the pre-1978 encroachers have been decided to be settled and Andaman Trunk Road (ATR). The main observations of the Committee are as under:

PRE-1978 ENCROACHMENTS:-

2. The relevant portion of the Hon'ble Supreme Court's order in this regard are as under:

".....(13) All those families who have been identified as having encroached on forest land prior to 1978 and have not yet shifted to their allotted rehabilitation sites, shall be given one month's notice to vacate their encroachments and shift to the allotted land. Failing this, their allotment shall be cancelled and they shall be forcibly evicted within three months of the deadline being over, without any further claim to land or any other form of rehabilitation. Such notices should be issued within six weeks.

(14) Similarly, those among the pre-1978 families that have shifted to their allotted sites but have occupied more land than they were entitled to shall also be given one month's notice to vacate the extra land occupied by them. On the expiry of this notice period, the allotments of those who have not complied with this notice shall be cancelled and they should be forcibly evicted within three months, without any further claim to compensation or land. Such notices should be issued within six weeks."

3. As per the information made available by the Administration, the Committee constituted by the State Government in 1982 found that 1367 families had encroached 2340 ha. forest land prior to 1978. In 1986, it was decided to regularise all these pre 1978 encroachments by giving one hectare of land per family without honeycombing the forest. On receipt of complaints that a large number of encroachers

have been left out in the initial survey done to identify pre 1978 encroachers, a Review Committee was constituted in 1988 before which 2866 claims were filed. After examination of these claims, the Committee identified 89 cases as left out pre 1978 cases. After obtaining approval under the FC Act, 1367 hectare forest land was de-reserved in 1989 for settlement of pre 1978 encroachers consisting of in-situ settlement of 645 families and ex-situ settlement 722 families (by shifting them from interior forest area). In respect of 89 left out pre 1978 cases approval under FC Act has not so been given by the MOEF. After the Hon'ble Supreme Court's order dated 7.5.2003, the licenses have been prepared in respect of 1124 encroachers comprising 495 in-suitu encroachers and 629 ex-suitu encroachers. The reconciliation work of these encroachers vis-à-vis 1367 encroachers, earlier identified is in progress. The licenses for 285 encroachers-161 in-suitu and 122 ex-suitu has been issued and survey of outer boundaries has been completed. There are 353 post-1978 encroachers within the area identified and de-reserved for settlement of pre 1978 encroachments.

4. Some of the forest area deserved for settlement of pre 1978 encroachments consisting of dense forest cover, tree felling in most of such areas have not so far been done. One such site namely, Ganesh Nagar was visited by the Committee by travelling from Aerial by sea for about one and a half hour. Once the pre 1978 encroachers are settled in such sites, the demand for further cutting forest for road construction and for providing other infrastructure facilities is bound to come. The area is surrounded by dense Mangroves forests - perhaps one of the best in the world, which are already being destroyed. During the site visit, the Committee informed the State administration that it will not object to the proposal of settling pre-1978 encroachers on alternate sites which does not involve tree felling and is easily approachable by road (such as Austin-II) provided such settlement is found advantageous to the Forest Department and the administration complies with provisions of the relevant Act and Rules.
5. The Committee found that the administration has not been able to fully implement the Hon'ble Court's order. Although notices have been served to the encroachers, a substantial number of them have neither been shifted to the allotted sites nor the excess land in their possession has been recovered. Even, the post-1978 encroachments on forest land de-reserved for settlement of pre-1978 encroachers have not been removed. Earlier the Administration had sought one year's time to fully comply with Hon'ble Court's orders, citing various reasons such as lack of infrastructure facilities, remoteness of the areas, inadequate police personnel, pending sanction of rehabilitation package etc. However, even after more than a year, this Hon'ble Court's order has not been fully compiled.

POST 1978 ENCROACHMENTS.

6. As per the information provided by the Administration, there are 4075 post 1978 encroachments covering 3641 ha. forest area, out of which 355 encroachments have taken place in the forest area de-reserved for settlement of pre1978 encroachments. Upto 18.6.2003, 2652.72 forest area has been reclaimed out of which 1069.70 hectare has been replanted. Earlier, area under encroachment was being reclaimed by removing the plants planted by the encroachers, however, this also has been discontinued. Most of the post 1978 encroachers have not been physically removed from the forest area. It is not clear how the encroachers are being removed if neither the encroacher is physically removed nor the site is physically reclaimed by removing the belongings of the encroaches especially the cash crops etc.

7. The main reasons given by the State Government for poor progress in implementation of the Hon'ble Court's order include (i) heavy rainfall from May to November – 250 to 350 c.m. , (ii) difficulty in movement of personnel for carrying out the eviction (iii) limited availability of manpower for rehabilitation and eviction (iv) remoteness of the area, (v) Insufficient number of police personnel available, (vi) stay orders granted by the Hon'ble High Court of Calcutta (vii) pending Estate Appeals and Title Suits in lower courts and (viii) delay in approval of rehabilitation package.

REHABILITATION PACKAGE

8. The State Government has provided an amount of Rs. 48.84 crore for rehabilitation of the post 1978

(41)

CENTRAL EMPOWERED COMMITTEE
CONSTITUTED BY THE HON'BLE SUPREME COURT OF INDIA
IN WRIT PETITIONS NO. 202/95 AND 171/96

Room No. 106, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi-110003 Telefax : 4363976

File No.: A-256/CEC/2002

Dated: 7th Nov., 2003

INTERIM ORDER

SUPREME COURT MATTER
MOST IMMEDIATE

To:

The Chief Secretary
Government of Goa, Panjim, Goa

Sub.: Interim Order passed by the Central Empowered Committee (CEC) in Application No.: 246 filed before it by the Goa Foundation.

Sir,

The hearing of Application no.:246 filed before the CEC by the Goa Foundation through its Secretary, Dr. Claude Alwares, wherein it is alleged that mining is being undertaken at Madei and Netravali Wildlife Sanctuaries in violation of the Hon'ble Supreme Court's order dated 14/02/2000 in I. A. no.: 548 and the provisions of the Wild Life (Protection) Act, 1973 as amended in 2003, was held on 7/12/2003. During the hearing, the Chief Conservator of Forests, Goa, stated that these Sanctuaries have only been notified under section 18 of the WPA and final notifications have so far not been issued. IA no.: 26 has been filed by the State of Goa in WPC no.: 337 / 96 for denotification of these sanctuaries, which is pending before the Hon'ble Supreme Court. Some of the mining leases are also having requisite approvals under the F.C. Act.

2. The Counsel appearing for MoEF stated that in view of Hon'ble Supreme Court's order dated 14/02/2000 no mining can be continued in any National Park or Sanctuary including areas notified under section 18 of the W. P. Act.
3. After considering the views of the applicant, the State Government and the MoEF and in view of the Hon'ble Supreme Court's order dated 14/02/2000 in I. A. no.: 548 in W. P. C. NO.: 202 / 95 which prohibits even removal of grass from National Parks and Wild Life Sanctuaries, **it has been directed by the CEC during the hearing that mining activities in all the mining leases falling inside the Madei and Netravali Wild Life sanctuaries shall be stopped forthwith including in the already broken up area and area having approvals under the F. C. Act.**
4. It shall please be ensured that the above directions are brought to the notice of all the concerned and mining activities are stopped forthwith. The compliance report about stopping of the mining shall be filed before the CEC immediately.

(M. K. Jiwrajka)
Member Secretary

**SITE VISIT REPORT OF
THE BOMBAY NATURAL HISTORY SOCIETY
TO THE
CORBETT NATIONAL PARK**

JUNE 2003

June 26, 2003

**Site Visit Report of Debi Goenka, Member, Executive Committee,
Bombay Natural History Society, to Corbett National Park from June 16-18, 2003**

1 INTRODUCTION

- 1.1. At the request of the Centrally Empowered Committee (CEC), the Bombay Natural History Society (BNHS) was co-opted by the CEC as a special invitee to assist the CEC. In my capacity as a Member of the Executive Committee of the BNHS, I was accordingly requested by the BNHS to attend the hearings held by CEC in New Delhi on June 04, 2003. I was subsequently requested to visit the Corbett National Park (CNP) and Corbett Tiger Reserve (CTR) on behalf of the BNHS to examine the issues relating to the Application Number 102 filed by Shri Pradip Gupta. The complaint relates mainly to the problem of encroachments on Reserved Forest lands within the CNP/CTR.
- 1.2. Accordingly, I visited the Corbett National Park/Corbett Tiger Reserve from June 16-18, 2003.
- 1.3. I was able to hold detailed discussions with the following officials –
 - 1.3.1. Shri B K Gupta, Superintending Engineer, Ramganga Dam Circle, Kalagarh
 - 1.3.2. Shri Sharma Executive Engineer, Ramganga Dam Circle, Kalagarh
 - 1.3.3. Shri Singh Sub DFO, Forest Department, Corbett National Park
 - 1.3.4. In addition, I was able to briefly interact with the Deputy Director of Project Tiger, Shri Pandey, and the Executive Engineer of the Uttaranchal Jal Vidyut Nigam, Shri M S Verma.
- 1.4. I was also able to get inputs from Shri Ashok Kumar, Trustee, Wildlife Trust of India (WTI), who represented the applicant before the CEC.
- 1.5. In addition, I visited the site of the colonies located within the CNP, and also the site of the main dam, the saddle dam, the power plant site, and also some parts of the CNP.
- 1.6. I am grateful to all the above-mentioned officials and individuals who were able to spare so much time to interact with me and provide me with valuable inputs and insights. My thanks are also due to the Forest Department for providing the help and facilities for my visit.

2 CORBETT TIGER RESERVE

- 2.1. Set up in 1936 as India's first National Park under the U P National Parks Act, 1935, Hailey Park (as it was then called) was first delimited in consultation with one of India's greatest hunter and conservationist, Jim Corbett. (The National Park and the Tiger Reserve are now named after him).
- 2.2. The National Park admeasures 520.82 square km at an altitude of 600 to 1100 metres at the foothills of the western Himalayas in the districts of Nainital and Pauri Garhwal in the state ofUttaranchal (formerly part of Uttar Pradesh). In its eventful 67 year life, it has grown considerably in size and now includes the Sonanadi Wildlife Sanctuary (301.18 square kilometers) as a part of its 1,288.34 sq km of Project Tiger Area. The rest of the area is n o t i f i e d as Reserve Forests and forms part of the buffer zone.
- 2.3. The National Park is noted for its rich and diverse fauna, with 50 species of mammals (Lamba, n.d.), 580 of birds, 33 of reptiles (Bedi, 1985), seven of amphibians (Bedi, 1985), seven of fish

(Bedi, 1985) and 37 of dragonflies (Singh and Prasad, 1977).

- 2.4. Corbett is an important refuge for Indian elephant *Elephas maximus* (E). Also notable among the large mammals are leopard cat *Felis bengalensis*, tiger *Panthera tigris* (E), hog deer *Cervus porcinus*, and Indian pangolin *Manis crassicaudata*, all of which used to exist in large numbers throughout the terai of Uttar Pradesh but are now rarely seen outside the national park. The swamp deer *Cervus duvauceli* (E) became locally extinct about 30 years ago. More recently, spotted deer *Cervus axis*, hog deer and Indian porcupine *Hystrix indica* populations have been severely affected by the inundation of much grassland. Although spotted deer and hog deer populations have dispersed elsewhere, the former has shown a fall in birth rate from 22.2 to 4.1 fawns per 100 females in three years. Worst affected is the porcupine population. By 1978 its relative density had dropped to 20% of that recorded in 1976-77. The creation of a reservoir has also denied elephants access to an important traditional migration route (Lamba, n.d.).
- 2.5. The avifauna is particularly interesting on account of the overlap between high altitude and plains, and eastern and western races of a number of species. The park attracts a large number of migratory birds. The river is a source of attraction to many winter migrants. A number of high altitude species visit during winter, and summer too sees many visitors. Being situated on a migratory route, the park is also visited by quite a few passage migrants. Among the birds that have suffered heavily on account of large-scale inundation are the passerines that roost and breed in smaller trees, bushes and reed-beds, notably red adavat *Estrilda amandava*, spotted munia *Lonchura punctata*, weaver bird *Ploceus philippinus*, black-throated baya *P. bengalensis* and common myna *Acridotheres tristis*.
- 2.6. As per a recent study carried out by the BNHS for the Important Bird Areas (IBA) Project, the Corbett National Park has many attractions for the bird watchers. Over 580 species of birds are found here. Most of the water birds are migrants and arrive in winter. Some of these are the Greylag Goose *Anser anser*, Barhead Goose *A. indicus*, ducks of many kinds, and G r e a t Crested Grebe *Podiceps cristatus*, Snipes *Gallinago* spp., Sandpipers, Plovers, Gulls *Larus* spp. and Wagtails. Some of the residents are Darter *Anhinga melanogaster*, Cormorants *Phalacrocorax* spp., Egrets, Indian Pond-Heron *Ardeola grayii*, the Black-necked Stork *E p h i p p i o r h y n c h u s asiaticus* and Spurwinged Lapwing *Vanellus* spp. The commonly seen raptors in Corbett are the Osprey *Pandion haliaetus*, Crested Serpent Eagle *Spilornis cheela*, Blackwinged Kite *Milvus migrans*, Shikra *Accipiter*, Pallas's Fish-Eagle *Haliaeetus leucoryphus*, Grey-headed Fish-Eagle *Ichthyophaga ichthyaeus*, Spotted Eagle *Aquila clanga* and Harriers *Circus* spp. The rare Cheer Pheasant *Catreus wallichii* is found in the higher hills near Kanda. The vultures commonly found are the Indian White-backed *Gyps begalensis*, Himalayan *G. himalayensis*, Longbilled *indicus* and the King vulture *Sarcogyps calvus*.

Globally Threatened Species

Species Name	Scientific Name	Status
Spot-billed Pelican	<i>Pelecanus philippensis</i>	T
Pallas's Sea Eagle	<i>Haliaeetus leucoryphus</i>	T
Greater Spotted Eagle	<i>Aquila clanga</i>	T
Imperial Eagle	<i>Aquila heliaca</i>	T
Grey-crowned Prinia	<i>Prinia cinereocapilla</i>	T

T=Globally Threatened Species

2.7. Approximately fifty species of mammals are found in the area. Among the larger mammals Tiger *Panthera tigris*, Leopard *P. pardus*, Indian Elephant *Elephas maximus*, Sambar *Cervus unicolor*, Cheetal *Axis axis*, Hog Deer *Axis porcinus*, Muntjak *Muntiacus muntjak*, Wild Boar *Sus scrofa*, Red Fox *Vulpes vulpes* and Jackal *Canis aureus* are noteworthy. Among the reptiles, the two species of largest Indian Lizards viz. Gharial *Gavialis gangeticus* and Marsh Crocodile *Crocodylus palustris* are found in the Park. In addition to lizards, the deadliest of the Indian snakes i.e., King Cobra *Naja hana* and the largest i.e., Python *Python molurus* are present in the Park. Some of the best game fishes of India such as Mahasheer *Barbus tor* and Indian trout *rainmus bola* abound the waters of Ram Ganga flowing through the Park.

2.8. Different kinds of vegetation are found all along the varied topography, which comprises hilly and riverine areas, temporary marshy depressions, plateaus and ravines. Hundred and ten species of trees, 51 species of shrubs and over 33 species of bamboo and grass are found

The Park is known for its almost pure sal *Shorea robusta* stands in the lower hilly ridges and valleys. Some associates of sal are haldu *Adina cordifolia*, rohini *Mallotus philippinensis*, and karipak *Murraya konigi*.

2.9. What is therefore important is that the Corbett Tiger Reserve probably holds one of the largest free living tiger populations in the world, and is also home to about 600 majestic elephants. The unique location of the CTR in the Shivalik- Terai biotic province of the foothills of the Himalayas has led to an amazing diversity in the habitat types and species. There are also several other species of endangered mammals such as the leopard cat, goral, serow, sloth bear, hog deer, barking deer, mugger, gharial, jungle cat, Indian otter and yellow throated marten.

2.10. There are also about 580 different species of resident and migratory birds, including about 49 different species of raptors.

3 RAMGANGA DAM PROJECT

3.1. In 1966, the Forest Department of Uttar Pradesh [vide letter no. 903(i)13-11 dated August 22, 1966 from the Conservator of Forests, Western Circle, U.P., to the Sahayak Sachiv, Van (Kha) Vibhag, U.P.], agreed to hand over 23,521 acres (**9,518.61 hectares**) of land to the Irrigation Department for the Ramganga Project. (A photocopy of the letter is annexed at Annexure "A"). However, as per the Irrigation Department, they had received only **8,998.15 hectares. No explanation is available for this discrepancy.**

3.2. Condition number 4 (iii) is important and is reproduced below for ready reference-

"4 (iii) The land to be transferred will remain reserved forest and revert to the Forest Department when no more required by Irrigation Department without any compensation."

3.3. The major portion of this land (8,142.96 hectares) has been submerged by the dam and the reservoir.

3.4. The Irrigation Department has 509.21 hectares of land around the worksite and it proposes to retain 357.83 hectares for its "minimum requirements". About 151.38 hectares has been returned to the Forest Department.

3.5. In addition, the Irrigation Department has 345.98 hectares of land for its colonies and proposes to keep 147.54 hectares for its continued use on the basis that this is the "minimum requirement". Of the balance of 198.44 hectares, the Irrigation Department has already returned

175.85 hectares to the Forest Department and proposes to return another 22.59 hectares.

- 3.6. The present controversy arises over the colony area within the CNP that is in the possession of the Irrigation Department.

4 COLONIES

- 4.1. There are two colonies within the CNP and one outside. These are as follows-

4.1.1. New Colony

4.1.2. Central Colony

4.1.3. Irrigation Colony (outside the CNP)

- 4.2. The first two colonies mentioned above were built some time in the early 1960s to provide accommodation to the engineers and staff who built the dam and the power project. As per the discussions with the Irrigation Department officials, it emerged that these were temporary colonies meant to house the huge work force for the duration of the construction period. The work on the dam was apparently completed by 1974 and of

the hydropower project by 1980. However, these colonies were not vacated – nor were the staff transferred to more habitable and permanent structures. This present controversy would not have arisen if the Irrigation Department had dismantled their temporary colonies after completion of the dam project and handed over the Reserve Forest lands to the Forest Department.

- 4.3. The Engineers Academy hostels and buildings which are located on Reserved Forests within the CNP were constructed sometime in 1982 well after the dam and the hydropower projects were completed.

- 4.4. Apparently, no permission was obtained under the Forest Conservation Act, 1980, or the Wildlife Protection Act, 1972. The Engineers Academy is used to conduct short training programmes for engineers and is not an operational requirement.

- 4.5. The colony at S. No. 4.1.3 mentioned above is located in a 90 acre plot outside the CNP/CTR. This land is not forest land, but belongs to the Irrigation Department. About 30 acres is occupied by the Irrigation Department colony, and the balance area

of 60 acres is either open or encroached. The encroachers are apparently “dependant” on the forests for their survival, since their entire biomass needs for fuel and fodder are illegally obtained from within the CNP/CTR.

- 4.6. Visits to the three colonies mentioned above which are within the CNP/CTR revealed a dismal state of affairs. A large number of structures were occupied by “non-official occupants”. Most of them had domestic animals stabled within their compound walls. Such animals included cattle, buffaloes, goats and pigs.

5 PROBLEMS

The Forest Department personnel pointed out that there were several problems being created by the occupants of the colonies. Some of these are –

- 5.1. These colonies are providing a haven for anti-social elements, who are indulging in all kinds of day to day offences within the CTR, such as the illicit entry, unauthorized removal of biomass, and in some cases, even wildlife crime.

- 5.2. The presence of domestic livestock which were not immunized put the wildlife to risk since the chances of passing on infections were high.

- 5.3. There were some cases of wild boar inter-breeding with the domestic pigs.
- 5.4. All kinds of undesirable commercial activities were being blatantly carried out in violation of the Indian Forest Act, the Forest Conservation Act, the Wildlife Protection Act, as well as in violation of the orders of the Hon'ble Supreme Court of India in WP (Civil) 202 of 1995.
- 5.5. Instances of buses and other private vehicles entering the colony at night hours created other kinds of problems. Besides being very difficult to check each and every vehicle, the use of pressure horns and even the noise and lights of the vehicle disturbed the wild life of the CTR.
- 5.6. Various programmes were also held within the colony. At such times, the entry of outsiders and private vehicles was almost impossible to monitor and control. On most of such occasions, the functions go on late in to the night hours, and the use of loudspeakers and firecrackers creates serious disturbance to wildlife.
- 5.7. There is a large group of monkeys that had made the colony into their second home, and harassed the occupants. As a result, these monkeys are attacked with catapults and often injured.
- 5.8. However, the most serious problem is the fact that the Ramganga Dam and the reservoir have virtually divided the CTR into two parts (please see map attached). As a result, the east-west movement of the elephants has been greatly affected and the elephants have either got to go

	north of the reservoir and move into the hills to cross the Ramganga River, or come south below the Ramganga Dam and cross below the dam and the powerhouse. Very unfortunately,					
	these colonies are located in such a way that they block the migration route and thus form a major barrier to the elephants. This is an extremely serious problem and needs to be addressed urgently.					
6	ESSENTIAL AND NON-ESSENTIAL/ MINIMUM REQUIREMENTS					

6.1. As per the Irrigation Department, the number of houses in the two irrigation colonies within the CNP is as follows –

	Total	Ruined	Habitable	Unauthorized/ Encroached	Given to FD	Allotted
New Colony	1962	71	1891	442	76	1373
Central Colony	652	16	636	314	135	187
Total	2614	87	2527	756	211	1560
This indicates that there are 1560 structures that are officially occupied by irrigation and other staff, 211 structures that are with the Forest Department, 756 structures that are encroached and occupied by unauthorized occupants, and 87 structures that are in "ruined" condition and uninhabitable.						

6.2. The number of structures allotted departmentally is as follows –

	Irrigation	Hydel	Academy	Workshop	Total	Others	Total
New Colony	745	175	135	86	1141	232	1373
Central Colony	95	5	1	58	159	28	187
Total	840	180	136	144	1300	260	1560

6.3. In addition to the above, there are a large number of "khokhas" or temporary wooden stalls that are carrying on commercial activities within these colonies that are totally illegal.

6.4. Some shopkeepers have apparently converted their temporary wooden stalls into permanent ones without any permission. There are also some shops in the unofficial market that have become ground + one structures.

6.5. In addition, one five acre plot is used as an open bazaar on market days – once a week.

6.6. An inspection to the Ramganga dam site and the power house revealed the following facts regarding the number of operational staff required for running these projects –

	Shift	Timings	Staff posted	Security	Total
Ramganga Dam	1 st	05:00 – 13:00	7	1	8
	2 nd	13:00 – 21:00	7	1	8
	3 rd	21:00 – 05:00	7	1	8
	General	08:00 – 16:00	24	-	24
Power House (Hydel)	1 st	06:00 – 14:00	15	2	17
	2 nd	14:00 – 22:00	15	2	17
	3 rd	22:00 – 06:00	15	2	17
	General	08:00 – 17:00	50	-	50
Saddle Dam	General		20	-	20
	Night		-	4	04
Barrage	General		12	-	12
	Night		-	2	02
Total			172	15	187

6.7. The table above indicates that the total number of operational staff required at the dam site, power house, barrage and saddle dam is approximately 187. Considering the fact that this includes non-operational staff such as gardeners, and allowing for additional requirements during illness, leave, etc., the total number of staff required to be housed near the project site should perhaps not exceed 300. It should, by no stretch of imagination, be 1300, with 260 “others” providing ancillary and other services!

6.8. In addition to the housing colonies, there are several workshops and storage sheds that occupy about 20% of the colony area. Visits to these workshops and discussions with the officials in charge indicated that the activities carried out within these workshops were minimal and that the sheds contained material that had to be sold as scrap. The only genuine continuing requirement was, perhaps, for a workshop for vehicle repair and maintenance.

6.9. There is also an “Inter College” which was apparently set up by the Irrigation Department but which is now run by private individuals.

6.10. What was perhaps shocking was the fact that most of the residential structures seemed to be

in very dilapidated and pathetic condition – perhaps not surprising considering the fact
t h a t
these were built as “temporary” structures and meant to last for about 5-10 years. One can
only imagine the hardships and trauma that the occupants must be experiencing.

6.11. What was even more relevant is the fact that the Irrigation Department is the owner of about 90 +
acres of land at Kalagarh which is just outside the boundaries of the CNP/CTR. As
mentioned earlier, about 30 acres is already built up, and the balance 60 + acres can be used for the
construction of a modern irrigation colony with all the amenities required in today’s modern world.

6.12. Even more interestingly, the location of this plot is such that it is closer to the dam sites and
the powerhouse by about 2 kilometres. This means that in the event of an emergency, the
staff would be able to reach the site much faster. Since the new colony would be much
m o r e
compact, the mobilization of staff would also be quicker.

7 LEGAL ASPECTS

7.1. Writ Petition No. 2157 (MB) of 1999

7.1.1. Order dated August 04, 1999, passed by the Hon’ble High Court of Lucknow (Lucknow
Bench) in Writ Petition No. 2157 (MB) of 1999 [Wildlife Protection Society of India v/s
State of Uttar Pradesh & Ors.] remains to be implemented.

7.1.2. As per the order, all encroachments had to be removed by December 15, 1999, and the Irrigation
Department was to keep only the land that is required or is essential for upkeep or running of
the Dam establishment within the forest area.

7.1.3. The interim order dated July 28, 1999, directing the Irrigation Department not to create any
third party rights in the forest lands is also being violated, since several cases have been pointed
out by the applicant and admitted as correct by the Irrigation Department Officials during my
site visit.

7.2. Writ Petition No. 78 (M/H) of 2003

7.2.1. Writ Petition No. 78 (M/H) of 2003 in the High Court of Uttaranchal at Nainital [Central
Market Traders & Social Welfare Organisation v/s State of Uttaranchal & Ors.] has been filed
recently.

7.2.2. As per the order dated June 09, 2003 of this Hon’ble High Court, the matter has been listed
after three weeks i.e. on June 30, 2003.

7.2.3. The Hon’ble High Court has taken cognizance of the fact that this matter is before the Centrally
Empowered Committee.

7.3. Application Number 102

7.3.1. Application Number 102 filed by Shri Pradip Gupta before the Centrally Empowered
Committee was heard on June 04, 2003.

7.3.2. At this hearing, the Irrigation Department was represented by Shri H P Sharma, Executive
Engineer.

7.3.3. Shri Sharma has informed the CEC that of the 784 cases of encroachment, the SDM who
was hearing the matters under the UP Public Premises Act had passed orders in 177 cases.
S h r i
Sharma informed the CEC that the Irrigation Department would evict all the encroachers
whose cases had been decided by the SDM on June 09, 2003.

- 7.3.4. During the site visit, Shri Gupta and Shri Sharma informed me that though the Irrigation Department had made all the preparations for carrying out the removal of the encroachments, this could not be carried out since the District Magistrate and the Superintendent of Police did not turn up at the Colony Site, and the police force required was not made available. In the absence of the police, the removal of the encroachments could not be carried out.
- 7.3.5. No fresh date had been fixed for removal of the encroachments.
- 7.3.6. Shri Gupta and Shri Sharma also expressed their inability to disconnect the illegal electricity and water connections that had been tapped by the encroachers. Some of the encroachers had also managed to obtain telephone connections. Most of them (about 80%) were apparently enjoying free and unlimited supplies of water and electricity.
- 7.3.7. Shri Gupta and Shri Sharma also informed me that the rate of disposal of cases against the encroachers was very slow since the SDM was extremely busy and had numerous other commitments. The delay was probably caused by the fact the cases were not being clubbed together but individual hearings were being given by the SDM.

7.4. PENCH IRRIGATION COLONY CASE

- 7.4.1. This is a case filed before the Bombay High Court – Nagpur Bench (Writ Petition No. 320 of 2001). The Petitioners in this case were encroachers living in an Irrigation Colony constructed by the Maharashtra Irrigation Department inside the PENCH Sanctuary. The encroachers were challenging their removal by the Maharashtra Forest Department.
- 7.4.2. By their Order dated 22nd April 2002, a Division Bench refused to stay the removal of all the encroachers. The relevant paragraphs of this order are as follows –

to “Therefore, we dismiss this petition with a direction to respondents to take immediate steps remove all such persons from the Reserved Forest land.

the “We are sure that the State would take immediate steps by providing the Forest Officials all necessary assistance both in men and material as well as sufficient number of Police force.

well “We are informed that there are certain structures of Madhya Pradesh Electricity Board as as Maharashtra State Electricity Board and Irrigation Department where people are residing for required maintenance work. All of them should be asked to vacate the Reserved F o r e s t land and be placed beyond the area as they can very well have access to the area with the required permission of the authorities for the purposes of maintenance.”

7.4.3. Pursuant to this order, (a copy of which is attached at Annexure “B”) the Forest Department, with the help of the police has removed all the encroachments, and the Maharashtra Government is in the process of relocating the Irrigation Colony as well.

7.4.4. Since the facts of this case are virtually identical, I would respectfully suggest that the CEC consider submitting a report recommending the same steps be taken by the Irrigation Department and the Forest Department in the CNP case as well, with the help of the police.

7.5. Sanjay Gandhi National Park Case

7.5.1. In yet another case pertaining to encroachments and commercial activities being carried out within the Sanjay Gandhi National Park Division (Borivili National Park in Mumbai), a Division Bench of the Bombay High Court has ordered the removal of over 60,000 encroachments from within the National Park Division.

7.5.2. A copy of this Order dated 7th May 1997 is reproduced below at Annexure “C”.

- 7.5.3. Pursuant to this order, more than 49,000 structures (affecting 250,000 encroachers) have been demolished to date.
- 7.5.4. All commercial activities including a factory run by a State Government Corporation (MAFCO) have been shut down and demolished.
- 7.5.5. 50 additional posts have been created for the protection of this National Park, and two companies of SRP have been permanently deployed under the control of the Forest Department to help them protect this Park. In addition, a Monitoring Committee has also been constituted under the Chairmanship of a retired High Court Judge to ensure protection and r e a f f o r e s t a t i o n of this Park.
- 7.5.6. A number of SLPs filed by the encroachers against this Order of the Bombay High Court h a v e been dismissed by the Hon'ble Supreme Court of India.
- 7.5.7. In view of the above, removal of a few hundred encroachers from the CNP should not pose an insurmountable problem.

8 RECOMMENDATIONS

- 8.1. The existence of the encroachers as well as the Irrigation Colonies is definitely creating a serious problem for wildlife and wildlife habitats within the CNP/CTR.
- 8.2. It is therefore necessary to ensure that all the encroachers and the encroachments are removed immediately i.e. within one month.
- 8.3. Since the continued existence of the Irrigation Colonies within the CNP/CTR is also creating serious problems for wildlife and wildlife habitats, I would also recommend that these colonies should also be shifted out of the CNP/CTR on an urgent and time bound manner. The fact that this area is now part of a notified National Park would mean that the provisions of the Wildlife Protection Act, 1972, as well as the recent orders of the Hon'ble Supreme Court of India pertaining to the protection of National Parks and Sanctuaries are now applicable to this area as well, and need to be enforced.
- 8.4. Until such time as the colonies are removed, the excess land available with the irrigation department should be immediately handed over to the forest department. This exercise may be carried out by a Committee comprising of the Irrigation Department, Revenue Department and Forest Department, as well as a member of the CEC.
- 8.5. The Irrigation Department may be asked to set up a check post at the gates of the colony so as to ensure that only bona fide residents and visitors are allowed inside the colonies.
- 8.6. The District Magistrate and the Superintendent of Police may be asked to take personal responsibility for ensuring that there is no law and order problem created by the encroachers.
- 8.7. No public meetings or functions should be permitted by the district authorities if they are to be held on Reserved forest lands.
- 8.8. No loudspeakers should be permitted within the Reserved forest areas.
- 8.9. All illegal or unauthorized water, electricity and telephone connections should be disconnected by the concerned departments. The Superintending Engineers may be made personally responsible for ensuring that this is complied with.
- 8.10. A Company of PAC may be deployed at the site under the control of the Director Project Tiger to facilitate the removal of the encroachments.

- I r r i g a t i o n
- 8.11. The SDM may be requested to dispose of the cases under the encroachers in a time bound manner. This could be done by clubbing the cases together or by any other means within the legal framework.
 - 8.12. Alternatively, a special officer could be appointed for the limited purpose of hearing these cases on a day to day basis.
 - 8.13. All domestic livestock shall be removed forthwith from the Reserved Forest areas by the Irrigation Department with the help of the police.
 - 8.14. All non-operational staff must be shifted out of the Reserved Forest area within three months.
 - 8.15. All operational staff whose presence is essential shall be relocated to the Irrigation Colony outside the CNP within 6 months.
 - 8.16. All wire fencing, boundary walls, houses and structures constructed within the CNP area should be demolished by the Irrigation Department after they are vacated and the debris and the other material shall be removed and disposed off on non-forest land. All wells and pits shall be filled up unless required by the Forest Department.
 - 8.17. All ornamental gardens, garden furniture, wire fencing, boundary walls, etc. that are creating obstacles for wildlife around the Saddle dam and Main Dam areas should also be removed by the Irrigation Department within three months.
 - 8.18. The site should be rendered safe and habitable for wildlife, and funds should be provided by the Irrigation Department as committed in letter no. 903(i)13-11 dated August 22, 1966 from the Conservator of Forests, Western Circle, U.P., to the Sahayak Sachiv, Van (Kha) Vibhag, U.P. The amount of Rs.1.25 crores that was supposed to be given in 1966 to the Forest Department should be immediately transferred along with the overdue interest to a separate bank account that shall be opened by the Director Project Tiger in any nationalized bank. These funds could be used exclusively for the protection and conservation activities of the CNP, and would be subjected to the normal account and audit procedures of the State Government.
 - 8.19. In case the Irrigation Department wishes to continue its activities within the ecologically sensitive and fragile environs of the CNP after six months, they could be asked to deposit a sum of Rs.1.27 crores per hectare per year (or part thereof) with the Director CNP, for the land retained by them within the CNP.

Annexure "B"

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH: NAGPUR

Writ Petition No. 320 of 2001

Memoranda of Appearance Court's
Court's or Judge's orders.
Orders actions & Registrar's orders

Mr. R.P. Joshi, Advocate, for the petitioners.

Mr. Gavali, G. P. for respondent nos. 1 to 3, 5 & 7.

Mr. Badar, Advocate, for respondent nos. 4 & 6.

CORAM : J. N. PATEL & P.S. BRAHME, JJ.

Dated : 22nd April, 2002

Heard the learned counsel for the parties.

The petitioners are residing in the area which is notified as Reserved Forest, under Indian Forests Act 1878 read with the Wild Life Protection Act, as such it is clear that no human habitation is permissible within the reserved forest land. The petitioners are persons who have been permitted to reside in the area within the Reserved Forests for the limited purpose of construction of Totladoh dam and Pench Project. Though the contractors employed by the Irrigation Department as well as the Government have removed themselves, the petitioners continued to reside in the area. It was noticed that the petitioners and such other residents are indulging in illegal fishing, felling of timber, grazing, collection of minor forest produce, poaching in the region and when the Forest Department made a concerted efforts to remove them from the reserved forest land, they approached this Court and in addition to invoking its extra ordinary jurisdiction, they also made an emotional appeal that the Court should have humane approach towards them and the persons like the petitioners, who belong to poor strata of society, deserves to be resettled before they are removed from the forest area. This Court by an ad interim order protected them.

The respondents were called upon to file their affidavits in reply.

On examining the matter on merits, this Court is satisfied that the petitioners have no right to remain in the Reserved Forest Area.

Mr. Joshi, the learned counsel appearing for the petitioners, who have filed this petition in representative capacity for all the residents of the area claiming to be the villagers, submits that this Court should direct the respondent-State to consider the case of all these persons vide G.R. dated 17 July, 2002 and Maharashtra Project Affected Persons Rehabilitation Act, 1999.

We have given our anxious consideration in reference to both the Act of 1999 and so also the G.R. issued by the State Government in the matter and we are more than satisfied that none of the petitioners fall in the category of affected persons within the meaning of Maharashtra Project Affected Persons Rehabilitation Act, 1999 and so also as the persons who are required to be resettled and rehabilitated in case a particular area or region is notified as National Forest. All these persons were labourers brought for the construction of dam under the Pench Project of the State which was a joint venture of the State of Maharashtra and Madhya

CEC
RULES AND PROCEDURE

CENTRAL EMPOWERED COMMITTEE
CONSTITUTED BY THE HON'BLE SUPREME COURT OF INDIA
IN WRIT PETITIONS NO. 202/95 AND 171/96

No. 1-1/CEC/2002-03

Date : 14.6.2002

Notification No. 2

DATED: 14-6-2002

RULES AND PROCEDURE

Applications

1. Any individual shall be at liberty to move the Central Empowered Committee, hereinafter referred to as the Committee, by filing an application for seeking suitable relief against any action taken by the Central / State Governments or any other authority
 - (a) in respect of deforestation, encroachments, working of the wood based industries, Working Plans, compensatory afforestation, plantations, regeneration, illegal felling and transportation of timber, illegal mining in forest area, and any other conservation issues; and
 - (b) the implementation of the Forest (Conservation) Act, 1980, Indian Forest Act, 1927, Wild Life (Protection) Act, 1972 including the respective Rules, Regulations and Guidelines framed thereunder

on which the Hon'ble Supreme Court of India has passed orders in Writ Petitions no. 202/ 95 and 171/96.

2. All applications should be addressed to:

The Member Secretary
Central Empowered Committee
Constituted by the Hon'ble Supreme Court of India
Room No.106, Paryavaran Bhawan, C.G.O. Complex
Lodi Road, New Delhi – 110003

3. Every application shall set out the name, description and complete postal address of the applicant(s) and the respondent(s). It should be typed in double space on a full-scape (legal size paper) and shall set forth in chronological order and in consecutively numbered paragraphs, all relevant facts, grounds and relief claimed and shall be signed by the applicant or his Advocate.
4. Six copies of the application shall be filed and it shall be accompanied by copies of such documents as are in the possession of the applicant and shall be supported by a duly attested affidavit of the applicant and all pages of the application shall be numbered.
5. A copy of the application shall be sent by the applicant to all the respondents and photocopy of postal or courier receipt as proof of the same shall be filed along with the application.
6. Every application shall have an index.

Proceedings:

7. After receipt of the application, as soon as it is feasible, a notice of hearing shall be issued to all the parties through counsel, Central Government, State Governments or any other authority, electronic mode, or through any other means. The notice shall specify the date and place of hearing before the Committee.

8. Where there are a number of applications in which common issues have been raised and similar issues are sought, the Committee may issue notice to all parties or through public notice/advertisement. The Committee in such cases may determine as to who shall bear the cost of such publication.
9. The respondents shall be at a liberty to file written objections to the application in the form of a counter affidavit with proof of service of advance copy to the applicant. The counter affidavit shall give a parawise reply on merits and no general replies or denials would be entertained. In cases where the respondent(s) is an office of the Central Government, the State Government, Government Undertaking or any authority owned, managed or controlled by the Central / State Government, the counter affidavit, shall be signed by the Head of the Department, Authority or the Undertaking.
10. The Committee shall have the powers to:
 - (a) Call for any documents from any person or the Government of the Union or the State or any other official;
 - (b) Summon any person and receive evidence from such person on oath either on affidavit or otherwise;
 - (c) Seek assistance / presence of any person(s) / official(s) required by it in relation to its work.
11. A quorum comprising minimum of three members will be competent to hear applications and pass orders.
12. The Committee may undertake field visits, public hearings, meeting with officials and NGO's through one or more of its members or Special Invitees or through such Central Government / State Government officials, institutions, experts, NGO's and others.
13. The Committee may pass interim order(s) so as to meet the ends of justice, which shall operate for a period of 90 days from the date of the issue of the order by which time the application shall be finally adjudicated. However, if no final order(s) is passed within 90 days, the interim order shall cease to operate unless extended by the Committee for reasons to be recorded in writing.
14. The Committee shall pass appropriate orders in writing after giving opportunity of hearing the parties.
15. The orders passed by the Committee shall be in conformity with the orders passed by the Hon'ble Supreme Court of India. In other cases, the Committee shall place its recommendations before the Hon'ble Supreme Court of India for passing appropriate clarifications or orders.
16. The Committee shall submit Quarterly Progress Reports to the Hon'ble Supreme Court of India.
17. All orders passed by the Committee shall be authenticated by the Member Secretary and bear the seal of the Committee.
18. In respect of the I. A.'s, reports and affidavits referred to the Committee by the Hon'ble Supreme Court of India, the Committee will follow the procedure as stated above.

(M.K.Jiwrajka)
Member Secretary

Distribution:

1. Registrar, Supreme Court (attention PIL Cell).
2. Attorney General of India.
3. Solicitor General of India and Amicus Curiae in Writ Petition (Civil) No. 202/95.
4. Shri P. V.Jayakrishnan, Chairman Central Empowered Committee.
5. Shri N. K.Joshi, Additional Director General of Forests, Ministry of Environment & Forests & Member,

Central Empowered Committee.

6. Shri Valmik Thapar, – Member Central Empowered Committee.
7. Shri Mahendra Vyas, – Member Central Empowered Committee.
8. PS to MEF.
9. Secretary, Ministry of Environment & Forests, Government of India.
10. Director General of Forests & Special Secretary, MOEF.
11. Chairman High Power Committee for the North-Eastern Region.
12. Chairman Special Investigation Team.
13. All officers of DIG and above level, MoEF.
14. Regional Chief Conservators of Forests, MoEF (all).
15. Secretaries to Government of India (all ministries).
16. Administrators / Chief Secretaries (all States / UTs).
17. Principal Chief Conservators of Forests, (all States/ UTs).
18. Secretaries (Forests) (all States / UTs).

This Notification should be given wide publicity & circulated to all concerned.

(M.K.Jiwrajka)
Member Secretary