

FOREST CASE UPDATE

Issue 52, April and May 2009

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Many Happenings in the Month of April and May 2009

The months of April and May 2009 are significant for the forest case for two reasons, *first*, will be the change in the composition of the Forest Bench which has been listening to matters as part of the Godavarman case. The longest serving judge in the Forest Bench Justice Arijit Pasayat retired on the 8th of May. Justice Pasayat has been part of the Forest Bench since 2002 when some of the crucial decisions on forests including CAMPA, NPV and even the formation of the CEC took place. Several critical judgements have been delivered by him. One directing the closure of the Kudremukh Iron Ore Company Limited (KIOCL) and ensuring that its operation in the Kudremukh National Park is stopped in a time bound manner and the second relating to the imprisonment of the Forest Minister and Additional Chief Secretary of Maharashtra for contempt of the Supreme Court's order. More recently, his role in the controversial judgement related to Vedanta Alumina and Niyamgiri Hills has also been under discussion amongst civil society groups and people's movements. Nevertheless, with the retirement of Justice Pasayat, there may be a new judge who takes his place or it may be that the Forest Case becomes a two judges bench.

The second crucial change is the end of the term of the M.K Jiwrajka, the Member Secretary of the Central Empowered Committee (CEC) from the time it was first constituted. He would now be on the committee as a member , with Sanjeev Chaddha as the new Member Secretary. This order was passed on 17th April 2009 and we are including it in this issue of the FC Update. The month was also dominated with the Aravalli mining matter and had seen the Conservator of Forest (Gurgaon Circle) R.P Balwan battling all odds to ensure a cessation of mining in the Aravalli Hills. We will report in the next issue about the case once the final order is with us.

In the *Centre for Environmental Law (CEL) v/s Union of India case* (see www.forestcaseindia.org for some more details) case, the tug of war over Lions continue with the National Board for Wild Life (NBWL) and Government of Madhya Pradesh favouring translocation of a few lions from Gujarat and Government of Gujarat trying to hold on to its pride of lions.

On the disturbing side, India's Protected Areas continue to be opened up for destructive development activities. Based on the report of the National Board for Wild Life (NBWL), the Supreme Court permitted uranium exploration and drilling in 50 Sq Km of the Nagarjuna Sagar Srisalam Sanctuary.

CEC COMPOSITION

A significant change in the Central Empowered Committee (CEC) took place with M.K Jiwrajka handing over charge to Sanjeev Chadda, an Indian Forest Service (IFS) Officer of the 1989 batch and belonging to the Orissa Cadre. Mr Sanjeev Chaddha had earlier served in the Ministry of Environment and Forests (MoEF) and has been involved in various activities of CEC in the past specially conducting site visits. Prior to joining CEC full time, he was serving in the Ministry of Health.

M. K Jiwrajka, who has been the driving force in the CEC, sought voluntary retirement from the IFS (he belongs to the Maharashtra Cadre). The Chairman of the CEC, through an Application to the Supreme Court sought the appointment of M.K Jiwrajka as Member of the CEC. Since, Shri Jiwrajka was no longer a serving officer there was no bar on his becoming a member or even seeking the approval of the Government.

TREE FELLING IN SIRI FORT COMPLEX

The Supreme Court gave an interim order on the construction at the Siri Fort complex where an application was filed by residents against the felling of over 800 trees at the complex. FC Update readers would recall, that the case grabbed the limelight when some of the prominent lawyers of Supreme Court were disturbed at felling of trees in a park which they go for their walk. Since, it was in an urban public park initial reservation was expressed as to whether the Court had jurisdiction since the *Godavarman* case essentially concerns forest areas. The Court however overruled the objections and directed the CEC to submit a report. The CEC after conducting a site visit submitted a strong report highlighting the brazen manner in which the Delhi Development Authority (DDA) had chopped down over 800 trees without working out any alternatives. The report drew attention to the fact that many of the sports related activities are infact a cover for commercial activities and so no reason as to why an underground parking be constructed when there are clear instructions not to have underground parking during the duration of the games. The sole purpose, was to convert prime green areas to commercial uses. The CEC recommended for severe penalty to DDA for felling of trees, constitution of a

Committee to oversee the implementation of suggested safeguards and other (See FC Update previous issue).

The Supreme Court passed an interim order on 27-4-2009. As is clear from the order, the report of the CEC has only been partially accepted. There is no bar on commercial use of the parking lot after the games and most of the other issues will be decided at a later date.

FISHING IN TAWA RESERVOIR, MADHYA PRADESH

The CEC report here relates to an application filed by by the Madhya Pradesh (MP) Fisheries Federation for fishing permits in the Tawa and Barna Reservoir within the Satpura Tiger Reserve. The report was accepted by the Supreme Court. This recommendation was pursuant to order passed by the Supreme Court in I.A 548 in W.P 202 wherein the Supreme Court prohibited the removal of forest produce without approval from the Court. The M.P Fisheries federation sought prior approval from the Court.

The CEC has recommended for denotification of a part of the Reserve falling part of the reservoir and grant of about 400 temporary fishing permit subject to certain conditions. The Supreme Court accepted the recommendation for grant of 400 fishing permits which are to be decided by the Chief Wildlife Warden. However, decision on denotification by the Court will be taken only after a report is submitted by the Wildlife Institute of India (WII), Dehradun.

FOREST RIGHTS ACT PETITION

The petition challenging the validity of the The Scheduled Tribes and Other Traditional *Forest Dwellers (Recognition of Forest Rights) Act, 2006 (referred to as the Forest Rights Act herein)* was heard along with the Godavarman case. In February 2009, however it was separated from the Forest Bench. Since the case is closely watched by concerned people across the country, we at FC update would be extending the scope of the FC Update to also update readers about the development in the case titled *Bombay Natural History Society and ors Vs Union of India* and others (W.P 50 of 2008) and *Wildlife First ! Versus Union of India* and ors (W.P (c) 109 of 2008) which can be simply called as the *Forest Rights Act case* or *FRA case*.

In response of the Notice issued by the Supreme Court last year, the following states and central government ministries have filed its Replies/ Counter Affidavits: Ministry of Tribal Affairs, Government of India, Ministry of Rural Development, Government of India, Governments of the following states: Manipur, West Bengal, Kerala, Tripura, Delhi, Chandigarh, Dadar and Nagar Haveli, Daman and Diu, UT of Chandigarh.

The Union of India sought transfer of the cases against the Forest Rights Act currently pending before the various Courts specifically: Bombay High Court, Orissa High Court, Andhra Pradesh High Court, Madras High Court including Madurai Bench. The transfer Petitions Numbered as T.P (c) 179-180 and 414 -417 is now listed before the Supreme Court on 4th of August, 2009.

LION RELOCATION

The Supreme Court considered the issue of relocation of lions from Gir Forests in Gujarat to Kuno Papur Wildlife Sanctuary in Madhya Pradesh. This was in response to a Petition filed by wildlife biologist Faiyaz Khudsar before the Supreme Court as an Intervention Application in the *Centre for Environmental law (CEL)* case. In February, 2008 the Supreme Court had referred

the matter to the National Board for Wildlife (NBWL). The NBWL submitted its report in which it favoured the relocation of some lions from Gir to its second home at Kuno Palpur wildlife sanctuary. The NBWL rejected the Government of Gujarat's stand which was opposed to the relocation. The Government of Gujarat has filed a fresh affidavit opposing the transfer of lions. The Supreme Court directed the NBWL to have a fresh look at the issue in light of the affidavit of the Government of Gujarat and file a report before the Court.

Supreme Court Order Dated 27.4.2009 on the Siri Fort Complex related to Commonwealth Games, New Delhi

As part of the Commonwealth Games, DDA wanted to construct an Indoor Stadium for Badminton and Squash. It is alleged that only 10.91 hectares land was required and originally for the purpose 172 trees alone were intended to be cut but later the area was expanded and it is alleged that about 891 trees were cut which caused extensive damage. It was alleged that this area should have been treated as a deemed Forest area.

The Forest Department could not earmark it as a deemed forest area as relevant records were not considered to treat it as deemed forest area. This is denied by the DDA. We leave open this question to be decided at a later stage.

CEC has examined the matter and the suggestion made by the CEC is that further trees shall not be cut by the DDA for the purpose of enabling new parking area for the Indoor Stadium. An alternative has been suggested, which is to the effect that approach to the above game complex shall be from the August Kranti Marg/Siri Fort Auditorium Complex side and after entering the Siri Fort Sports Complex entry inside the Golf Driving Range from the extreme left end can be made through a temporary opening and a track about 9 meters wide. This track, to be laid inside the Golf Driving Range, would go up to the point as shown in the map and from where the vehicles of the VIPs and Games Participants would turn into the Badminton and Squash Court Complex to reach the alighting point. The vehicles will return towards the farthest end of the Golf Driving Range (adjoining the Hockey Ground) which would be the temporary parking space for vehicles during the games period.

Learned Additional Solicitor General submitted that the underground parking space will not be used for commercial purpose till the games are over. The suggestion of CEC is acceptable to the DDA. Any further construction can be done in the Stadium only in accordance with these suggestions. To carry out the suggestions proposed by the CEC if any trees are to be cut the same may be done with prior notice to and approval of CEC. It is suggested by the learned counsel appearing for the Commonwealth Games that 12 trees are to be cut. CEC may be apprised of this, before cutting is effected, and its approval has to be taken. All other questions raised will be decided later.

Also See:

http://www.thaindian.com/newsportal/uncategorized/apex-court-halts-parking-lot-construction-at-siri-fort_10034620.html

<http://www.thehindu.com/2008/05/04/stories/2008050451040500.html>

<http://news.webindia123.com/news/articles/Sports/20090319/1202251.html>

<http://timesofindia.indiatimes.com/articleshow/3436544.cms>

Some Orders in the Godavarman Case in April and May 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 17.4.2009

- **I.A.No.1640: (Regarding approval to GVK Novopal Industries, Andhra Pradesh)**

C.E.C. has filed its report in the application. The applicant GVK Novopal Industries (P)Ltd. agrees to the conditions/ recommendations of the C.E.C. Nobody appears on behalf of the State of Andhra Pradesh nor the State has filed its response. We approve the following recommendations of the C.E.C.. The project is cleared, subject to fulfillment of the conditions/recommendations of the C.E.C. If the State, while granting approval, has got any objection, it will be at liberty to move this Court.

1. the applicant will deposit an amount of Rs.30.00 and Rs.50.00 lakh respectively for the establishment of MDF/Particle Board plant and for composite plant for the manufacture of MDF and Particle Board respectively. This amount will be kept in a designated account outside the Consolidated Fund and will be used by the Forest Department for activities identified and related to conservation and protection of forest;

2. The purchase/lease of the land and order for the plant and machinery will be placed within a period of six months failing which the approval will automatically be deemed to have been cancelled; and

3. the ownership of the unit will not be transferred including by way of transfer of majority shareholding or change of partners before the unit starts commercial production.

I.A. is allowed accordingly.

- **I.A.Nos.2595-2596 in I.A.No.1697 in I.A.NO.548 (Relating to Tawa Reservoir, Madhya Pradesh)**

This application has been filed by the Madhya Pradesh Fisheries Federation (Co-operative) Ltd. seeking permission for the continuance of the fishing rights in the Tawa and Barna Reservoirs falling the Satpura Tiger Reserve. Large number of applications have been filed by the people in the locality to have fishing right in these two reservoirs. As it is in the forest area, the C.E.C.

has filed a report stating that some area of this reservoir could be de-notified as reserve forest. As regards the de-notification, the Wildlife Institute of India, Dehradun may examine the matter and file a report before this Court within a period of six weeks. As the C.E.C. has recommended that about 400 temporary permits may be given to the applicants for fishing confining to the northern part of the reservoirs, the Chief Wildlife Warden, Madhya Pradesh Forest Department and the Director of Fisheries of the State of Madhya Pradesh may consider the eligible applicants. As an interim measure, while giving such permission, we direct that the following conditions may be kept in mind for the purpose of granting permission:

1. no mechanized boat will be used by the fishermen;
2. Exotic fish would not be introduced in the reservoir so as to preserve the existing natural ecosystem ; and
3. the permit holders should be given an option to dispose of the catch either directly or through the application federation.

It is also directed that a High Powered Committee under the Chairmanship of the Chief Secretary may be constituted for the purpose of preparing the rehabilitation package.

- **I.A.No.2137 (Regarding Improvement of Roads passing through Gangotri National Park, Uttarakhand)**

The applicant seeks permission for improvement of Sonam-PDA, PDA- Mendi, PDA-Sumla Road passing through the Gangotri National Park. CEC has filed its report along with the following recommendations:

1. for use of forest land, approval under the F.C.Act will be obtained;
2. the conditions stipulated by the Chief Wild Life Warden, Uttarakhand, Forest Department and the Standing Committee of the NBWL will be strictly complied with; and
3. 5% of the estimated project cost for each of the two roads will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the National Parks and Wild Life Sanctuaries in the State of Uttarakhand.

The recommendations of the C.E.C. are acceptable to the applicant. I.A. Is allowed subject to the fulfillment of the above conditions by the applicant.

- **I.A.No.2140 (Regarding Improvement of Gunji-Kutti Jolingkong road passing through Askot Wildlife Sanctuary)**

The applicant seeks permission for improvement of Gunji-Kutti Jolingkong Road passing the Askot Wildlife Sanctuary and Naga-Jadung Road passing through the Gangotri National Park. CEC has filed its report along with the following recommendations:

1. *for use of forest land, approval under the F.C.Act will be obtained;*
2. *the construction of the Gunji-Kutti Jolingkong Road will be undertaken only after the project is cleared by the Standing Committee of the NBWL;*
3. *the conditions stipulated by the Chief Wild Life Warden, Uttarakhand, Forest Department and the Standing Committee of the NBWL will be strictly complied with; and*
4. *5% of the estimated project cost for each of the two roads will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the National Parks and Wild Life Sanctuaries in the State of Uttarakhand.*

The recommendations of the C.E.C. are acceptable to the applicant. I.A. Is allowed subject to the fulfillment of the above conditions by the applicant

● **IA.Nos.2245-2246 in 1620 in 566**

The applicant seeks permission for carrying mining activities in the forest area. C.E.C. Has examined the matter and has recommended that clearance could be granted on payment of Rs.37.80 lacs as compensatory afforestation charge and also to return 6.10 ha. non-forest land situated Kotavura village. Subject to fulfillment of the conditions laid down by the C.E.C., the project is approved. Action may be taken by the State Government after compliance of the conditions as recommended by C.E.C.

I.A.s are disposed of accordingly.

● **I.A.No.2358:**

The applicant-State has filed this application for modification of the order passed by this Court on 27.7.2007. C.E.C. has examined the matter and suggested the following conditions :

1. *The balance amount of Rs.6.591 crores deposited with the Jammu & Kashmir Wildlife Department will immediately be deposited in the Compensatory Afforestation Fund;*
2. *the MoEF will prescribe appropriate monitoring and evaluation mechanism to ensure proper utilization of the funds; and*
3. *the State will comply with all the conditions laid down by the Standing Committee of National Board for Wildlife including transfer of Lachhipura Wildlife Sanctuary to State Wildlife Department.*

I.A. allowed, subject to fulfillment of the above conditions. The order of this Court is modified to the above extent accordingly.

● **I.A.No.2370: (Regarding felling of trees in Himachal Pradesh)**

Taken on board.

The present application has been filed by the State of Himachal Pradesh. C.E.C. has examined the feasibility and has given the following recommendations :

1. felling of trees from the forest area approved for non-forestry use under Section 2 of the F.C.Act may continue to be permissible.

2. Compact wooded blocks of above five hectares, which are otherwise not notified/recorded as forest, should be treated as "forests" for the purpose of the F.C.Act. Felling of trees and non-forest use of such areas should be permissible only after obtaining approval under the F.C.Act;

3. felling of trees in non-forest areas should be strictly regulated as per the provisions of the Land Preservation Act, 1978; and

4. no felling of trees or non-forest use of area falling within the National Parks and Wildlife Sanctuaries should be permissible unless specifically permitted by this Hon'ble Court.

The recommendation of the C.E.C. is extended to the whole of State of Himachal Pradesh except in respect of Khair trees from the non-forest areas.

I.A. is disposed of accordingly.

● **I.A.Nos.2079-80,2031-2303,2546 & W.P.(C)NO.301/2008:**

Learned amicus has suggested the name of Shri E.N.Rammohan,I.P.S. and Director General of B.S.F. (Retd.) as the one Member S.I.T. The State of Maharashtra has no objection to this. Mr.Rammohan, can take the assistance of any person he desires. S.I.T. is authorised to call for any documents/records or seek personal assistance of the concerned State Officer/State functionary in discharge of the duties. The S.I.T. Will file its report to this Court at the earliest, preferably within a period of four months.

● **I.A.NO.2068: (Regarding Renovation and Construction of five roads in Sariska Tiger Reserve, Rajasthan)**

This application has been filed by the State seeking permission for renovation/construction of five roads falling in Sariska Tiger Reserve. C.E.C. has examined the same and made the following recommendations:

1. four traffic barriers will be erected and maintained by the Forest Department at Kushalgarh Bharthari junction near 'Thank you Board' and Ghata Bandrole for restricting the traffic within the sanctuary;

2. diversion boards at Ghata Bandrole, Kushalgarh and Bharthari junction will be installed by the PWD. In addition two direction boards indicating commencement of the sanctuary area will be installed by the PWD at Natni Ka Baran and near 'Thank you Board'(Km.204/0);

3. the Tehla-Sariska road (State Highway 29-A) which passes through the core area of sanctuary will be closed to traffic. The existing road between Burja Tirya to Thanagazi via Kishori-Ajabgarh will be repaired/renovated and used as an alternative road;

4. movement of the commercial vehicles on the State Highway No.13 between Kushalgarh Tiraya (Km.196/0) to near 'Thank you Board' (Km.204/00) will be stopped; and

5. during the night no movement of vehicles on the above stretch will be permitted. The traffic will pass through the bye-pass road.

The recommendations are acceptable to the State. I.A. is allowed subject to fulfillment of above recommendations by the State.

● **I.A.No.2223: (Regarding felling of trees related to Kollimalai Hydro Electric Project, Tamil Nadu)**

The Tamil Nadu Electricity Board seeks permission to cut 738 trees from the reserve forest area for implementation of the Kollimalai Hydro Electric Project at Kollimalai, District Namakkal. C.E.C. has suggested the following conditions :

- a) the tree felling will be done under the supervision and direction of the Forest Department;
- b) the tree felling will be kept to the barest minimum possible; and
- c) wherever technically feasible, instead of felling, the tree will be transplanted.

The said conditions are acceptable to the State. I.A. is allowed subject to fulfillment of the above conditions by the State.

● **I.A.No.2252-53: (Regarding construction of High Level bridge along Chambal River)**

Application for exemption from filing O.T. is allowed.

The State of M.P. Seeks permission for construction of a High level Bridge across Chambal river. As the construction is likely to have some impact on the National Chambal Crocodile Sanctuary, the matter was examined by the C.E.C. and subject to the following conditions, C.E.C. has recommended the project :

1. 5% of the estimated project cost of Rs.22.55 crores i.e. Rs.1.128 crores will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection measures in the sanctuary;

2. for the use of non-forest land falling within the sanctuary, the NPV will be deposited as per this Hon'le Court's order dated 28.3.2008 in the NPV matter;

3. the conditions stipulated by the Chief Wildlife Warden will be strictly complied with;

Subject to fulfillment of the above conditions, the project is approved. I.A. is allowed accordingly.

Order Related to Lion Relocation from Gujarat

CENTRE FOR ENVIR. LAW, WWF-I

Petitioner(s)

VERSUS

U O I & ORS

Respondent(s)

Date: 22/04/2009

I.A.No.100:

There was a proposal to send two lion cubs from the State of Gujarat to the State of Madhya Pradesh. The proposal was objected to by the State of Gujarat for various reasons. All these objections were considered by N.B.W.L. and it supported the proposal for rejected of objections raised by the State of Gujarat. Now the State of Gujarat has filed a further affidavit in response to the affidavit of MoEF dated 21.07.2008 wherein detailed reasons for objecting the proposal were given. A copy of the further affidavit be furnished to the N.B.W.L. and N.B.W.L. will have a fresh look on the subject and file a report regarding the same. If N.B.W.L. feels necessary for filing the report, both the States may be heard.

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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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