

FOREST CASE UPDATE

Issue 41, December 2007

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Highlights of the Godavarman Hearing on 7th December 2007

The first hearing in the Godavarman case in the month of December appeared to be reminiscent of the orders of the Supreme Court in the same matter in the month of April. One of the first critical matters that were heard in court referred to the Forest Advisory Committee (FAC). As per an order in April 2007, it was stated that all the clearances granted by the FAC would be placed before the Central Empowered committee (CEC) which would give its recommendations to the Supreme Court Godavarman bench (See Issues 32, 33, 34 of Forest Case Update. Also see: <http://in.reuters.com/article/topNews/idINIndia-31252720080104>; <http://www.indlawnews.com/3B61E0AAC8ABF4C1980995356C63E638>; <http://www.indianexpress.com/story/20258.html>).

During the 7th December hearing the Amicus Curiae Harish Salve brought to the notice of the court that the FAC had been ignoring the orders of the Supreme Court (SC) thereby granting clearances to a number of projects. He highlighted that the FAC has been granting Temporary Working Permits (TWP) to mining projects which was against the SC orders. He also mentioned that between September and November 2007 clearances have been granted to a number of projects as well as TWPs. This was also a concern that the clearances were granted by the concerned ministry despite CEC observations on the same.

These clearances were usually granted by the MoEF, signed by the Inspector General of Forest with a rider that that the concerned project is approved subject to approval by other concerned authorities. The Amicus pointed out that round about 55 dam projects or so were cleared.

The matter was listed for detailed hearing on 13th and 14th of December, 2007.

The second matter was regarding the CEC report on the identification of forests. This was mainly to do with the State Uttar Pradesh. Accordingly at the District level a policy was worked out for the

identification of forests, the same was also adopted at the State level. The respondents asked for more time to work out the policy.

The next matter was I.A. No. 979 and 991 which was in relation to encroachment of about 1.798 ha of forestland. I.A.979 relates to mining in Lalitpur, Uttar Pradesh. The Amicus Curiae made reference to the order of the SC of the 24th November 2006 which specifically mentions that that the boundary of the Reserved Forests should be demarcated. The discussions as pointed out by the Amicus, were not relating to the key issue of the application. Once this was pointed out the respondents sought more time to respond, which was agreed to by the court.

The other I.A.s for the day was predominantly in relation to mining and on the request of the Amicus Curiae was postponed to a future date.

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Highlights of the Godavarman Hearing on 14th December 2007

The 14th December 2007 hearing began on an interesting note with counsel for Sterlite Industries moving an application before the court relating to the bauxite mining in Niyamgiri. As per the order passed by the Hon'ble Supreme Court in the case of Vedanta Mining case on the 23rd of November 2007, M/s Vedanta was prohibited from mining in the hills of Niyamgiri. Accordingly it was stated by the Apex Court that that M/s SILL has the liberty to move the Apex Court if the former is ready to comply with certain conditions. Thus Sterlite industries have moved in their application, and it seems that the Orissa Government has expressed their willingness as well. (See: *FC Updates Issues 38, 39, and 40*. Also see: <http://www.thehindubusinessline.com/2005/09/25/stories/2005092502140200.htm>; <http://www.livemint.com/2007/10/11001817/Vedanta-faces-fresh--bauxite-m.html>).

The subsequent application dealt with the Constitution of the Central Empowered Committee (CEC). It was stated by the Counsel for the Ministry of Environment and Forests (MoEF) that that CEC is no more under the purview of the Notification issued by the MoEF dated 03/06/2002 rather it is being constituted based on the Apex Courts order where in it was stated that CEC is as an advisory body to the Supreme Court and that that the authority is going to continue. The discussion was basically with regards to the constitution of the CEC. The counsel for MoEF asked for a change of the present Chairperson, P.V.Jayakrishnan and suggested that the office of the Director General of Forests take over the position. The Amicus curiae Harish Slave strongly opposed this move by stating that that there could be vested interest involved in this move. One more suggestion that came from the MoEF was to include the name of one Mr. Sanjiv Chaddha IFS to be included as a member of the committee thereby increasing the number of members on the Committee.

The SC did not take a final decision on the issue and asked MoEF to submit a complete plan, following which a decision can be taken in the month of January.

The next matter that came up for hearing was I.A.No. 1413 that relates to temporary working permits for mining by TISCO. The counsel for the applicant raised issues about not being able to carry out mining despite having a TWP. This and the matters related to the 18 Temporary Working Permits (TWP) in relation to mining in the State of Goa were discussed in detail in the SC. The counsel, K.K. Venugopal stated that inspite of getting TWP by the FAC the people are not being allowed to carry out mining activity. The Amicus clarified that the TWPs have been granted by the Forest Advisory Committee (FAC) and do not hold, till after the CEC has pointed out that that the TWP's granted by the FAC does not hold, till looked over by the CEC.

Supreme Court Order on Temporary Working Permit

Supreme Court in its order dated 16th September 2005 it was inter alia directed that no Temporary Working Permits or any other permission shall be granted to mining activities in the National Parks, Sanctuaries, and Forest Areas. It was further stated that no mining activity would continue under TWP or working permit or permission, which may have been granted. This order was later modified and in its order dated 4th August 2006 the Apex Court laid down certain conditions for grant of TWP. In yet another order dated 30th November 2006 the Supreme Court also stated that for all the existing TWP's an extension could be granted.

Taking the views of both the parties into consideration the Court stated today that affected parties (mining agents) could approach the CEC on Monday i.e. the 17th of December 2007. Accordingly if the CEC finds that the 18 new TWPs that have been issued falls within the ambit of the 30th November 2006 or 4th August 2006 orders respectively then in that case the CEC can give the mining parties the green signal to go ahead and exercise their TWPs.

The last matter that came up for hearing related to the CEC's recommendations related to the forest clearance of the POSCO Steel plant in Jagatsinghpur. Mukul Rohtagi senior counsel for POSCO brought up the issue. He highlighted that the CEC had submitted three reports related to the recommendations of the FAC. In their third report which also relates to the proposed port and plant to be set up by POSCO (click here to read about [CEC's recommendations](http://timesofindia.indiatimes.com/India/Posco_SC_panel_says_take_stock_of_ecological_impact/articleshow/2673364.cms), and also see: http://timesofindia.indiatimes.com/India/Posco_SC_panel_says_take_stock_of_ecological_impact/articleshow/2673364.cms). The CEC has stated in its recommendations that the forest clearance should be granted only after an assessment of the mining is carried out. Rohtagi highlighted that in its report the CEC even though has allowed the construction of the port and the plant added a rider to it by stating that before the commencement of the work the respondents is expected to submit a holistic study of the area so as to identify the potential sites for the future projects as well. The counsel's plea was to bifurcate the report made by the CEC such that they may be allowed to carry out the construction work side by side. The matter will come up for hearing before the Supreme Court in January when the court shall return after the vacation.

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Summary of the third report of CEC on proposals examined by Forest Advisory Committee

Third Report of CEC in IA No. 1413,1414,1426 and other related IA's regarding the Constitution and Composition of the Forest Advisory Committee (FAC) - Proposals Examined by the FAC

SUMMARY

- The CEC in its first report dated 16.08.07 made the following recommendations: That the MoEF may be permitted to approve 20 Proposals as per the recommendations made by the FAC in its meeting held on 27/09/06 and 27/10/06 respectively.
- The CEC in its second report dated 28/09/07 had recommended 35 development projects pertaining to the Government/ Government Undertakings may also be permitted to be approved by the MoEF as per the Recommendations made by the FAC.

Facts:

The present report deals with the 13 proposals recommended for approval by FAC in its meeting held between 17/05/07 and 27/09/07. In 12 of these cases the CEC had recommended that the proposals may be permitted to be approved by the MoEF. But in case if the 13th proposal relating to M/s POSCO it was suggested by the CEC that diversion of forest land for the project may be permitted after considering the consolidated proposal for the entire project including for the linked mining project. The diversion of forest lands were as follows:-

- (i) **Diversion of 130 ha of Forest Land for 4000 MW Ultra Mega Power Project at Mundra, Gujarat in favour of M/s Coastal Gujarat Power Ltd:** This project based on imported Coal was recommended by the FAC on 03.07.07. The project involves the diversion of 130 Ha of area notified under Section 4 of the Indian Forest Act during 2002. The project involves the felling of 17,900 trees, compensatory afforestation over equivalent non forest area has been proposed. The land is not important from the wildlife angle and has no violation of the FC Act as well. The project also involves the use of 523 Ha of Government Wasteland, 218Ha of Mundra SEZ and 169 Ha of Private Land. The area falls in the semi arid zone and is in close proximity to the Mundra SEZ. Additionally no displacement of people is expected. After considering the above points the CEC recommended the Supreme Court to consider permitting the MoEF to give approval as recommended by the FAC.
- (ii) **Diversion of 498.896 Ha of Forest Land for the construction of Modikuntavagu Medium Irrigation Project in Khaman District of Andhra Pradesh:** The FAC considered this proposal in its meeting held on the 17th of May 2007 whereby recommending the diversion of 498.896 Ha of area for the project. The CEC made the following observations:
 - a) Non forest land of 437.35 Ha was initially identified for the purpose of Compensatory Afforestation, but the area happens to be well stocked with trees. Hence it was proposed to mainly carry out gap planting and soil moisture conservation. In addition to the 437.35 ha compensatory afforestation may be permitted to be carried out in 499Ha of degraded land. This was in view of the fact that most of the beneficiaries of the Project would be the tribals residing in 35 villages.
 - b) The inspection report of the CCF Bangalore mentions that the catchment area work over 12,424 ha of the area will be taken up at an estimated cost of Rs. 10.56 lakhs. However the detailed Catchment Area Treatment plan as per the guidelines of the MoEF has not been included and hence the projected cost for the catchment area works over 12.424Ha of area is grossly inadequate and hence needs to be re-looked.
 - c) The recommendation of the FAC regarding the 489.89Ha of Forest Land may be approved subject to a detail catchment area treatment plan and examining the possibility of reducing the tree felling by the MoEF.
- (iii) **Diversion of 1,253.225Ha of Forest land for the Establishment of Integrated Steel Plant and captive ports by M/s POSCO India Pvt Ltd:** FAC made its recommendation on the 9th of August 2007. The project involves a 12 million tonne integrated steel plant with a captive minor port in Orissa at a total cost of about Rs.55, 000 Crores in three phases. The present proposal is for diversion of 1,253.225Ha by felling around 2.8 lakh trees. The proposals for the requirement of forestland for other linkages such as mines, railways, road, corridor etc are yet to be finalized. Accordingly the CEC was of the view that instead of gradually diverting the forestland it would be appropriate that the total forest land required for the project including for the mining is taken for the entire forest land after considering the ecological importance of the area and, number of trees required to

be felled, the R&R policy and the benefits accruing to the State. Also since the number of trees capable of being felled is to the tune of 2.8lakhs the same needs to be studied by an expert committee including the representatives from the NGO sector so assess the impact of cutting of such large number of trees and also the fact that mitigative measures can also be taken up at the earliest.

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Orders in the Godavarman Hearing on 14th December 2007

Some of the substantive orders from the Godavarman Hearing on 14th December 2007 follow:

▪ **I.A.No.2016 (Regarding Reconstitution of the Central Empowered Committee)**

Heard learned Solicitor General and learned A.C. They have been contemplating all formalities and terms and conditions. After discussing the learned Solicitor General and learned Amicus curiae, for the time being we agree with the following terms and reference of CEC:

1. In supercession of all the previous orders regarding constitutions and functioning of the Central Empowered Committee (hereinafter called the "Empowered Committee") is constituted for the purpose of monitoring and ensuring compliance with the orders of this Court covering the subject matter of forest and wild life and related issues arising out of the said orders.

2. The Committee shall exercise the following powers and perform the following functions:

(i) To monitor the implementation of this Court's orders and place reports of non-compliance before the Court and Central Government for appropriate action.

(ii) To examine pending Interlocutory Applications in the said Writ petitions (as may be referred to it by the 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 Court for orders:

iii) To deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf;

iv) For the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can:-

(a) Call for any documents from any persons or the government of the Union or the State or any other official;

(b) Undertake site inspection of forest area involved;

c) Seek assistance or presence of any person(s) or official(s) required by it in relation to its work;

d) Co-opt one or more persons as its members or as special invitees for dealing with specific issues;

e)Co-opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular state;

f)To suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court.

(v)To examine and advise/recommend on any issue referred to the Committee.

3. The Ministry of Environment & Forests shall provide suitable and adequate office accommodation for the Committee and shall bear all the expenses of the working of the CEC.

4.The jurisdiction of the Committee shall extend to the whole of India.

- I.A.NO.1413,1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006 In 1413 and 2121-2132 in IA 1413 (regarding Temporary Working Permits for mining)

Heard learned AC and learned Solicitor General.

This is regarding 18 Temporary Working Permissions (TWP) granted to various parties in Goa. The A.C. points out that these TWPs have been granted contrary to the Order passed by this Court on 30.11.2006. Learned Solicitor General, however, points out that TWPs have been granted in accordance with the directions of this Court Order on 4.8.2006 by which various conditions have been laid down for grant of TWPs.

It appears that there is some dispute. Let the holders of TWPs approach the CEC and satisfy that TWPs have been granted in accordance with the orders passed by this court dated 4.8.2006 and 30.11.06, by fulfilling all the conditions laid down by this Court. This Court had stayed TWPs by Order dated 7.12.007. The holder of TWPs would be at liberty approach the CEC by 17.12.2007. If the CEC is satisfied that the TWPs are in accordance with the conditions laid down by this Court by order dt. 4.8.2006, the CEC would be at liberty to permit the holder of TWPs to carry on work in the instant case, and will submit a report on 4.1.2008 in this Court.

- I.A. NO. 1029 (regarding upgradation/construction of a road passing through Pangolakha Wildlife Sanctuary in Sikkim)

The CEC has submitted that the Ministry of Defence has filed a report seeking permission for upgradation/construction of Road between Track Junction-Bheem Base-Doka La and for an alternate road between Flag Hill-Doka La passing through the Pangolakha Wildlife Sanctuary in Sikkim

The CEC has examined the needs of the project. No cutting of trees is involved but only bushes and jungle clearance along the trace would be required. Therefore, no conditions have been imposed by the CEC.

We permit the Army to carry on the project.

I.A. is already disposed of.

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Visit the Forest Case Update Website for past issues and accessing the orders of the Supreme Court and Central Empowered Committee: www.forestcaseindia.org

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