

FOREST CASE UPDATE

Issue 51, February and March 2009

CONTENTS

- 1. Overview of the Godavarman Case in February and March 2009**
 - 2. Application against the widening of the NH-7 through the periphery of Pench Mowgli Sanctuary, Madhya Pradesh**
 - 3. Extracts from the report of the CEC on the Kotlibhel Hydro Electric Project, Uttarakhand**
 - 4. Some Orders in the Godavarman Case in January and February 2009**
-

Overview of the Godavarman Case in February and March 2009

The mining in Aravalli hills in the state of Haryana dominated the hearings in the Supreme Court over the past few weeks. The report of the Central Empowered Committee was in itself quiet comprehensive (See Forest Case Update, Issue 50) and targeted illegal mining and construction activities which not only led to denundation of the fragile ecosystem but adversely affected the groundwater regime of the region. Most of the recommendations of the the CEC (argued very aggressively by Senior Advocate Ranjit Kumar and Amicus Curiae A.D.N Rao) were accepted by the Government of Haryana. However, the case lead to an interesting issue which came to the forefront: who should file an affidavit when the state government is directed by the Supreme Court do so? The controversy arose when the Affidavit of the Conservator of Forests of Gurgaon (an extremely dynamic officer Dr R.P Balwan) was not accepted by the State Government and instead a usual cover up one of the Secretary of the Government was

submitted before the Court. As is observed in most cases, although the task of implementation of Forest (Conservation) Act is with the Forest department, in instances (especially where other departments of the Government are guilty of violations), the affidavits before the court are filed by the State Government who are obviously more concerned about protecting their own officers than speaking the truth. It is therefore of no surprise, that to the best of our knowledge not a single conviction has taken place even after 29 years of enactment of the Forest (Conservation) Act. The most famous case of the Additional Chief Secretary and the Forest Minister being sent to jail in the Godavarman case due to contempt of the Supreme Court's order and not due to violation of the Forest (Conservation) Act.

Other than the Aravalli mining case, some other usual cases arising out of reports of the CEC were taken up. In a significant development, the CEC's recommended that the approval granted by the Forest Advisory Committee to the two Kothlibhel Hydro Electric Projects be reconsidered by the reconstituted Forest Advisory Committee after considering two critical aspects: the cumulative impact of the cascade of dams coming up in the region and the nature of compliance with the approval conditions. The Supreme Court accepted the Report of the CEC and has directed the FAC to reexamine the two projects. It is a positive development since the issue of cumulative impact assessment as well as compliances with respect to clearance conditions did get some attention from the Court.

The CAMPA Bill lapsed in parliament. However, on the existing CAMPA funds the Supreme Court directed the Ad Hoc CAMPA committee to scrutinize the 23 proposals by state governments pending and file a report so that funds could be released. Also those states which are yet to submit proposals have been directed to do so if they so wish. It will be interesting to look out the proposals which would be approved. (See Order in this Issue of the newsletter)

And at FC Update we will surely try our best to keep you informed !

Application against widening of NH-7 through the periphery of Pench Mowgli Sanctuary, Madhya Pradesh

Wildlife Trust of India filed an application before Central Empowered Committee against the widening of NH-7 through periphery of the Pench-Mowgli Sanctuary of Pench Tiger Reserve. According to the applicant this widening will fragment the Pench-Kanha landscape, which is extremely important for wild tiger conservation.

On 19th September 2008, during the hearing, the Central Empowered Committee appointed Rajesh Gopal, Member Secretary, National Tiger Conservation Authority as a special invitee of the CEC to deal with the issues raised by the applicant. Rajesh Gopal submitted his report on 4th December 2008 and following are the highlights of the same: -

1. The proposal is relating to the 4/6 laning of NH-7 which passes through the periphery of the Pench-Mowgli Sanctuary of Pench Tiger Reserve. This area forms a core/critical tiger habitat notified by the State Government under 38V of the Wildlife (Protection) Act, 1972, as amended in 2006. This highway also passes through the forest area of Nagpur

Forest Division in Maharashtra, which is contiguous to the Pench Tiger Reserve of Maharashtra.

2. As per the All India tiger estimation done by Project Tiger, MoEF in collaboration with Wildlife Institute of India (WII), the Kanha-Pench landscape is extremely important for wild tiger conservation. This area is contiguous patch of 16, 000 sq. km. which forms a crucial linkage for the largest meta-population unit in Central India. Thus there is an urgent need to consolidate the source population of tiger in the landscape as per the guidelines of NTCA and statutory provisions of WPA, 1972.
3. The proposed four laning will entail large scale of tree felling (approx. 22, 482) in the area, which will result in irreversible damage of the tiger habitat and its surrounding corridors.

The report further opines that:

“under no circumstances the proposal should be implemented, and no felling in this regard should be permitted in the forest areas of South Seoni Forest Division (MP), periphery of Mowgli Wildlife Sanctuary (MP) and the Nagpur Forest Division (Maharashtra)”.

4. However, the alternate route suggested for the proposed four laning of NH-7 from Seoni to Nagpur is Seoni (MP) - Chhindwara (MP) – Savner (Maharashtra) – Nagpur (Maharashtra) which will result in loss of low quality forests of South Chhindwara Division, MP in comparison to current proposed area

The report mentions that Government of Maharashtra has already recommended diversion of 112.620 ha. of forest land involving felling of around 22482 trees and Madhya Pradesh State Wildlife Advisory Board has also accorded its approval for the four laning of NH-7. However, the Standing Committee of NBWL has already rejected the proposal.

The CEC after considering the report submitted by Rajesh Gopal, conducted a site inspection of the area on 9 & 10 March 2009. The CEC is yet to take any decision on the issue.

Also See:

<http://www.nagpulpulse.com/tiger-expert-look-impact-nhai-plan-wildlife>
<http://www.dnaindia.com/report.asp?newsid=1195719>
<http://timesofindia.indiatimes.com/articleshow/3436544.cms>
<http://www.indianjungles.com/161208.htm>

Extracts from the report of the CEC on Kotlibhel Hydro Electric Project, Uttarkhand

REPORT (ELEVENTH) IN IA NO. 1413, 1414, 1426 AND OTHER RELATED IAS REGARDING THE PROPOSALS EXAMINED BY THE FAC

DIVERSION OF 258.737 HA OF FOREST LAND FOR KOTLIBHEL HYDRO ELECTRIC PROJECT (STAGE-1A) (3X65 MW EACH) IN FAVOUR OF THE NATIONAL HYDRO POWER CORPORATION LIMITED PROPOSED TO BE CONSTRUCTED ON RIVER BHAGIRTHI AT DEVPRAYAG IN JANPAD TEHRI GARHWAL IN UTTARKHAND (FILE NO. 8-82/2007-FC)

AND

DIVERSION OF 496.793 HA OF FOREST LAND FOR KOTLIBHEL HYDRO ELECTRIC PROJECT (STAGE-1B) (4X80 MW EACH) IN FAVOUR OF THE NATIONAL HYDRO POWER CORPORATION LIMITED PROPOSED TO BE CONSTRUCTED ON RIVER ALAKNANDA NEAR DEVPRAYAG IN TEHRI & PAURI GARHWAL IN UTTARKHAND (FILE NO. 8-9/20087-FC)

7. The project on River Bhagirathi near Muneth Village known as “Kotlibhel Stage-1A”, involves the construction of 82.5 meter high concrete gravity dam and underground power house while the project on river Alaknanda near Devprayag town identified as “Kotlibhel Stage-1B”, involves construction of a 70.5 meter high concrete gravity dam and surface power house. In both the above projects the water from the power house will be discharged back to the river. The above two projects are part of the cascade development of the Kotlibhel project in three stages. The deep gorge along Kandilya and Devprayag on River Ganga, the gorge between Devprayag and Srinagar on River Alaknanda and the gorge between Devprayag and Koteswar on River Bhagirathi have been identified for harnessing the power potential through three different projects in cascade ma

8. The catchment of River Alaknanda and River Bhagirathi has many hydro projects under implementation / completed i. e. Tapovan Vishnugad, Bowla Nandpryag, Devasari, Karnprayag, Shrinagar, Hashil, Lohari Nagpala, Pala Maneri, Maneri Bhali Stage I & II, Tehri and Koteswar. The construction of the so many projects / dams may have an adverse cumulating impact on the riverine eco system and the biodiversity.

9. In the above background, the CEC of the view that it would be prudent that the reconstituted FAC reviews these projects after considering the findings of the studies regarding:

- a) Cumulative environmental impact of various hydro electric projects particularly on the riverine eco system, land acquisition, biodiversity; and
- b) effectiveness of the mitigation measures and compliance of the stipulated conditions on which various projects have earlier been cleared.

Note: The Supreme Court has agreed to the suggestions of the Central Empowered committee and the project has been sent back to the Forest Advisory Committee for reconsideration of forest clearance issued under the Forest Conservation Act, 1980

Some Orders in the Godavarman Case in January and February 2009

In every issue of the FC Update we try and share with you some of the most detailed and self explanatory orders in the Godavarman case. There are several other very short orders passed which are not substantial enough to share with all. However, they are soon uploaded on www.forestcaseindia.org and are available for a short period even on the Supreme Court website.

Orders Dated 23.1.2009

- **I.A.NO.1424-25 (Regarding instances of violations, encroachment and illegal mining and industrial operations in Chhatisgarh by BALCO, ESSAR and others)**

*Eight weeks time is granted to the State Government to furnish translated copies of documents in Hindi in English with copy to the other parties. Registry will make available copies of the documents which are not with the parties, when given such list in advance.
Post thereafter for directions.*

- **I.A.Nos.2273-2274 (Regarding underground gas pipeline through a wildlife sanctuary in Madhya Pradesh)**

The applicant proposed to lay underground gas pipeline through the Wildlife Sanctuary in the State of Madhya Pradesh and Rajasthan. CEC has examined the feasibility of the project and recommended the project to be cleared subject to the following conditions:

i) 5% of the estimated cost of Rs.36.01 crores for laying the pipeline in the sanctuary area i.e. Rs.1.8 crores will be deposited by the Applicant in the Compensatory Afforestation Fund for the conservation and protection works in the National Chambal Sanctuary and the Samsagar Sanctuary. In addition, the NPV at the rates applicable for the use of the land falling within the National Park/Sanctuary will be deposited by the Applicant.

ii) the conditions imposed by the Chief Wildlife Warden will be strictly complied with.

Subject to fulfillment of the above conditions, the project is cleared.

I.As. are allowed accordingly.

Orders Dated 30.1.2009

- **I.A.Nos.2423-2425 & 2460-2461 with I.A.No.1274-1275 (Regarding saw mills in Bihar)**

Learned amicus curiae points out that in the State of Bihar, availability of timber is less but there are large number of applications either for starting fresh saw-mill or restarting and/or continuance of old saw-mill are stated to be holding licenses. C.E.C. has filed a report to the effect that the State should prepare a seniority list of the saw-mills so that eligible applicants could be identified. The State may prepare the list and file it as suggested by the C.E.C. within six weeks and the seniority list can be prepared.

The applicant in I.A.No.2424 submits that the paste units shall be excluded as they are not using the timber. We make it clear that these units are generally treated as saw-mill units as they are using the forest produce.

The applicants in I.A.Nos.2480-81 would be at liberty to approach the State authorities and place their contentions while preparing the seniority list. The State is at liberty to file their reply/response, if any, within six weeks.

▪ **I.A.NO.2486 (Regarding permission to remove flowered dead bamboo from Purna Wildlife Sanctuary in Gujarat)**

This application has been filed on behalf of State of Gujarat seeking permission for removing gregariously flowered dead Bamboo from Purna Wildlife Sanctuary in the State. C.E.C. has filed its recommendations indicating parameters so that it may not cause destruction to other wild species. The following conditions are suggested by the C.E.C. :

i)The removal and use of the dead bamboo should be done strictly in accordance with the provisions of Section 29 of the Wildlife (Protection) Act, 1972;

ii)the gregariously flowered dead bamboo should be felled and removed from the sanctuary through the Eco-development Committees under the strict supervision of the Forest Department, without causing damage to the new and regenerating clumps of bamboo;

iii)strict protection from fires and grazing should be undertaken along with proper soil and moisture/ water conservation measures to ensure regeneration of the young bamboo in the sanctuary; and

iv)the area from which dead bamboo has been removed should be regenerated by allowing natural regeneration of bamboo mixed with other associated miscellaneous species of trees to prevent recurrence of vast area of mono-culture i.e. spread of single type of vegetation-bamboo. ▪

These conditions are acceptable to the State of Gujarat. The application is allowed, subject to fulfillment of the above conditions as imposed by C.E.C.

Orders Dated 25.2.2009

▪ **I.A.No.2143 (Regarding CAMPA fund)**

Pursuant to the order passed by this Court on 29.10.2002 in I.A.NO.566, Compensatory Afforestation Fund (for short 'CAMPA Fund')was created and fairly large amount is now lying in the CAMPA Fund. All these amounts has been collected from various user agencies for interference

with the forests while implementing their schemes. The money was so collected primarily with the intention that it could be utilised for afforestation purpose and also to take remedial measures to see that whatever damage has been done to the forests should be restored.

We had also indicated therein that the States should come forward with proposed schemes so that the fund may be utilised for the purpose for which it was collected. The fund is now lying with the Ad-hoc CAMPA. We are told that so far 23 proposals have come from various States/Union Territories and are pending consideration of Ad-hoc CAMPA. The Ad-hoc CAMPA will scrutinize the feasibility of these proposals and shall file a report within a period of six weeks before this Court. Thereafter further orders will be passed for utilisation of the fund to implement the approved schemes submitted by the various States/U.T.s. The States/Union Territories, which have not submitted their proposals or wants to submit fresh proposals, may submit their proposals to the Ad-hoc CAMPA within a period of four weeks.

Send a copy of this order to the Chief Secretary of each State/Union Territory for taking further steps.

Status quo, as on today, shall be maintained as regards the maintenance of the account.

Issue notice to the States/Union Territories. Four weeks time is granted to file reply.

List after six weeks.

Editors: Ritwick Dutta and Kanchi Kohli

For further information and clarifications please write to forestcase@yahoo.com

Coordinating addresses: E-180, Greater Kailash 2, New Delhi-110048 and C-106, Sector 40, Noida, Uttar Pradesh

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

We would like to acknowledge the support of Foundation for Ecological Security. The support for the procurement of the Supreme Court orders has been received from Rufford's Small Grants.