

# **FOREST CASE UPDATE**

**Issue 56, October and November 2009**

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**Extracts of the Report of the Central Empowered Committee on Mining by M/s Obulapuram Mining Company, Karnataka and Andhra Pradesh**

### **CENTRAL EMPOWERED COMMITTEE**

#### **RECOMMENDATIONS OF THE CEC IA Nos. I.A.No.2 of 2009 in Writ Petition Civil No. 201 of 2009**

Presented below are key points extracted from the report of the Central Empowered Committee in I.A.No.2 of 2009 in Writ Petition (Civil) No. 201 of 2009 filed by Tapal Ganesh of Bellary district, Karnataka regarding alleged illegal mining by Obulapuram Mining Company Pvt Ltd (M/s OMC) in violation of Forest Conservation Act, 1980. The I.A. had the following prayers:

a) Direct the respondent Ministry of Environment and Forests not to give effect to the order dated 1.5.2009 which has been passed in clear violation of the Forest (Conservation) Act, 1980, in the interest of justice.

b) Direct the Central Empowered Committee to look into the issue of illegal mining and encroachment of forest land in the areas covered by orders 22.4.2009 and supervise the implementation of the order dated 22.4.2009 by the respondent Ministry of Environment and Forests and Government of Andhra Pradesh

c) In the alternative, direct the respondent Ministry of Environment and Forests to ensure the implementation of the order dated 22.4.2009 by stopping mining by all five mining lessees and to ensure that Survey of India completes the survey within six weeks as recorded in the order dated 1.5.2009 of this Hon'ble court, and

d) Pass any order or orders that this Hon'ble court may deem fit in the facts and circumstances of this case.

2. This report is being filed by the CEC pursuant to this Hon'ble court's order dated 24.8.2009 after examining the matter during the meeting in this regard convened by the CEC on 5.10.2009.

### **OBSERVATIONS AND RECOMMENDATIONS**

3. Bellary Reserve Forest has been constituted with effect from 1<sup>st</sup> July 1890, vide Notification dated 12.5.1890 issued under section 16 of the Madras Forest Act, 1882 and includes survey numbers in the 10 villages located in the state of Andhra Pradesh and Karnataka. The inter-state boundary in the states of Andhra Pradesh and Karnataka passes through this Reserve Forest, almost in the middle, from South-West to East. In Andhra Pradesh the Reserve Forest includes the border villages of Obulapuram and H.Siddapuram of District Anantpur. The shrine of Sulgamma (Sulga Devi), with an extent of 16 square yards in front of it, is excluded and retained as an enclosure within the Bellary Reserved Forests with the right of way over a footpath two yards in width and for a distance of about 2 miles from Obulapuram.

4. In villages H.Siddapuram and Obulapuram the following six iron ore mining leases exist in the Reserved Forest area [Bellary Iron Ore Private Limited (M/s BOP) in 27.12 hectares; M/s Y.M. & Son in 20.24 hectares; M/s Obulapuram Mining Company Pvt Ltd (M/s OMC) in 25.98, 35.50, 68.52 hectares (three leases); and M/s Anantpur Mining Corporation in 6.50 hectares].

5. The main issue raised in the present I.A. is that M/s Obulapuram Mining Company Pvt Ltd (M/s OMC) is owned by influential and politically powerful persons. Its Managing Director, Mr. Janardhan Reddy is a cabinet minister in Karnataka government who is also involved with a business partnership with the son of the then Chief Minister, Andhra Pradesh. The OMC has encroached in mineral rich areas outside their mining leases and is carrying out large scale mining in unallotted Reserved Forest areas. The temple of goddess Sulgamma Devi, located on the top of the hillock, together with the GTS station, fixed there by the Survey of India have been destroyed. The OMC is a habitual encroacher in the forest areas and have also encroached in the forest areas of the adjoining mining leases (M/s BIOP owned by the applicant's father). The OMC have also, after destroying the boundary pillars, encroached on the forest land located between the State of Andhra Pradesh and Karnataka. The Survey of India which is the apex body for conducting the survey, should after relocating the GTS station destroyed by M/s OMC determine and demarcate the boundaries of all the approved mining leases. Till then no mining should be permitted. The Survey of India should also identify the unallotted forest area wherein illegal mining has been carried out by M/s OMC.

6. The CEC had earlier received a complaint dated 6<sup>th</sup> February 2009 from the Applicant in this regard which was forwarded to the MoEF on 23.2.2009. MoEF, after considering

the report of its Regional Office, views/advise of the CEC, and the recommendations of the Forest Advisory Committee (FAC) vide its letter dated 22<sup>nd</sup> April 2009 suspended the approvals granted under the FC Act for all the abovesaid mining leases except the mining lease M/s OMC having an area of 68.53 hectares. It was decided that (a) demarcation of these mines should be done on the ground by Survey of India and (b) action should be initiated against the officials for allowing the mining without proper demarcation on the ground.

7. The State of Andhra Pradesh vide its letter dated 28.4.2009 informed the MoEF that all the five mining leases have adequately been demarcated on the ground and none of the lessee have encroached any fresh Reserved Forest adjoining their mining lease area. It was also stated that the mining lessee have not been allowed to carry out mining operations outside their mining lease boundary limit within the Reserved Forest. Thereafter MoEF vide its letter dated 1.5.2009 conveyed its decision to keep its earlier order dated 22.4.2009 in abeyance.

8. Pursuant to the decision taken by MoEF, the Regional office of the MoEF after carrying out the site inspection of the mining lease areas filed a report dated 1<sup>st</sup> August 2009, which has the following observations against the report dated 28.4.2009 of the Government of Andhra Pradesh:

i) the present demarcation of the boundaries of the mining leases has been done on the basis of the interpretation of the mining lease sketches with reference to the 1896 forest map, the boundaries indicated in the lease sketches and some related old lease sketches.

ii) the inter village boundary between H. Siddapuram and Obulapuram has been re-fixed relying mainly on the length and direction of inter village line of the old Forest Map of 1896 and using the scale shown on the map. The re-fixed inter village boundary line has got shifted to the west of the old boundary line. The distance between the GTS station does not match with the position shown in the 1896 Forest Map.

iii) the re-fixed inter village boundary line appears to be inconsistent with the junction point of villages Obulapuram and H.Siddapuram of Andhra Pradesh and villages Halakundi and Vonnahalli of Karnataka State, the GTS coordinates etc.

iv) the position of the inter village boundary needs to be rechecked and the boundaries of the mining leases should be fixed accordingly. The northern boundary of M/s OMC should be shifted to the bottom of the hill towards south as per the position on the map; and

v) the contention of the state government that all five mining leases are adjacent to each other having compact block without any unallotted forest area and that there is no violation of the FC Act can be agreed to if (a) the bearing shown on the sketch of M/s OMC are revised to match the sketch provided; (b) revised sketch is issued for the mining lease of M/s Y.M. & Son without leaving any portion of Siddapuram village on the eastern side and restricting to Siddapuram village; and (c) revised sketch is prepared for the mining lease of M/s BIOP including left out area in the north east corner.

It is clear from the above that the Regional Office has found serious defects and inconsistencies in the mining lease boundaries as determined and fixed by the State of Andhra Pradesh.

10. The CEC after examining the matter is of the considered view that the demarcation of boundaries of the five of the above mining leases and conclusion reached by the State of Andhra Pradesh that M/s OMC is not involved in any illegal mining in the forest areas outside its mining lease areas suffers from the following serious defects and inconsistencies and it is not at all conformity with the approved mining leases.

11. In other words, the boundaries of the mining leases that are now determined by the State of Andhra Pradesh are totally inconsistent and different in terms of the (i) area of the mining lease; (ii) shape of the mining leases; (iii) length and bearings of the boundary line and; (iv) location of the mining leases of M/s OMC (25.98 hectares). The boundaries of the mining leases granted to M/s BIOP, M/s Y.M & Son, and M/s OMC (25.98 hectares) are of such shape that all these three mines just cannot form a compact block without leaving any unallotted area lying in between them. The conclusion drawn by the State of Andhra Pradesh based on the report of the DFO Ananthpur. That these mining leases form a continuous block without any unallotted forest area between them is totally erroneous. The location of the mining lease of M/s OMC (25.98 ha) now fixed by the Andhra Pradesh Forest Department is wrong and unacceptable. Their effort appears to have been to cover up the illegal mining done by M/s OMC in the unallotted forest areas outside the approved mining leases. This is simply not acceptable and vitiates the entire process of fixation of mining lease boundaries by the State of Andhra Pradesh.

13. The objectivity, fairness and impartiality which is expected from a State Government is shockingly lacking here and does not inspire confidence. In these circumstances, it is imperative that the boundaries of the mining leases are determined and fixed by an independent agency and till then all mining operations in the are remain suspended. The CEC is separately advising the the State of Andhra Pradesh and MoEF to suspend mining operations in above said six mining leases till the matter is considered and decided by this Hon'ble court.

This Hon'ble court may please consider the above report and may please pass appropriate orders in this matter.

M.K. Jiwrajika  
Member

Dated: 19.11.2009

See also: <http://www.deccanchronicle.com/bengaluru/sc-stays-mining-obulapuram-435>; <http://beta.thehindu.com/news/states/andhra-pradesh/article52153.ece>; <http://timesofindia.indiatimes.com/city/bangalore/CEC-report-without-jurisdiction-OMC/articleshow/5255966.cms>

**Supreme Court Order dated 8<sup>th</sup> October 2009 Regarding Mining and Construction Activities in Aravalli Hills, Haryana**

**I.A Nos.839, 840, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 900, 905, 1276-1277, 1590, 1612-1613, 1700-1703, 2007-2008, 1488, 2138-2139 in 891-892, 2205, 2445, 2567, 2574 in 875-876, 2536,2636 in 879-880,265802659 in 828, 2719 IN 1488 IN 891-92 in 828 (Minor Minerals and Construction Matters in Haryana Mining)**

Heard both sides.

The Aravalli Hill Range has been subjected to widespread mining activities in recent times. About 1500 ha. of land was given for mining operations in Gurgaon and Mewat areas. Most of the mines were for excavating major minerals but we are told that what the mine operators extracted from the leased area were mostly minor minerals. Vast areas were thus reduced to ditches, some of them going down to a depth below the water level. The C.E.C. has filed a report showing the extent of damage caused by the mining operations in this area. With the help of the National Remote Sensing Centre, Hyderabad, Department of Space, Govt. of India, maps of these areas are prepared by using satellite imagery system. Photocopies of the maps of these areas are produced before us from which it appears that as a result of the mining operations, the entire area has become highly devastated. The C.E.C. has also filed its report indicating the extent of damage caused to this area.

There were discussions between the C.E.C. and the State of Haryana as to what steps need be taken in regard to the mining activities in these areas.

All mining operations in these hills were suspended by this Court vide order dated 8th May, 2009. Now it is stated on behalf of the State of Haryana that a complete ban on mining minerals there would cause scarcity of building materials and the construction of roads and buildings and other developmental activities would be seriously affected. It was suggested that about 600 ha. of land be set apart for extraction of minor minerals in the district of Faridabad, including Palwal. The State Government is also facing a problem caused by mining operations carried on in the past over an area 1500 ha. of land in Gurgaon and Mewat. These mine operators did not carry out any reclamation or rehabilitation work though they were legally bound to do so under Rule 27 of the Mineral Concession Rules, 1960 read with Form-K of the Mineral Concession Rules. Most of these places have been simply abandoned. These areas have to be reclaimed and extensive afforestation work needs to be carried out in these areas.

Some of the mining operators, having existing licenses that have not so far expired, raised a contention that due to suspension of all mining operations by this Court they were not able to conduct any mining even though they had not violated any rules or guidelines and hence, they should be allowed to do the mining operations in terms of the lease granted to them, more so as the State of Haryana is proposing a Scheme for setting aside about 600 ha. of land in Faridabad for excavation of minor minerals.

We do not think it is feasible or in the larger interest to allow those mining operators to carry out any mining activities on the basis of the earlier licenses. Of course, they would be at liberty to participate in the auction in respect of the 600 ha. of land in Faridabad which would be made available for mining activities.

The C.E.C. and the State of Haryana held a meeting on 7.1.2009 and a report dated 15.1.2009 has been filed before this Court. On the basis of the report, any mining activity in the 600 ha. of land to be identified and earmarked in Faridabad shall be based on the following decisions taken in this meeting:

- i) The State shall issue a Notification laying down the guidelines and the procedure for giving licence/lease. The State shall also establish an Aravali Rehabilitation Fund and a Monitoring Committee. In issuing the Notification for allowing mining operations in an area upto 600 ha. in the District of Faridabad, including Palwal, the State must strictly adhere to all the conditions

enumerated in the Minutes of the Meeting held on 7.1.2009 between the C.E.C., State of Haryana and the Forest Survey of India regarding mining, colonisation and related issues in Aravali hills. It is hoped and expected that the Notification will be issued by the State Government within a period of three months.

ii) The State of Haryana will take immediate steps for preparation and implementation of Reclamation and Rehabilitation Plan for the area degraded as a result of the mining activities in that part. The rehabilitation of those areas shall be done by the respective leaseholders. The State would also be at liberty to hold the respective leaseholders who had not carried out the rehabilitation work as per Rule 27 of the Mineral Concession Rules read with Form-K of the said rules as liable for the rehabilitation of those areas. The State shall take all reparatory and compensatory steps in this regard.

iii) The actual mining operation in the 600 ha. of land in Faridabad shall commence on submission of the rehabilitation and reclamation plan by the State and its approval by this Court. It shall be done at the earliest and preferably within a period of six months.

iv) The C.E.C. shall submit quarterly reports to this Court in regard to the commencement of the mining activities and its effect on the surrounding areas as also in regard to the progress of the reclamation work in the areas of Aravali range degraded by the past mining operations.

Before any mining operations commence, the leaseholders shall obtain all statutory clearances including environmental clearance in terms of MoEF Notification dated 14.9.2006 and also the approval under the Forest Conservation Act.

The Principal Secretary, Department of Mines, State of Haryana will be responsible to ensure strict compliance of this order. The Chief Secretary of the State shall have supervisory control over the matter.

As regards the permission for mining activities in the 1500 ha. of land in Gurgaon and Mewat, the same will be taken up separately considering the progress made in the rehabilitation work to be carried out by the State in the 600 ha. of land.

In case of violation of any of these directions or failure of the rehabilitation and reclamation process to make satisfactory progress, this Court would consider closure of the mining activities which are hereby permitted by this Court.

In case of any such failure, the C.E.C. may file a report as and when required. The State would revoke all licenses in respect for major minerals both in Faridabad and Gurgaon districts.

All I.A.s, writ petitions and contempt petitions relating to minor minerals are disposed of. Consequently, all applications for intervention and impleadment are also disposed of.

List the Construction matters on 11.12.2009.

## **Some Orders in the Godavarman Case in October and November 2009**

### **Orders dated 30.10.2009**

- **I.A.No.2370 (Regarding felling of trees on private lands in Himachal Pradesh)**

*The High Court of Himachal Pradesh passed an order on 28.5.2008 in regard to felling of trees on private lands which came within the definition of forest land. The order was challenged both by the land owners and contractors on the one side and the State Government on the other. In view of the controversy, we referred the matter to the CEC. The CEC after considering the relevant issues in detail has filed a report. The recommendations and suggestions made by the CEC are acceptable to all the parties before us. The CEC has recommended that the order passed by this Court on 8.5.2009 in I.A. 2370 of 2008 should be extended to the felling of Khair trees on privately owned non-forest areas also subject to the following conditions:-*

*"i) no felling of trees, including of Khair trees, from the forest area will be permissible in violation of the Hon'ble Supreme Court order dated 12.12.1996;*

*ii) no deviation from the ten-year felling programme fixed by the Forest Department in accordance with the provisions of the Land Preservation Act, 1978 will be permissible;*

*iii) no Katha/ Kutch manufacturing unit will be permitted to be established/ allowed to operate or to expand its capacity in violation of the Hon'ble supreme Court orders dated 29/30.10.2002".*

*As noted above, the conditions suggested by the CEC are acceptable to all the parties. All the parties shall abide by the above conditions and shall also follow the directions issued by this*

*Court on 12.12.1996.*

*This order is in continuation of the earlier order passed by this Court on 8.5.2009.*

*The present order is confined in application to the State of Himachal Pradesh.*

- **I.A.No.2670 (Regarding exclusion of Ranakpur Jain Temple from Kumbhalgarh Wild Life Sanctuary, Rajasthan)**

*The Ranakpur Jain Temple Complex, under the management of a trust, occupies an area of 9.81 hectares that falls within a much larger area that is notified as reserved forest and also as Kumbhalgarh Wild Life Sanctuary. The trust managing the temple complex approached the Court for a direction to the concerned authorities to exclude the temple area from the reserved forest and the wild life sanctuary. The Court referred the matter to the CEC.*

*The CEC has examined all the relevant issues in detail and has recommended that the trust be allowed only permissive possession over the area of the temple complex, subject to certain conditions.*

*All the recommendations made by the CEC and the conditions stipulated by it are acceptable to the applicant- Trust. A copy of the CEC report was also given to the State but no petition has been filed on its behalf raising any objection to the recommendations/ conditions made by the CEC.*

*As recommended by the CEC the Trust may have permissive possession of 9.81 hectares of forest land over which the temple complex stands subject to the conditions stipulated in the CEC report dated 12.8.2009.*

*The trust shall maintain the temple complex. The trust shall also ensure that there should not be any unlawful trespass over the forest area and no tree is cut down from the forest area. In addition, the trust shall abide by all the restrictions imposed by the Wild Life (Protection) Act, 1972.*

*The I.A. is disposed of accordingly.*

**● I.A.No.2671 (Regarding exclusion of Shri Muchhala Mahavir Temple Complex from Kumbhalgarh Wild Life Sanctuary, Rajasthan)**

*This application is filed by Sheth Anandji Kalyanji Trust seeking the deletion of the entire area of Shri Muchhala Mahavir Temple Complex from the reserved forest as well as from Kumbhalgarh Sanctuary within which the Temple Complex is located. The Temple Complex stands over an area of 3.28 hectares and it is located within the reserved forest/sanctuary as established by the notifications dated 4.3.1950, 13.7.1971 and Collector Pali's order dated 21.8.1998 and is part of Kumbhalgarh Sanctuary. The Forest (Conservation) Act, 1980 as well as the Wild Life (Protection) Act, 1972 are applicable to the area. The matter was referred to the CEC which has examined all the relevant issues and has made its recommendations as follows:*

*'Considering that the Temple Complex has been in existence for a very long period and that too before the forest laws came into existence, that it cannot be translocated and that the complex is occupied, managed and maintained by the Trust much before it was declared as Reserved Forest or Sanctuary it will be in the fitness of thing if the applicant Trust is allowed to continue to occupy, manage and maintain the entire Temple Complex measuring 3.28 hectares in the Reserved Forest/Sanctuary within which the Applicant Trust may have "permissible possession" without excluding it from the boundary of the Reserved Forest/ Kumbhalgarh Sanctuary. The repair and maintenance of the complex may be done by the Temple authorities but any new construction should be carried out by them only after obtaining the approval under the Forest (Conservation) Act, 1980 and in accordance with the provisions of the Wild Life (Protection) Act, 1972. On special occasions the pilgrims may temporarily be allowed to use the area outside the 3.28 ha. Temple Complex as in the past but without erecting any building/structure.*

*The Rajasthan Forest Department should prescribe suitable guidelines for this purpose. The Rajasthan Forest Department is agreeable to the above proposed arrangements.'*

*The recommendations are fully acceptable to the applicant-Trust.*

*The Court accepts the recommendations and the conditions stipulated by the CEC. The Trust shall approach the Rajasthan Forest Department for laying down suitable guidelines for the pilgrims and visitors to access the Temple Complex causing least adverse impact on the surrounding forest area and the wild life. It is once again made clear that the trust shall neither make any new construction nor cut any tree in the forest area. I.A. is disposed of accordingly.*

**Orders dated 6-11-2009**

- **I.A.Nos.1335, 1356, 1376-1377, 1388 in 989, 2197-2198, 2418 (Regarding theft of high quality coal in very large quantities from coal washeries)**

*A report is received from the CEC in which it is stated that high quality coal in very large quantities was being removed misrepresented as inferior quality coal/coal dust from washeries. The high quality coal thus stolen finds its way in international markets causing loss to the exchequer running into tens of thousands of crores. Mr.Salve, learned Amicus Curiae stated that the magnitude of the theft clearly indicated large scale involvement of the coal companies, officials of the State Government and other concerned authorities.*

*We would like to get an enquiry made regarding this matter at the highest level in the Ministry of Home Affairs. We, accordingly, request the Secretary, Home, Government of India, to examine the matter and submit a report to this Court within a reasonable period. The CEC will make available to the Secretary, Home, Government of India all the relevant records concerning the matter.*

*Office is directed to send a copy of this order to the Secretary, Home, Government of India.*

**Editors: Ritwick Dutta and Kanchi Kohli**

**For further information and clarifications please write to [forestcase@yahoo.com](mailto:forestcase@yahoo.com)**

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

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**We would like to acknowledge the support of The Duleep Mathai Nature Conservation Trust and Foundation for Ecological Security for the continuation of the Forest Case Update.**