

# FOREST CASE UPDATE

Issue 40, November 2007

## CONTENTS

1. Highlights of the Godavarman Hearing on 30<sup>th</sup> November 2007
  2. Summary of the CEC report on Alleged Illegal Possession of forest land by BALCO in Korba, Chhatisgarh
  3. Some Orders in the Godavarman Hearings in November 2007
- 

### Highlights of the Godavarman Hearing on 30<sup>th</sup> November 2007

The month of November saw four hearings in the Godavarman case. In the next section we have given orders related to most of the cases that were discussed at the hearing. Presented here are the highlights of the discussions that went on in the Supreme Court during the 30<sup>th</sup> November 2007 hearing.

The first matter heard was I.A. Nos.1424 and 1425 regarding instances of violations, encroachment and illegal mining and industrial operations in Chhatisgarh by BALCO, ESSAR and others. The Amicus Curiae U.U.Lalit mentioned to the court this matter relates to mining in certain areas in Bastar. Part of this matter has been covered by the recommendations of the Central Empowered Committee (CEC) dated in 17.10.2007 in the Writ Petition 469 of 2005. So this case should also be merged with that, which the court agreed to. Mukul Rohtagi, the counsel for ESSAR stated that the applicant has connected three unconnected issues. It was also highlighted by another respondent that the State of Chhatisgarh has filed an affidavit in this case after two years. The matter was listed to be heard in January 2008.

The next was I.A.1798 which related to diversion of 3.19 ha. forest land by Power Grid Corporation of India in the Gudaloor Forest Division in Chengalpattu, Tamil Nadu. The CEC had given their recommendations in this matter which were agreeable to Power Grid Corporation of India. The IA was accordingly disposed off.

The third case listed was I.A.1240 with 1266, 1299 and 1382. Following the Tsunami, the Andaman and Nicobar administration had sought permission to allow for felling of trees in the Islands. The 7<sup>th</sup> May 2005 order of the Supreme court had been referred to, asking for interim relief. This I.A No 1240 is the Report of Central Empowered Committee (CEC) regarding permission sought by the Andaman and Nicobar Administration for felling of trees etc for rehabilitation of victims of Earthquake and

Tsunami waves. This had been allowed by the Supreme Court following the CEC report and conditions. The Amicus Curiae highlighted that the CEC is of the opinion that the interim relief cannot be extended indefinitely. However before the matter could be discussed further, the counsel representing the Andaman and Nicobar administration mentioned that the state government does not require this permission any more and the interim relief need not continue. The matter and all the IAs were accordingly disposed off. Colin Gonsalves, the advocate for the original application in which the 7<sup>th</sup> May 2005 order had been passed, made a mention of the Shekhar Singh report and also that the recommendations in the report had not been implemented, and requested the court to take notice of it.

Following this is I.A.Nos.1267-1268 with I.A.No.1395 which related to extraction of bamboo from the forest in Assam. The Amicus highlighted that the matter has elements that point to undue favour having been given in contracts, business rivalry etc, however the CEC report only deals with the substantive matter. Mukul Rohtgi, senior counsel appearing for one of the respondents mentioned to the court that their business rival has filed the case. The Amicus explained the recommendations of the CEC which laid down parameters and costs on how the bamboo needs to be extracted. He also stated that the rights for extraction have been given for 20 years which is beyond the period of the working plan. The report also states that the applicant has not been able to establish the violations the respondent feels that it has been filed by a business rival. Mukul Rohtagi mentioned that the permission is co-terminus with the working plan, in such a way that if the working plan is not approved then this too will not be approved. The court directed the respondents to file their responses.

I.A.Nos.1297 and 1300 related to release of water from Ponchana dam to Keoladeo National Park in Rajasthan and report of the CEC. It was highlighted that the said area is not getting enough water. For some years there was heavy rainfall, so the need was not felt. However, the issue needs to be addressed now. The issue of the height of the dam and release of water were also raised. The court ordered that the State of Rajasthan file a fresh response based on recommendations of the CEC.

I.A.432 was listed next. It was highlighted that the details of the matter were not known as the relevant documents had not available.

The Amicus U.U.Lalit while referring to the next set of I.A.s 1308, 1323, 1455, 1468 and 1478 stated that Harish Salve, Amicus Curiae would like to be present to discuss these cases. The matters refer to the crisis around tiger deaths and also setting up of the National Wildlife Authority.

Another set of I.A.s that were heard were I.A.Nos.1335, 1356, 1388 in 989. This case related to the allegation against Maruti Coal Washery towards allotment of forest land in Korba, Chhatisgarh without approval under the Forest (Conservation) Act, 1980. The matter was disposed off in court following a fine against the applicant Deepak Agarwal, M/s Aryan who was stated to be a business rival who had filed the case. Mukul Rohtagi representing Maruti coal washery highlighted before the court that the coal washery of M/s Aryan is in the middle of the South Eastern Coalfields Ltd (SECL) mines. M/s Aryan is allowed to sell only the residue remaining after the coal washing process. However in the garb of this, they are actually selling coal at a much higher price to companies like HINDALCO which they have no permission for. He further highlighted that the earlier petition was filed so that Maruti cannot function, and now M/s Aryan is in the middle of SECL land and has grabbed all long term contracts. He read out from a Parliamentary committee report which mentioned the problems and issues with this nexus. As a result of this Coal India Ltd is incurring losses. The Amicus highlighted that the CEC has asked the Ministry of Coal if this is being monitored as it is felt that a large quantity of coal is actually being marketed. He added that some directions need to go to the Ministry of Coal from the Supreme Court. There are also undertakings that mention Aryan should not be selling the residue as well. Mukul Rohtagi commented that M/s Aryan should not be allowed to sell coal in garb of rejects and fund litigation against M/s Maruti. M/s Maruti has not

been allowed to function because M/s Aryan is doing all this. The Supreme Court asked all respondents to file responses.

I.A.1336 in 1254 was the last matter for the day. It dealt with the recommendations of the CEC with reference to the re-identification of forests in Rajasthan. It was mentioned that the State of Rajasthan has expanded the 12.12.96 order of Supreme Court regarding dictionary meaning of forest; and stated that a compact area of 5 hectares with minimum 200 plants needs to be considered a forest. The CEC has rejected this contention. The counsel for the state of Rajasthan raised concerns that this has been done only to identify forests in the state; otherwise it is difficult to demarcate it. He mentioned that a Kapur committee was set up and the above mentioned parameter was their recommendation. This is because the government wants to keep its house in order. The Supreme Court bench pointed to the counsel for Rajasthan that the CEC recommendations agree to the Kapur committee report with certain modifications. The CEC states that Orans, Dev Banis in Rajasthan should also be deemed forest. The court suggested that the CEC recommendations be shared with the Kapoor committee and discuss whether they are acceptable or not.

[Back to Contents](#)

## Summary of the CEC report on Alleged Illegal Possession of forest land by BALCO in Korba, Chhattisgarh

### Report of the CEC regarding the alleged illegal possession and the use of forestland for the non-forestry purposes by M/s Bharat Aluminium Company Ltd (BALCO) in Korba, Chhattisgarh

#### A SUMMARY

##### Background:

The present report is an out come of writ petition (C) no. 469 of 2005 filed by an NGO named Sarthak against M/s BALCO and two others alleging the following;

- a) Unauthorized occupation of the Government Land.
- b) Illegal use of the Forest Land for the various non-forestry purposes, such as construction of the captive power plant and the aluminium smelter plant with out any sanction or validity;
- c) Cutting and felling of thousands of trees by M/s BALCO.

##### Facts:

M/s BALCO was initially a Government of India Company while it set up the alminium project in the Korba, Chhattisgarh. Accordingly on the 18<sup>th</sup> of March 1968 the Government of Madhyapradesh decided to transfer the land to M/s BALCO for the setting up of the plant on 99 years lease on the payment of

- a) A premium of Rs 200/- acre of land.
- b) Compensation for the trees standing in the forestland.
- c) Cost of acquisition of the private tenure lands.
- d) An annual lease rent of Rs 20/- per acre including for the acquired tenure land.

Thus M/s BALCO was in possession of about 1,897 acre of Government land out of which about 1,751 acres were "Revenue forest". This was in addition to its possession of about 914 acre of private tenure land acquired by the State Government for the Company.

Accordingly the District Collector of Bilaspur asked M/s BALCO to deposit the money towards the premium of the land (in respect of 1,136 acres of land out of 1804 acres) and the lease rent along with compensation for the standing tree over the Forest land on the condition that will deposit the revised amount as and when decided by the State Government. The amount being asked for was in anticipation of the approval of the Government. The same was deposited by BALCO where by taking the stand that that it is now in possession of the land and thus is free to clear the trees.

Subsequently the Government of MP vide letter dated 22/09/1993 issued the formal sanction for the allotment of 338.65 acre of land on the payment of Rs.5.42 lakh as premium and the lease rent of Rs.0.54 lakh per annum. This demand by the Government has been challenged by BALCO via W.P. (C) No. 5328 of 1996 before the High Court, order for maintaining the status quo and not to deforest any land has been passed, the matter is still pending before the High Court.

Thus it was seen that though the formal possession of the Government land was never given to M/s BALCO it was and is continuing to be in physical possession of the entire area apparently with the tacit understanding and approval of the State Government. The same gets strengthened by the fact that that the Government had acquired 914 acres of private tenure land for the company and which till date is in the physical possession of the company. Moreover at no point in the past till 2003 did the Government raise any objection to the same. But according to the State Government but for 338.66 acres of land no other land has been allotted to the company, which has been made clear from the acts of the District Collector of Bilaspur. The report of CEC did not deal with the matter at length as the High Court of Chhattisgarh was dealing with the same.

Referring to the 12/12/96 of the Supreme Court the CEC said that that the purpose of Section 2 of the FC act "forest' includes any area recorded as forest in the Government Records and that in the present case about 1,751 ace of the land in BALCOs possession is revenue forest and therefore falls with in the ambit of section 2 of the Forest (Conservation) Act, 1980.

It was pointed out by the Committee that that the company had admitted that out of 1,751 acres of revenue forest land it had made payment towards compensation for 947.05 acre of revenue forest and that to before 1980 when the FC act was not in consideration. For the balance area of 803 acres no payment towards compensation has been made.

#### **Observations by the CEC:**

The CEC recommended that M/s BALCO could seek ex-post facto approval under the FC Act. Though permission may be sought and the considered for the entire 1,751 acre of revenue forest in possession the payment of compensatory afforestation, NPV etc may be restricted to the 803 acre of revenue forest in the possession of the company.

With regards to the large scale felling of trees by the M/s BALCO it was observed by the CEC that no documentary evidence has been made available because of which the committee could not proceed to the intricate details. However it was also stated by the Hon'ble Committee that if the recommendation is accepted and the follow up action is taken then in that case the issue of non-forestry use of the forestland and the corresponding felling of trees in violation of the provisions of the FC Act would be taken care of.

**[Back to Contents](#)**

## Some Orders in the Godavarman Hearings in November 2007

### Orders dated 2<sup>nd</sup> November 2007

- I.A.No.1398 in I.A.1289 (Laying of optical fibres in Kaziranga National Park)

*The Honourable Supreme Court had in its earlier order dated 11.3.2005 permitted the laying of optical fibres in the Kaziranga National Park. One of the conditions for this grant of permission was that Oil India Ltd. would supply diesel/petrol free of cost to the vehicles, engaged in the protection of the national park, free of cost. The counsels on behalf of Oil India Ltd. submitted before the Court that the cost of petrol/diesel would turn out to be very high. The Court thus ordered Oil India Ltd. to pay a sum of Rs 5,00,000 per annum to the Kaziranga National Park Authorities for purchase of petrol/diesel for the vehicles used by Kaziranga National Park and was disposed accordingly.*

- I.A.No.2087 (Permission seeking felling of trees and using the area for improving the facilities at Talkatora Stadium Complex for the upcoming Common Wealth games)

*In this matter the NDMC sought permission for felling trees and using the area for improving the facilities in Talkatora Stadium Complex for the ensuing Commonwealth Games. The same matter was examined by the CEC. The permission was granted subjected to the following conditions:*

4. *Approval under FC Act be obtained.*
5. *5% of the project cost i.e. Rs.1.74 crores will be deposited with the Ridge Management Board;and*
6. *To make special efforts to save as many trees as possible and also where possible NDMC to transplant trees.*

*The directions issued by the Ridge Management Board would have to be complied with by the NDMC. Thus, the NDMC was granted the permission to go ahead with work as long as it satisfied the above-mentioned conditions.*

- IA 1042-1045 (Declaration of Mt.Abu as Ecologically Fragile Area)

*Learned counsel for the petitioner was granted time to file objections, if any, before MoEF for declaration of Mt.Abu City as an "eco-fragile" area. The MoEF would have to consider the objections of the applicant before taking any decision in the matter.*

- I.A.No.976 in IA 727 (Regarding permission to exclude areas notified under section 4&5 of the Punjab land Preservation Act, 1900)

*Learned counsel for the State Government was directed to file its report regarding deletion of cultivated/cultivable land from the list of forest area prepared within a period of four weeks.*

- I.A.No.780 with IA 818 and IA 1290, IA 2015 in IA 780 (Regarding commercial vandalism indulged by various companies including multinational companies by painting advertisements on rocks)

*As per the earlier order of the Court a sum of Rs.1048550/- was deposited as FDR such that it would be matured on 7.9.2008. Further, the amount has to be handed over to the society created pursuant to the order of this Court on 12.10.2007 In the order dated 12.10.2007 the Court had directed that the Himachal Pradesh Forest department may constitute and form a society having its area of operation in the entire Kullu district and utilise this money in accordance with the suggestions made by the CEC.*

#### Orders date 16<sup>th</sup> November 2007

- I.A.No.979 in I.A.Nos.442-446, 1204, 1245 & 1357 in W.P.(C)No.202/1995: (Regarding mining activity on Lalitpur, Uttar Pradesh)

*The court observed that the state of Uttar Pradesh had not yet filed its response regarding the mining activity in Lalitpur and that the court was awaiting the same. There were allegations that despite the orders passed by the Court, some people are doing/carrying mining activities and those who have applied through regular channel are not given permission by the State Government. The State is directed to give its reply at the earliest through the Principal Secretary, (Forests), U.P.*

*In view of the reports appearing in the press, the Principal Secretary (Forests), U.P. is directed to appear before this Court on 7<sup>th</sup> December, 2007 and shall furnish the reply/report, as referred above, on that day*

#### Order dated 23<sup>rd</sup> November 2007

- I.A.Nos.1868 & 2091 (In relation to Lafarge mining Phlangkaruh, Nongtraï Dist. Meghalaya)

*The applicant Lafarge Umiam Mining Pvt. Ltd. is a company incorporated under the laws of Bangladesh. It set up a cross border cement unit. Lafarge Surma is a joint venture between Lafarge Group, claimed to be a world leader in building material based in France and other countries. Lafarge Surma has set up the cement manufacturing plant at Chhatak, Bangladesh, which inter alia has a captive limestone mine of 100 ha. located at Phlangkaruh, Nongtraï, distt. of Meghalaya. The entire mined material out of this mine is used for cement factory in Bangladesh. The mining operations have been done at this place. Mining was done as if this was not a forest area and it appears that the then DFO gave the clearance without applying the proper yardsticks. However, these mining operations have been closed down.*

*For the time being, the court however permitted the mining operations to continue in view of the international agreement. But this was only an interim measure. The petitioner was asked to submit a detailed report as to whether they propose to have a cement factory in the State of Meghalaya itself. Learned Amicus Curiae raised certain points in a note filed. The applicant was also directed to submit its response within a period of six weeks. In the response the applicant would have to specifically respond as to the cost benefits in respect of the project. The Union of India was also asked to file its response to the note submitted by the amicus curiae.*

- IA 2072 & 2083 (Diversion of forest land with in the Pulicat Bird Sanctuary Pudirayadoruvu Reserve Forest for construction of a road)

*By these applications, the applicants sought for permission to divert 0.88 ha. of forest land falling in the Pulicat Bird Sanctuary and Pudirayadoruvu Reserve Forest for construction of a road from Rayadoruva/Nawabpet to village Chinnathota. Permission was also sought for diversion of 3.24 ha. of forest land falling in the Pulicat Bird Sanctuary for widening of existing road and laying of bitumen to make metal road from Village Kudiri to Buckingham Canal.*

*The CEC has examined and recommended for approval of the project, subject to the following conditions:*

- i. For use of the forest land approval under the FC Act will be obtained.*
- ii. The construction of the road connecting Chinnathota village to Rayadoruvu and Nawabpet villages will be undertaken after obtaining clearance from the Standing Committee of the National Board for Wildlife.*
- iii. The NPV at the applicable rate will be deposited along with an undertaking to pay additional NPV, as per the decision of this Hon'ble Court;*
- iv. The conditions prescribed by the Standing Committee for the Wildlife will be strictly complied with;*
- v. No labour camps will be established in the forest area and no work will be done between sunset to sunrise; and*
- vi. For ensuring availability of water in the Pulicat Lake throughout the year, appropriate works will be carried out in a time bound manner at the cost of the Satish Dhawan Space Centre, Sriharikota Range as per the recommendations made in the study carried out by the Integrated Coastal and Marine Area Management Project Directorate (ICMAM).*

*Thus, both the projects were cleared, subject to fulfilling of the above-mentioned conditions and the IA's were disposed off accordingly.*

- I.A.No.2086

*State of Rajasthan had not filed any affidavit. And the matter was listed for hearing for 7.12.2007. In the meantime State would be required to file its affidavit.*

*All the matters relating to Haryana be listed on 7.12.2007. All the matters relating to Rajasthan be listed on 4.1.2008.*

*The CEC was asked to file a list regarding illegal mining in the States of Haryana and Rajasthan in violation of the Order of the Honourable Supreme Court. The CEC filed a report indicating that absolutely no details were given by the State of Rajasthan as to how many mines are there and how many are closed and how many are operating.*

*Further, the State of Rajasthan had not disclosed the number of licenses granted to the licensees as on 16.12.2002 and thereafter. The Court ordered the State to furnish the necessary details on or before 4.1.2008.*

Orders date 30<sup>th</sup> November 2007

- I.A.Nos.1424 & 1425 (Regarding a case on instances of violations, encroachment and Illegal Mining and Industrial Operations in Chattisgarh by BALCO, ESSAR and others.)

*These applications have been filed by the applicants stating that there were violations of conditions for laying of pipe line in Forest Land. Learned counsel for the State of Chhattisgarh submitted that she would be filing the counter affidavit during the course of the day. Rejoinder/reply thereto, if any, may be filed within four weeks. We are told by learned Amicus Curiae that the C.E.C. has filed a report dated 17 th October, 2007 in W.P.(C)No.469/2005 relating to similar issue. A copy of the report of C.E.C. be given to the parties in these applications.*

*List the W.P.(C)No.469/05 also along with these applications in the month of January, 2008.*

- I.A.No.1798 (Regarding diversion of forest land by Power Grid Corporation of India in Gudaloor forest division, Chengalpattu, Tamil Nadu)

*The applicant-Power Grid Corporation, by way of this application, seeks permission for diversion of 3.19 ha. Of forest land in the Gudaloor Forest Division in Chengalpattu. We are told that the C.E.C. has approved the same, subject to fulfillment of the following conditions:*

- i) approval under the F.C.Act for the use of the forest land for the project will be obtained;*
- ii) Net Present Value (NPV) of the forestland involved in the project at the existing rate will be deposited in the Compensatory Afforestation Fund;*
- and*
- iii) the felling/trimming of the trees will be carried out under the supervision and direction of the Forest Department and will be kept to the barest minimum;" If the above conditions are fulfilled by the applicant, it may go-ahead with the project.*

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

- I.A.NOs.1240 with 1266, 1299 and 1382 (regarding permission sought by the Andaman and Nicobar Administration for felling of trees etc for rehabilitation of victims of Earthquake and Tsunami waves)

*The Andaman & Nicobar administration seeks extension of permissions by way of these applications for felling of trees etc. for rehabilitation of victims of Earthquake and Tsunami.*

*Learned senior counsel appearing for the Administration submits that he is not pressing for the I.A.s and prays for withdrawal of the same.*

*The I.A.s are dismissed as withdrawn.*

- I.A.Nos.1267-1268 with I.A.No.1395 (Regarding license for extraction of Bamboos from Assam)

*These applications have been filed contending issuance of license allegedly to M/s.Hills Trade Agencies for collecting Bamboos from Assam was for oblique motives. The applicants have suggested that the license is given for petty amounts. Respondents 2, 4 and 5 may file their counter/response, if any, within six weeks.*

- I.A.Nos.1335, 1356, 1388 in 989 (Regarding allotment of forestland in Korba, Chattisgarh, without approval under the Forest (Conservation) Act, 1980 to Maruti Coal Washery)

*A report has been filed by C.E.C. alleging that one M/s.Aryan Coal Benefication (Pvt.) Ltd. has been given the right to wash coal under the control of M/s.South Eastern Coalfields Ltd. It is pointed out that as per the direction, there can be only treatment of the coal and an agent shall not sell any produce after the washing process is over. It is specifically directed that the agent cannot sell the coal under the garb of reject. It is pointed out that there has been gross violations by M/s.Aryan Coal Benefication (Pvt.)Ltd. by selling the coal under the garb of reject, after the washing process is over Issue notice returnable within four weeks to M/s.Aryan Coal Benefication(Pvt.)Ltd. and Ministry of Coal through its Secretary.*

- I.A.Nos.1336 in 1254 (Regarding re-identification of forests in the state of Rajasthan)

*The State of Rajasthan has filed this application seeking directions for declaring compact and contiguous tracts of land measuring 5 ha. and above and having 200 or more trees per ha as "deemed forest area" and norms to be applied for making such a declaration.*

*The C.E.C. has filed its report. Earlier, the State of Rajasthan has appointed the Kapur Committee for the same and the report of the Kapur Committee is also available. The State may examine both the reports and suggest the course to be adopted and report back within six weeks.*

**[Back to Contents](#)**

***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***

**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)**

**A special thanks to Anil Raj for his contribution to the content of this Issue of Forest Case Update.**

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