

# **FOREST CASE UPDATE**

**Issue 68, June and July 2011**

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### **Highlights of the Central Empowered Committee (CEC) hearing on 6<sup>th</sup> July 2011**

The CEC heard several matters related to the violations of the orders of the Supreme Court in the Godavarman case and other related matters which had directly been filed before them and were since then pending.

One such case was Application No. 1322 related to mining in three clusters the Aravalli Hills in Rajasthan. This matter took up most of the discussion time on the 6<sup>th</sup> July 2011 hearing. It was highlighted by the counsel representing the mine owners that this matter had come up in the High Court from where the applicants were directed to be heard before the CEC. The CEC remarked that the central question in the case before proceeding further is whether the area in question falls within the Aravalli hills or not. Unless this is determined by Forest Survey of India (FSI) the CEC cannot intervene in the particular matter. This is one particular case related to three mining leases. However, it will be important to know if it falls within the demarcation of the Aravalli Hills being done by the Forest Survey of India. At this point of time the CEC cannot disagree with the contention of the State of Rajasthan according, and can decide further only once the zone is demarcated. The current application is challenging the contention of the Government of Rajasthan that the three mining leases fall within the Aravallis and according to the applicant this is incorrect.

The CEC further highlighted that in this case the 2003 direction of the state government is not applicable as at that point of the the demarcation by FSI was not done which was required as per the orders of the Supreme Court in the Godavarman case. Under the present circumstances the CEC

would need to wait for the FSI demarcation. All the CEC can do is ask the FSI to expedite the process of Rajsamand District which is where the mines are located.

The counsel for the applicant highlighted that it is important to consider as to why only these three mining leases have been discriminated against when another 1500 mines are operating. The CEC highlighted that this is not an appropriate forum for redressal for the above mentioned grievance. The question for the CEC is only to look into whether or not these three mining leases are within the Aravalli or not. If the High Court directs that the CEC look into the working of all the mines in the area, they would do so. The CEC does not deem it appropriate to over-rule the State of Rajasthan at this point. The final outcome can be decided in the Supreme Court only after the FSI demarcation is presented and as of the day of the hearing it cannot be pre-empted what the outcome of that would be. Therefore, the CEC would not like to pass any order to the State of Rajasthan that indicates that mining activity in the three lease areas should be allowed to continue. The CEC does not deem it fit to use such a discretion and the earlier stand of the 2003 on which the applicant is relying can't be agreed to.

The applicant repeatedly stated that stand of the state government in this case is discriminatory against the three mining leases. The CEC responded by saying that it is not an appropriate authority to take a stand against discrimination even if the applicant has a valid contention. There might be a case, but CEC does not have the mandate to look into this aspect. The High Court has asked the CEC to only look into whether or not the three mining leases fall within the Aravalli Hills or not. If the applicant wishes they can take this up with the High Court or the Supreme Court but the CEC does not have the powers. It is for the applicant to decide whether they would like to keep the matter pending before the CEC or take another recourse. The matter was fixed for hearing on 2<sup>nd</sup> August 2011.

Another case heard was W.P. 2342 related to saw mills. At the time of the hearing photographs from the file inspection by the Range Forest Officer were filed. The CEC asked the saw mill owner to present details of their sales tax, income tax and other land related details to establish the fact that this was an old lease which had been operating prior to the orders of the Supreme Court related to wood based industries. The applicant sought more time to file these details and the matter was listed for 2<sup>nd</sup> August 2011.

As part of the hearing a special mention was made to a matter related to road widening in Valmiki Tiger Reserve. The representatives of the State of Bihar were also present. The CEC stated that the appears that the area in question also falls within a sanctuary. The State government representatives mentioned that they would state this and other facts as part of their affidavit. It was listed for hearing on 2<sup>nd</sup> August 2011.

**Some Orders of the Centre for Environment Law v/s Union of India Hearing dated 15<sup>th</sup> July 2011**

[Note: We are aware that some orders in this section do not give full details of the either the issue at hand or from which state they emanate. We will share additional details on these as soon as we have it.]

**CORAM :**  
HON'BLE MR. JUSTICE K.S. PANICKER RADHAKRISHNAN  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

I.A. Nos. 128-129 & 144 in W.P. (C) No. 337/1995  
(FOR MODIFICATION OF COURT'S ORDER DATED 28.4.2003 AND EXEMPTION  
FROM FILING O.T. AND PERMISSION TO FILE REJOINER AFFIDAVIT)

CENTRE FOR ENVIR. LAW, WWF-I

Petitioner(s)

VERSUS

U O I & ORS

● **I.A. NO. 2898 ( FOR PERMISSION FOR CONSTRUCTION OF MISSING LINK OF NATIONAL HIGHWAY NO. 11A, RAJASTHAN)**

*Application filed by the State of Rajasthan seeking permission for the construction of missing link of National Highway No.11A was considered by the Standing Committee of NBWL, in its meeting held on 17<sup>th</sup> July, 2009 and resolved as below:*

*"Diversion of 4.17 hac of forest land from Jamwa Ramgarh Wildlife Sanctuary for Construction of missing link of National Highway-11 (Dausa-Manoharpur), Rajasthan. In this connection, a site inspection was made by Dr. Divyabhansingh Chandra, Member, and Dr. Anmol Kumar, DIG (WL). The site inspection report had been circulated to all the members. Member Secretary informed that the inspecting team has recommended the proposal subject to three conditions i.e. Compliance of all the conditions envisaged by CWLW in his recommendation; Appropriate action against the erring official of the PWD who have violated the Wildlife (Protection) Act, 1972, and direction of the Hon'ble Supreme Court by undertaking construction on Highway without necessary clearances; and , obtain approvals under the Forest (Conservation) Act, 1980, and of Hon'ble Supreme Court in the matter.*

*The Committee unanimously approved the recommendations of the inspecting team subject to conditions envisaged by CWLW in its recommendation."*

*The decision is reflected in the Annexure-A1 letter dated 27.7.09 of MoEF and the same has been approved.*

*The IA is, therefore, allowed in accordance with the directions given by National Board for Wild Life in 15th Meeting held on 17th July, 2009.*

● **I.A. NOS. 2872-2873 AND 3086 (REGARDING USE OF FOREST LAND IN ARAVALLIS)**

*Learned Amicus Curiae, Shri P.S.Narasimha submitted that issue relating to Aravali Forest Land is pending for consideration before the First Forest Bench and hence, this matter be tagged with Aravali Batch. Be listed before the First Forest Bench.*

● **I.A. NO. 1174 IN W.P.(C) 202/1995 (FOR RECOMMENDATION OF CEC IN IA NO. 804 RELATED TO ILLEGAL TIMBER TRANSPORTATION IN DAMOH, MADHYA PRADESH)**

*Mr. Kalu Ram Yadav, Driver/Hawaldar was alleged to have transported illegally timber in a Police vehicle and a case was charge-sheeted against him, but was acquitted of that charge by order dated 4.12.2004 passed by the Chief Judicial Magistrate, Damoh in Crl. Case No. 1585 of 2002.No appeal*

has been preferred against the said order and the same has attained finality. Therefore, the I.A. has become infructuous and the same is dismissed.

- **I.A. NO. 2865 IN W.P.(C) 202/1995 (FOR RECOMMENDATION OF CEC APPLICATION NO. 1246 RELATED TO KOYNA WILD LIFE SANCTUARY, MAHARASHTRA)**

Perused the Report of the CEC in Application No.1246/2010. Application was preferred seeking permission for transportation and the use of the *Mapia Foetida* (a medicinal plant) planted on non-forest land falling within the boundary of the Koyna Wildlife Sanctuary. Principal Chief Conservator of Forest (Wildlife), Maharashtra Forest, raised no objection in issuing transit passes. Report of the CEC dated 11.5.10 is accepted and the application is disposed of as prayed for.

- **I.A. NO. 2976 (FOR USE OF FOREST LAND IN MADHAV NATIONAL PARK, MADHYA PRADESH FOR LAYING OF UNDERGROUND DRINKING WATER PIPELINE)**

Learned counsel appearing for the Municipal Council referred to Annexure A-5 letter dated 26.10.2010 of the Ministry of Environment & Forest, (Wildlife Division) addressed to the Chief Wildlife Warden and submitted that the council has some objection with regard to sub-paragraphs (iii) and (v) of paragraph 1 of that letter. If that be so, it is open to the Municipal Council to move the Ministry of Environment and Forest, and in turn, MoEF may vary the conditions, if so warranted.

Perused the report of the CEC dated 20.4.11 and permission is accorded to use of 1.241 hectares of forest land falling in Madhav National Park for laying of the underground pipeline for supply of drinking water to Shivpuri town, Madhya Pradesh subject to the conditions enumerated in paragraph 6 of the report of the CEC.

This IA is disposed of in the above terms.

- **I.A. NO. 2637 IN W.P.(C) 202/1995 (FOR MODIFICATION OF ORDER DATED 14.2.2000)**

Application is disposed of giving liberty to the applicants to approach the Notified Authority under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and it is for the Notified Authority to consider their applications and to take appropriate decisions in accordance with law.

Petitioners, if so advised, may also approach the State Legal Services Authority for legal assistance.

Application is disposed of accordingly.

- **I.A. NO. 2646 (FOR USE OF FOREST LAND IN RATAPANI WILD LIFE SANCTUARY, MADHYA PRADESH)**

Perused the report of the CEC dated 26.2.2010. Learned Amicus Curiae submitted that the applicant had earlier moved the application No.1025 in respect of the same project which was allowed by this Court on the basis of the report of the CEC dated 28.9.2007. This application is accordingly disposed of incorporating the following conditions:

(i) "Approval under the Forest (Conservation) Act for the use of the forest land will be obtained and the stipulated conditions including the condition regarding the payment of the NPV will be complied with;

(ii) The conditions laid down by the Chief Wildlife Warden for carrying out of the work of the Ratapani Wildlife Sanctuary will be strictly complied with."

● **I.A. Nos. 2974 and 2980 of 2010 (REGARDING SAW MILLS IN UTTAR PRADESH)**

I.A. Nos. 2974 and 2980 of 2010 are allowed following the order of this Court in I.A. Nos. 2968 and 2970 dated 14.3.11, by which this Court has permitted relocation of the saw mills of the applicant and other wood based industries in (a) industrial areas notified by the U.P. Government / Government of India and (b) Nagar Nigam Area (Municipal Corporation) Areas irrespective of the distance of such areas from the nearby forest in the State of U.P. The report of the CEC dated 20.4.11 has stated that the applicant's saw mill is also covered by the above mentioned order.

After hearing the counsel and the amicus curiae, we are inclined to allow the applications following the order of this Court dated 14.3.11.

**Extracts of the Supreme Court Judgment on Limestone Mining by M/s Lafarge in Meghalaya**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. NOS. 1868, 2091, 2225-2227, 2380, 2568 and 2937  
IN  
WRIT PETITION (C) No. 202 OF 1995**

Lafarge Umiam Mining Pvt. Ltd. ... Applicant  
T.N. Godavarman Thirumulpad ... Petitioner(s)  
versus  
Union of India & Ors. ... Respondent(s)

**JUDGMENT**  
S. H. KAPADIA, CJI

**Facts**

1. Lafarge Surma Cement Ltd. ('LSCL' for short) is a company incorporated under the laws of Bangladesh. It has set up a cross-border cement manufacturing project at Chhatak in Bangladesh, which inter-alia has a captive limestone mine of 100Ha located at Phlangkaruh, Nongtra, East Khasi Hills District in the State of Meghalaya. The mine is leased out in favour of Lafarge Umium Mining Pvt. Ltd. ('LUMPL' for short), which is an incorporated company under the Indian Companies Act, 1956 and which is a wholly owned subsidiary of LSCL. The entire produce of the said mine is used for production of cement at the manufacturing plant at Chhatak, Bangladesh under the agreement/arrangement between Government of India and Government of Bangladesh. There is no other source of limestone for LSCL except for the captive limestone mine situated at Nongtra, East Khasi Hills District in the State of Meghalaya. The limestone as mined by LUMPL is conveyed from the mine situated at Nongtra after crushing in a crusher plant. The limestone mined is conveyed by a conveyor belt to LSCL plant in Bangladesh.

5. On 1.9.1997 LMMPL made an application for granting environmental clearance for limestone mining project at Nongtraï, East Khasi Hills District, Meghalaya. The application was made under EIA Notification, 1994. It was made in the form prescribed by the Notification, 1994. 20 copies of Rapid EIA Report (NEHU Report) were also annexed therewith. However, the said proposal dated 1.9.1997 was returned by MoEF vide letter dated 24.10.1997. The reason being that on 10.4.1997, as stated hereinabove, the MoEF had amended the EIA Notification of 1994 making public hearing mandatory for the development projects listed in Schedule-I of the Notification. By reason of the said Notification dated 10.4.1997 the then project proponent (M/s. LMMPL) was asked to seek Site Clearance as well as Project Clearance separately. The Site Clearance proposal was called for through the State level agency dealing with the mines. Accordingly, by application dated 23.9.1998 M/s. LMMPL applied for Site Clearance for Limestone Mining Project at Nongtraï village, East Khasi Hills District, Meghalaya. This application was made in the prescribed form. The application indicates that there exists an approach/access road to the site that is described as Shillong-Mawsynram-Nongtraï or Shillong- Cherrapunjee-Shella-Nongtraï. The application further states that all villages represent tribal population. The application further indicates that there exists many private limestone quarries in the area. It is further stated in the application that the topography of the area is hilly. Against the column 'Forest Land Involved in the Project' the answer given by the project proponent was "Nil". According to the application the site is not a habitat/corridor for endangered/rare/endemic species. The source of this information was the NEHU Report. According to the said Report, mining of limestone in Khasi Hills was a source of revenue right from 1858. The limestone deposit in Meghalaya is estimated to be 2165 million tonnes. Exploitation of Nongtraï limestone dates back to 1885. Even today, a number of private parties quarry limestone in this area. An area of 100 hectares stood acquired by LMMPL on lease basis for mining. For that an agreement was signed with Village Durbar. The limestone bearing area around Nongtraï and Shella falls under the Karst topography. This area falls on the southern fringe of the Meghalaya plateau. Karst topography is a landscape formed by the dissolution of a layer(s) of soluble bedrock, usually carbonate rock such as limestone. Karst topography is characterized by limestone caverns carved by groundwater. Karst landscapes are formed by the removal of bedrock (composed in most cases of limestone, gypsum or salt). Alongwith the application, a certificate dated 27.8.1997 was annexed. It was issued by Khasi Hills Autonomous District Council, Shillong which council is the constitutional authority under Sixth Schedule of the Constitution. By the said certificate the council specifically stated that it had no objection for mining operation in the area at Nongtraï village since the area does not fall within a forest land. This application for site clearance was allowed by MoEF vide letter dated 18.6.1999 addressed to the Project Proponent. Site clearance was, thus, granted under the 1994 Notification as amended on 4.5.1994 and 10.4.1997 subject to strict compliance of terms and conditions mentioned therein. One of the conditions was that the Project Proponent shall obtain environmental clearance for the proposed limestone mine as per the procedure laid down in the 1994 Notification before taking up developmental work at the site. The said clearance was not to be construed as grant of mining permission. No developmental activity relating to the project was to start prior to environmental clearance. Accordingly, on 17.4.2000, LMMPL made an application for environmental clearance to MoEF in the prescribed form to excavate 2.0 million tonnes per annum of limestone and to transport the same to Chhatak in Bangladesh through belt conveyor (7.2 km long within Indian territory). The mining lease area was indicated to be 100 hectare. The description of land was shown as "barren". In the application, it was further stated that there is no notified forest land within 25 kms. From the proposed mine. Along with the application vide Annexure A, copy of No Objection Certificate (NOC) for mining operations at the proposed site dated 27.8.1997 stood annexed. That certificate was issued by Khasi Hills Autonomous District Council, Shillong, which, as stated above, inter alia states that the Council has no objection for mining operations at Nongtraï Village since the area of 100 hectare does not fall within forest land. Similarly, vide letter dated 6.7.1997 issued by Village Durbar, NOC was granted for withdrawal of water for the project. Vide Annexure G to the application, consent to establish the project stood issued by Meghalaya Pollution Control Board. By Annexure H to the

application, minutes of Environmental Public Hearing of the project has been annexed. These minutes indicates the presence of Addl. Deputy Commissioner, East Khasi Hills District, various government officials including nominees of Forest Conservators and Member Secretary of the Pollution Control Board. According to the Headman of Nongtraï Village, limestone is abundantly available in the area; the same has not been utilized by local villagers due to lack of infrastructure; for economic development, the Village Durbar had decided to lease the area; the environmental implications of the project stood discussed; complaint received from Meghalaya Adventures Association was read out which complaint mainly dealt with destruction of caves which stood rebutted by the Headman and, thus, the meeting stood concluded....According to the report the site is at the Phalngkaruh which originates from the foot hills of the proposed mine site. According to the said report the site is on uneven terrain with a rugged topography. There are heaps of fractured rocks all over the place. It is a rocky region. The site rejects any possibility of natural growth of forest. It is an area of low botanical and floral diversity. It is an area covered with rocks. The area can be termed as a wasteland.

6. On receipt of the application for environmental clearance, certain queries were raised by MoEF with regard to the scope of the site clearance (the original site clearance was for 0.8 million tonnes whereas subsequently that capacity was revised to 2 million tonnes); that, as per this Court's order dated 12.12.1996, "forests" has to be understood in terms of the dictionary meaning and, accordingly, a certificate was asked for in that regard from local DFO; the effect due to disposal of waste water through soak pit and whether the existing road width was sufficient to carry on heavy equipments for mining purposes. These were some of the queries/ objections on the basis of which clarification was sought vide letter dated 1.5.2000 by MoEF with regard to environmental clearance under the 1994 notification. As requested by MoEF, the project proponent vide letter dated 11.5.2000 requested the local DFO to issue necessary certificate as called for by MoEF in terms of the order of this Court dated 12.12.1996. Accordingly, on 13.6.2000, the DFO forwarded the certificate to the project proponent in respect of Limestone Mining Project at Nongtraï, East Khasi Hills District, Meghalaya by which it was certified that the mining site was not a forest area as per this Court's Order dated 12.12.1996 and nor did it fall under any of the notified reserved or protected forests. Moreover, the certificate once again reiterated that the site area stood covered with Karst topography which supported only a sporadic growth of a few tree shrubs.

7. However, vide letter dated 1.6.2006, from Chief Conservator of Forests (C), Shri Khazan Singh, addressed to MoEF it was pointed out that he had visited Limestone Mining Project of M/s. Lafarge when it was found that project had completed developmental works and opening of mine benches had also been accomplished for 7Ha of the mining lease land. According to the said letter the mining lease area around the developed mine benches stood surrounded by thick natural vegetation cover with sizeable number of tall trees. The said vegetation included trees being cleared for developing the mining benches. That the wood obtained from felling of trees was collected by the lessor who were from Nongtraï Village. According to the said letter, for such clearance no permission was taken under Forest (Conservation) Act, 1980 (for short the '1980 Act'). Further, even the Rapid EIA report submitted by the project proponent described the land as wasteland though the visit of the Chief Conservator found it to be otherwise. Consequently, by the said letter the Chief Conservator of Forests (C) informed the MoEF that the project proponent may be directed to obtain forest clearance under the 1980 Act and not to proceed with the mining activities till such clearance. A copy of the said letter was also sent to the project proponent. By letter dated 11.8.2006, the project proponent replied to the Chief Conservator of Forests (C) stating that it had proceeded with the developmental work on the basis of the certificate given by DFO dated 13.6.2000 under which it was certified that the project area was not a forest area and it did not fall in any of the notified reserved or protected forests...By letter dated 29.1.2007, M/s. Lafarge took the stand that there is some natural growing vegetation; that only those shrubs which are growing in the excavation plan have been cleared and since there was no diversion of forest land for non-

forestry purposes the 1980 Act was not applicable. Vide letter dated 9.4.2007 addressed by the Chief Conservator of Forests (C) to the Secretary, Department of Forest and Environment, Government of Meghalaya as well as to the Khasi Hills Autonomous District Council, it was pointed out that the mining project was undertaken in the virgin and natural forest; that the forest is standing all around the periphery of the broken area; that the mine was operating on forest land without clearance under the 1980 Act; that the area is a natural/virgin forest; that the land belonged to village Durbar of Nongtraï and in the circumstances forest clearance was required to be obtained under the provisions of 1980 Act in terms of the order of the Supreme Court dated 12.12.1996. According to the said letter, there was a clear violation of the 1980 Act. Accordingly, the Chief Conservator of Forests(C) Shri B.N. Jha requested the Government of Meghalaya to stop fresh clearance of vegetation, breaking of land, extension of mining area, removal of felled trees and stoppage of non- forestry activities with immediate effect...However, MoEF, vide letter dated 30.4.2007, directed complete closure of all on going non-forestry activities by M/s. Lafarge in compliance of the directions of the Supreme Court dated 12.12.1996.

8. On 6.9.2007 CEC submitted its report to this Court saying that the project proponent should have taken permission under the 1980 Act before starting operations in the area. According to CEC this was a typical case where ex- post facto approval under the 1980 Act is sought after the mine has been allowed to operate illegally. Since fait accompli situation arose according to CEC there was no option but to recommend the case for grant of permission for the use of forest land for mining lease, conveyor belt system and associated activities subject to certain conditions mentioned therein. By interim order dated 5.2.2010 M/s. Lafarge was directed to stop all mining activities. On 5.4.2010 a report was submitted by Shri B.N. Jha, Regional Chief Conservator of Forests (C) [also known as High Powered Committee (HPC)]. The report was submitted pursuant to the site inspection carried out by a High Level Committee which also had interaction with local population and institutions in the first week of April, 2010. Briefly, it may be stated that the report indicates assessment of the impact of the mining done by the project proponent up to April 2010 on forest, wildlife and surroundings. The report indicates details of the area already broken up. On the impact aspect the report states that the total clearing involves felling of 9345 trees out of which 1200 trees have already been felled. That, although the area supports rich flora, the same can be re-forested as a part of reclamation plan. According to the report, the said impact can be minimized after a thorough study of Bio-Diversity Management Plan as well as Catchment Area Treatment Plan is prepared and executed in a time bound manner. At the same time the report states that the project is positive and beneficial to the residents of Nongtraï village due to huge amount of cash going to village Durbar and reaching the individual household improving the financial health of the population of two villages, i.e., Nongtraï and Shella...The environmental clearance dated 19.4.2010 was followed by forest clearance dated 22.4.2010 (ex-post facto clearance) granted by MoEF. This letter refers to letter of the State Government dated 19.7.2007 forwarding its proposal for diversion of 116.589 Ha of forest land for Lime Stone Mining in favour of M/s. Lafarge wherein prior approval of Central Government was sought. The said proposal of the State Government was examined by FAC constituted by Central Government under Section 3 of the 1980 Act. Thus, forest clearance was granted by MoEF vide letter dated 22.4.2010 which again stipulated further conditions to be complied with by the project proponent. Accordingly on 26.4.2010 learned AGI submitted before this Court that M/s. Lafarge may be permitted to resume the mining operations subject to compliance of conditions enumerated in the order passed by MoEF on 22.4.2010. However, this Court ordered that before it grants permission to resume the mining operations it was imperative that plans should be drawn up and relevant reports be placed before this Court based on a comprehensive engineering and biological study including assessment of flora and fauna. A study report was submitted by NEHU on June, 2010 .

10. Shri Shyam Divan, learned senior counsel appearing on behalf of Shella Action Committee (SAC) while adopting the submissions of the learned Amicus Curiae with regard to the project being

illegal, submitted that having regard to para 4.3.1 of the National Forest Policy, 1988, tropical rain/moist forest are required to be totally safeguarded. According to SAC the forest in the region is a tropical moist forest and no forest clearance ought to have been granted because of the ecological significance recognized by the 1988 Policy. According to SAC this fact was known to M/s. Lafarge at all material times as can be seen from the Rapid EIA Report prepared by NEHU which specifically states that the vegetation at the study site is a mixed moist deciduous forest. Reliance is also placed by the learned counsel on the assessment of floral diversity prepared by NEHU in June, 2010 which indicates that the forest in the study area can be categorized into tropical moist-deciduous forest, tropical semi evergreen forest, savanna, sub-tropical broad leaves forest, forest garden, orchards and riparian forest. According to the said assessment of 2010, the vegetation in the core area is tropical moist-deciduous types whereas the vegetation in the proper zone can be categorized into tropical and sub-tropical types. Thus, according to the learned counsel having regard to the undisputed position emerging from the record the subject area is covered by a tropical moist forest deserving highest degree of ecological protection and therefore this Court should set aside the environmental clearance dated 9.8.2001 given under Section 3 of the 1986 Act by MoEF. In this connection it may be mentioned that SAC has also moved this Court by way of I.A. No. 2937 of 2010 seeking revocation of the environmental clearance dated 9.8.2001. They have also challenged the revised environmental clearance dated 19.04.2010 granted by MoEF as also Stage-I forest clearance dated 22.04.2010 issued by MoEF.

## **Issues**

### **18(i) Nature of land;**

(ii) Whether ex post facto environmental and forest clearances dated 19.4.2010 and 22.4.2010 respectively stood vitiated by alleged suppression by M/s. Lafarge regarding the nature of the land. In this connection it was contended by learned Amicus and by the learned counsel appearing on behalf of SAC that the EIA clearance under Section 3 of the 1986 Act dated 9.8.2001 (being a parent clearance) was obtained by M/s. Lafarge on the basis of "absence of forest" with full knowledge that the project site was located on forest land.

### **Findings**

26. Similarly, it is not possible for us to hold on the above facts that ex post facto clearances have been granted by MoEF in ignorance of the existence of forests due to mis-declaration. Two points are required to be highlighted at the outset. Firstly, the ex post facto clearance is based on the revised EIA. In the circumstances, EIA Notification of 2006 would not apply. Secondly, IA preferred by SAC being I.A. No. 2225- 2227/08 was preferred only in March, 2008. Thus, during the relevant period of almost a decade, SAC did not object to the said project. In fact an IA is now pending in this Court being IA No. 3063 of 2011 preferred by CEC which indicates that there are 28 active mines out of which 8 are located along the Shella-Cherrapunjee Road which are operating without obtaining approval and in violation of the 1980 Act. Further, the said I.A. alleges that 6 registered quarry owners are under the Shella Wahadarship, East Khasi Hills and that there are 12 individuals involved in mining limestone in the Shella Area during 2008-09. All these aspects require in-depth examination. The locus of SAC is not being doubted. However, the I.A. No. 3063 of 2011 preferred by CEC which has acted only after receiving inputs from the respondent No. 5 prima facie throws doubt on the credibility of objections raised by SAC. However, we do not wish to express any conclusive finding on this aspect at this stage.

## **Conclusion**

32. Accordingly, we see no reason to interfere with the decision of MoEF granting site clearance dated 18.6.1999, EIA clearance dated 9.8.2001 read with revised environmental clearance dated 19.4.2010 and Stage-I forest clearance dated 22.4.2010. Accordingly, I.A. No. 1868 of 2007 preferred by M/s. Lafarge stands allowed with no order as to costs. Consequently, I.A. No. 2937 of

2010 preferred by SAC is dismissed. The interim order passed by this Court on 5.2.2010 shall also stand vacated. All other I.As. shall stand disposed of.

## **Part II**

### **Guidelines to be followed in future cases**

(i) As stated in our order hereinabove, the words “environment” and “sustainable development” have various facets. At times in respect of a few of these facets data is not available. Care for environment is an ongoing process. Time has come for this Court to declare and we hereby declare that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. This direction is required to be given because there is no machinery even today established for implementation of the said National Forest Policy, 1988 read with the Forest (Conservation) Act, 1980. Section 3 of the Environment (Protection) Act, 1986 confers a power coupled with duty and, thus, it is incumbent on the Central Government, as hereinafter indicated, to appoint an Appropriate Authority, preferably in the form of Regulator, at the State and at the Centre level for ensuring implementation of the National Forest Policy, 1988. The difference between a regulator and a court must be kept in mind. The court / tribunal is basically an authority which reacts to a given situation brought to its notice whereas a regulator is a pro-active body with the power conferred upon it to frame statutory Rules and Regulations. The Regulatory mechanism warrants open discussion, public participation, circulation of the Draft Paper inviting suggestions. The basic objectives of the National Forest Policy, 1988 include positive and pro-active steps to be taken. These include maintenance of environmental stability through preservation, restoration of ecological balance that has been adversely disturbed by serious depletion of forest, conservation of natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, checking soil erosion and denudation in the catchment areas, checking the extension of sand-dunes, increasing the forest/ tree cover in the country and encouraging efficient utilization of forest produce and maximizing substitution of wood. Thus, we are of the view that under Section 3(3) of the Environment (Protection) Act, 1986, the Central Government should appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters.

(ii) In all future cases, the User Agency (project proponents) shall comply with the Office Memorandum dated 26.4.2011 issued by the MoEF which requires that all mining projects involving forests and for such non-mining projects which involve more than 40 hectares of forests, the project proponent shall submit the documents which have been enumerated in the said Memorandum.

(iii) If the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the Regional Office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of State Forest Department to assess the Expert Appraisal Committee.

(iv) At present, there are six regional offices in the country. This may be expanded to at least ten. At each regional office there may be a Standing Site Inspection Committee which will take up the work of ascertaining the position of the land (namely whether it is forest land or not). In each Committee there may be one non-official member who is an expert in forestry. If it is found that forest land is involved, then forest clearance will have to be applied for first.

(vi) Constitution of Regional Empowered Committee, under the Chairmanship of the concerned Chief Conservator of Forests (Central) and having Conservator of Forests (Central) and three non-official members to be selected from the eminent experts in forestry and allied disciplines as its members, at each of the Regional Offices of the MoEF, to facilitate detailed/in-depth scrutiny of the proposals involving diversion of forest area more than 5 hectares and up to 40 hectares and all proposals relating to mining and encroachments up to 40 hectares.

(vii) Creation and regular updating of a GIS based decision support database, tentatively containing inter-alia the district-wise details of the location and boundary of (i) each plot of land that may be defined as forest for the purpose of the Forest (Conservation) Act, 1980; (ii) the core, buffer and eco-sensitive zone of the protected areas constituted as per the provisions of the Wildlife (Protection) Act, 1972; (iii) the important migratory corridors for wildlife; and (iv) the forest land diverted for non-forest purpose in the past in the district. The Survey of India toposheets in digital format, the forest cover maps prepared by the Forest Survey of India in preparation of the successive State of Forest Reports and the conditions stipulated in the approvals accorded under the Forest (Conservations) Act, 1980 for each case of diversion of forest land in the district will also be part of the proposed decision support database.

(x) In addition to the above, an Office Memorandum dated 26.04.2011 on Corporate Environmental Responsibility has also been issued by the MoEF. This O.M. lays down the need for PSUs and other Corporate entities to evolve a Corporate Environment Policy of their own to ensure greater compliance with the environmental and forestry clearance granted to them.

(xii) Completion of the exercise undertaken by each State/UT Govt. in compliance of this Court's order dated 12.12.1996 wherein inter-alia each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest (Conservation) Act, 1980.

(xiii) Incorporating appropriate safeguards in the Environment Clearance process to eliminate chance of the grant of Environment Clearance to projects involving diversion of forest land by considering such forest land as non-forest, a flow chart depicting, the tentative nature and manner of incorporating the proposed safeguards, to be finalized after consultation with the State/UT Governments.

(xiv) The public consultation or public hearing as it is commonly known, is a mandatory requirement of the environment clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances;

(xv) The MoEF will prepare a comprehensive policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearances and identification of forests in consultation with the States (given that forests fall under entry 17A of the Concurrent List).

33. Part II of our order gives guidelines to be followed by the Central Government, State Government and the various authorities under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. These guidelines are to be implemented in all future cases.

These guidelines are required to be given so that fait accompli situations do not recur. We have issued these guidelines in the light of our experience in the last couple of years. These guidelines will operate in all future cases of environmental and forest clearances till a regulatory mechanism is put in place. On the implementation of these Guidelines, MoEF will file its compliance report within six months.

.....CJI  
(S. H. Kapadia)

.....J.  
(Aftab Alam)

.....J.

(K.S. Panicker

Radhakrishnan)  
New Delhi;  
July 06, 2011

**Note:** If you would like to read the complete judgment please write to [forestcase@yahoo.com](mailto:forestcase@yahoo.com)

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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](http://www.forestcaseindia.org)

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