

FOREST CASE UPDATE

Issue 49, November 2008

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Dear Friends,

November 2008 saw some important issues taken up the 'forest bench' of the Supreme Court ranging from the mining in the Aravallis (both Rajasthan and Haryana) to the Mundra SEZ issue (M/s Adani). However, for many of us what may come as a shock is the approval granted to the Human Irrigation Project in Chandrapur, Maharashtra. The project was strongly opposed by conservationists led by the Bombay Natural History Society (BNHS) on the ground that it would destroy the vital link between the Tadoba Andheri Tiger Reserve and the adjoining forests. Only few months back the Supreme Court in its order had stated that they are not approving the Human Project in view of felling of large number of trees. Strangely, as per the 21st November 2008, i.e. latest order of the Supreme Court where, there seems to be no change in the project design, but only mention of NPV and compensatory afforestation (See order later in this newsletter). If there is no change in the number of trees felled or area, the moot question arises as to how could it be approved? The newly constituted Forest Advisory Committee (FAC) appears to have cleared it and sent its decision to the Court. The Adani/ Mudra SEZ report of the CEC also reveals the changing stance of the erstwhile FAC: They reject a proposal in the month of March 2008 and approve the same in the month of April 2008 after the Minister of State for Environment requests the FAC for reconsideration! As a neutral newsletter we are bound to not commenting on the wisdom of the FAC but with every passing Friday (when the 'forest Bench of the Court assembles) we are finding this 'neutrality' increasingly difficult to maintain.

On the positive side, the CEC in its characteristic strong words has recommended for demolition of a hotel which had illegally come up on a Reserved Forest land in Himachal Pradesh. We have carried a detailed article on the same in this issue of Forest Case Update.

Ritwick Dutta

Kanchi Kohli

Recommendations of the CEC on Forest Land Diversion by M/s Adani Chemicals/Mundra SEZ Ltd, Gujarat

In Forest Case Update Issue 48, we had carried an order related to M/s Adani Chemicals Limited wherein the state government had been asked to submit a fresh proposal for the diversion of forest land for non-forest use. The order dated 13.10.2008 stated:

“The applicant M/s. Adani Chemicals Ltd. in Kutch district of Gujarat has made this application for reconsideration of diversion of 1850 ha. (approved area of 1840 ha.) of forest land for high purity salt works in its favour for development of Mundra Special Economic Zone and also for reconsideration of diversion of one consolidated patch in Survey No.169/36 admeasuring 168.41 ha. of forest land for the Salt Washery Desalination plant and container depot near Dhrub village in Kutch district of Gujarat. CEC has examined the project and has submitted its report.

Meanwhile, as regards the proposed land use, the State Government may furnish a fresh proposal to the FAC within a reasonable time.

FAC may take an appropriate decision at the earliest.

The applications as regards the applicant are disposed of accordingly.”

However, what had preceded this order was the report of the Central Empowered Committee (dated 16.7.2008) which traces the history of the case and how it was dealt with by the Forest Advisory Committee (FAC) of the MoEF. The original proposal was pending before the MoEF from 1998 and since the proposals for the change of land use and the name of the user agency have been repeatedly submitted. Further within a month of its rejecting the proposal the FAC reconsidered the decision and cleared the project.

THE RECOMMENDATIONS OF THE CEC

Reconsideration of diversion of 1850 ha (approved area 1840 ha) of Forest Land for High Purity Salt Works in favour of M/s Adani Chemicals Limited in Kutch District of Gujarat for Development of Mundra Special Economic Zone

And

Reconsideration of diversion of one consolidated patch in survey no, 169/36 admeasuring 168.41 ha of forest land for salt washery, desalination plant and container depot near

Dhrub village in Kutch district of Gujarat for Development of Mundra Special Economic Zone (File No.8-2/99-FC)

11. The proposal for diversion of 2400 ha of forest land in favour of Adani Chemicals Limited for high purity salt works in District Kutch, Gujarat was recommended for rejection by the FAC on its meeting held on 26.6.1998 after observing that the area contains about 19.42 lakh mangrove trees.

12. Further as per the then existing CRZ notification the project was not permissible as the area falls within CRZ 1. However the project remained under examination from 1998-2002. On 21.5.2002 the CRZ was amended whereby the project became a permissible activity under CRZ 1. In the meanwhile the original proposal was modified by reducing the forest area from 2400 ha to 1850 ha. Excluding 530 ha of mangrove forests.

13. The project was discussed by the FAC on its meeting held on 17.7.2002 when the following recommendation was made:

“....the committee is of the view that the proposed project site is situated in eco fragile area and the project would adversely affect the marine flora and fauna including the mangrove eco system. The user agency should be asked to revise the proposal to exclude the biodiversity rich eco fragile area and take other suitable measures to contain adverse impacts of the project...”

14. The project was again examined by the FAC in its meeting held on 29.6.2002 after considering the fresh site inspection report of the Regional Office, Bhopal. The FAC recommended the diversion of 1840 ha of forest land for the project after excluding 10 ha of interspersed mangrove forest. The proposal was granted in principle approval by the MoEF on 13.5.2004 along with another proposal by the same user agency for the diversion of 168.41 ha forest land for salt washery, desalination plant and container depot by the MoEF.

15. Before the grant of the in principle approval, the Ministry of Commerce and Industries, Government of India, vide letter 12.2.2004 approved the proposal of M/s Mundra Special Economic Zone for setting up a Special Economic Zone at Mundra, Gujarat over an area of 10,000 ha out of which 2500 ha of land was to be developed in the first phase. As per the approval letter, the zone would provide industrial commercial and social infrastructure facilities and atleast 25% of the SEZ area will be used for setting up of the industrial area for setting up of units.

16. The applicant company filed a letter dated 26.4.2004 addressed to the Inspector General of Forests, MoEF stating that the project area falls within the boundary of Mundra SEZ being set by its group company viz M/s Mundra SEZ Limited and requested MoEF to make a mention in the approval letter that the diversion thus permitted will apply to related land use permitted within the SEZ area.

17. While issuing the in principle approval letter, the MoEF permitted M/s Adani Chemicals Ltd. to include the diverted forest land in the Special Economic Zone. The decision to include the diverted forest land in the Special Economic Zone was taken without placing the matter before the FAC and MEF.

18. On 23.6.2004 the MoEF accorded approval for the change of name of user agency from M/s Adani Chemicals Ltd to M/s Mundra Special Economic Zone Ltd. The permission was accorded by the MoEF on a letter no. Nil dated 17.6.2004 from M/s Adani Chemicals Ltd without placing the matter before the FAC or seeking approval of MEF.

19. After grant of in principle approval by the MoEF, the Mundra Port and Special Economic Zone Ltd, more than three years later vide its letter dated 15th September 2007 requested the MoEF to amend the in principle approval to include the following specific provisions:

- i) approval for change in land use as per Master Plan for Mundra Port and Special Economic Zone Ltd;
- ii) phasing out of payment of the NPV;
- iii) change in the name of the user agency from M/s Mundra Special Economic Zone Ltd to Mundra Port and Special Economic Zone Ltd.

20. The proposal was considered by the FAC in its meeting held on 27th March 2008 where the following observation was made whereby the proposal was to be treated as closed:

“The committee considered the proposal and noted that the present proposal is for change in land use for which in principle approvals were accorded on 13.5.2004 subject to certain conditions. The original proposals were for the diversion of 1840 ha of forest land for high purity salt works and 168.41 ha of forest land for salt washery, desalination plant and container depot in favour of M/s Adani Chemicals Ltd In Kutch district of Gujarat. The committee also noted that the Ministry vide its letter dated 23.6.2004 has accorded the approval for the change in name of the user agency from M/s Adani Chemicals Ltd to M/s Mundra Special Economic Zone Ltd.

After examining the proposal the committee observed that the proposed changed land use completely changes the scope and purpose of the original diversion proposals approved by the Ministry thereby rendering the entire EIA study and other special reports considered at the time of granting in principle approvals meaningless and desired that this proposal maybe treated as closed and the State government may be advised to submit a the proposal afresh.”

21. However following the representation dated 3.4.2008 addressed to the Minister of State for Forests and Wildlife by M/s Mundra Port and Special Economic Zone Ltd, the proposal was reconsidered by the FAC in its meeting held on 17th April 2008, and the following was recommended:

“The committee reconsidered the proposal and noted that the present proposal is for change of land use for which in principle approval has been granted on 13.5.2004 subject to certain conditions. The original proposals were for the diversion of 1840 ha. of forest land for high purity salt works and 168.41 ha of forest land for salt washery, desalination plant and container depot in favour of M/s Adani Chemicals Ltd In Kutch district of Gujarat. The committee also noted that the Ministry vide its letter dated 23.6.2004 has accorded the approval for the change in name of the user agency from M/s Adani Chemicals Ltd to M/s Mundra Special Economic Zone Ltd with the condition that for the purpose of the development of the Mundra Special Economic Zone, deviation from the sanctioned land use shall be included in the detailed Master Plan for the exclusive Economic Zone as per the norms fixed by the Ministry of Commerce for which a consolidated proposal be sent for approval in due course.

After examining the proposal the committee recommended the proposal for in principle approval on standard terms and conditions. The committee also recommended the change of

name from M/s Mundra Special Economic Zone Ltd to Mundra Port and Special Economic Zone Ltd.”

22. From the above it may be seen that at the time of the submission of the original proposal, the proposed activity was not permissible as the area was CRZ 1 and the FAC recommended for the rejection of the proposal. The proposal remained pending with the MoEF from 1998-2002. In the meanwhile the amendment of the CRZ notification took place and the proposed activity became permissible in CRZ 1. The FAC after reconsidering the revised site inspection report recommended the proposal for approval. Based on the representation from the user agency, the forest area was allowed to be included in the Special Economic Zone without considering whether the implementation of the project is feasible within the SEZ or otherwise. After the grant approval, in principle, on a representation received from the user agency, the approval was modified in favour of another company without examination of the FAC and approval by the MEF. Though the original proposal was for a salt project and was approved for the same, however, at a later stage on a request made by the user agency for setting up of a SEZ by a sister concern of the original applicant has been admitted. What is more this has been done without seeking a formal proposal under the F.C.Act. It is also imperative to note that the FAC on 27.3.2008 recommended for the rejection of the modified land use of the forest land and thereafter on 17.4.2008 completely reversed its own decision. No reason for the change in the stand of the FAC has been recorded in the minutes of the meeting.

23. Thus initially the user agency had requested for land in an ecologically sensitive area for site specific activity, namely salt project. Since this site specific salt project has been given up and keeping in view all the fact and circumstances as brought out above, the CEC is of the view that the recommendations of the FAC in the present case may not be accepted and the present request by the user agency for the diversion of forest land in a phased manner as a part of the expansion of Mundra Port and Special Economic Zone Limited may be rejected.

Some Orders in the Godavarman Case in November 2008

Orders dated 10.11.2008

- **I.A.No.1426 & 1768 (Regarding decision of Lok Ayukta on an alleged illegal mining)**

Allegation is that certain irregularities have taken place in the grant of permission for mining activities. In view of the nature of the allegations, we request the Lok Ayukta, Karnataka to look into these matters as has been done in the earlier case and a report may be filed within a period of four weeks. We make it clear that we have not examined any of the alleged irregularities on merits and we express no opinion. It is made clear the uninfluenced that it is being referred, a report may be filed. All the records may be made available by the CEC to the Lok Ayukta for appropriate action. Before finalising the report, the Lok Ayukta may give reasonable opportunity to the applicants of being heard.

Liberty to mention after the report is made available to this Court.

- **I.A.Nos.2164, 2167, 2298, 2378, 2379 in 1413**

When these matters came up last time, we have requested the Ministry of Coal to file an affidavit. So far no such affidavit has been filed. Learned Solicitor General of India is requested to contact the Ministry of Coal for taking appropriate action.

- **I.A.No.2293-94, 2298**

We are told that the CEC has cleared the project.

List on 14.11.2008.

- **I.A.Nos.2231-32 in 2167 (Regarding mining in forest area by Narayan Mines Pvt Ltd, Karnataka)**

We had requested the Lok Ayukta of Karnataka to submit a report in a sealed cover regarding the mining in forest by Narayan Mines Pvt. Ltd. in the State of Karnataka.

The Lok Ayukta has submitted the report but we are told that the applicants herein were not heard before finalising the report and the applicants have got various objections to the report. We request the Lok Ayukta to afford an opportunity to the applicants and after that a report be submitted to this Court within a period of six weeks. The records may be sent back to the Lok Ayukta and the parties be given notice by the Lok Ayukta.

- **I.A.Nos.1287, 1570-1571, 1624-1625, 1978, 2395 (Regarding working of sandalwood oil factories in various parts of India)**

CEC has filed a report regarding the working of the Sandalwood oil factories in various parts of India. Learned counsel appearing for some of the private owners of the sandalwood factories stated that they were not being heard before giving such a report. It is also contended that these factories are being operated in different States and there is no allegation that there is illegal cutting of sandalwood trees in the States of Kerala, Karnataka, Maharashtra and Tamil Nadu. Applicants in I.A.Nos.1570-71, 1624-25, 1978, 2395 be given an opportunity of being heard by CEC and a report be filed within a period of six weeks. All the applicants may get in touch with the CEC in this connection.

- **I.A.Nos.2278-2279 with 2275 (Regarding the repair of Karnataka State Highway Improvement Project passing through Nagarhole, Karnataka)**

The Karnataka State Highway Improvement Project proposes to repair the road which is passing through the Rajiv Gandhi National Park (Nagarhole) having a length of 28.9 kms. CEC has examined the matter and subject to certain conditions has recommended the same. These conditions are acceptable to the Karnataka State Highway Improvement Project and subject to fulfillment of the conditions as recommended by the CEC, the applicant may go ahead with the project.

The applications are disposed of accordingly.

- **I.A.No.2335 (Regarding construction of dam in Kumbhalgarh, Rajasthan)**

This is an application by the State of Rajasthan seeking permission for construction of a Dam in

Tehsil Kumbalgarh District Rajsamand to facilitate drinking water in certain villages in Rajasthan. CEC has recommended the project subject to fulfillment of certain conditions. The said conditions are acceptable to the State Government. Subject to the fulfillment of the same, the project is approved.

I.A. is disposed of accordingly.

- **I.A.Nos.2339-41 (Regarding the upgradation and maintenance of roads by Ministry of Defence in Desert National Park, Rajasthan)**

Ministry of Defence seeks permission for upgradation and maintenance of certain existing roads which is passing through the desert National Park in Rajasthan. CEC has examined the project and has held that no widening or upgradation of the existing roads should be done on new black topping. Subject to this, the road work in the Desert National Park may be continued. In case the Ministry of Defence finds any difficulty, it would be at liberty to file an application. The existing black topping can be repaired or the surplus could be renewed. Adjourned by 10 days.

- **I.A.NO.2364 IN I.A.No.1364 (Regarding an application from National Highways Authority of India)**

I.A.No.1364 was dismissed on 18th July, 2008 by this court as counsel was not ready at that time. Learned senior counsel prays that it may be restored to the file. We heard learned senior counsel for the applicant. After hearing learned counsel, we find no merit in the application. I.A. is accordingly dismissed.

As regards I.A.No.2364 learned senior counsel appearing for the NHAI is agreeable to the recommendations of CEC and is also prepared to pay the NPV as suggested within four weeks. Subject to the fulfillment of the above, the I.A. is allowed.

Orders dated 21.11.2008

- **I.A.Nos.828, 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, 1465, 1590, 1612-1613, 1700-1703, 2007-2008, 1488, 2138-2139 in 891-892, 2205 & 2417, 2426-2427 (HARYANA MINING)**

CEC has filed a report regarding the mining activities in the Aravalli Hill area in Haryana. CEC, with the help of the State of Haryana and other agencies, prepared a large-scale map of villages in Gurgaon and Faridabad districts falling within Aravalli hills by fixing of about 20 ground control points (GCP) in each village through intensive field work using village map, GPS and satellite imagery of the corresponding village and it was drawn by super imposition of each village map on satellite imagery and overlaying of areas. The map is now made available to the Court. But many of the applicants who have either no permission for mining activities or have filed applications which are pending, have not been able to peruse the map so that they may respond in respect of findings of C.E.C. Learned counsel/amicus curiae appearing for CEC has stated that those applicants would be permitted to peruse the map in the office of the CEC. Those who want to have perusal of the map may give advance intimation to Mr.A.D.N.Rao, learned counsel/amicus curiae. Those applicants would be at liberty to file objections, if any, before the next date of hearing.

List on 28.11.2008.

▪ **I.A.No.2176 in 548 (Regarding construction of a high level bridge across Pulicat Lake)**

The State of Tamil Nadu proposes to construct a high level bridge across Pulicat Lake in Pulikat lake Bird sanctuary in Ponneri Taluk of Turuvallore district. CEC has examined the matter and suggested that the project could be approved subject to fulfillment of the following conditions:

- i) work will be carried out only during day time only;*
- ii) construction material will be brought from outside the sanctuary area;*
- iii) disposal sites will be located outside the park area;*
- iv) machineries will be removed from work site immediately after the work is over; and*
- v) no labour camps will be erected in the sanctuary and*
- vi) approval under the F.C.Act will be obtained for use of forest land;*
- vii) 5% of the project cost of Rs.10.00 crores i.e. Rs.50 lacs will be deposited in the Compensatory Afforestation Fund for conservation and protection of the sanctuary; and*
- viii) the conditions on which the proposed use of forest land within the sanctuary has been recommended by the Standing Committee of the National Board of Wildlife will be strictly complied with.*

Learned counsel appearing for the State has submitted that the conditions are acceptable to the State. Subject to fulfillment of these conditions, the project is cleared.

I.A. is disposed of accordingly.

▪ **I.A.Nos.2186-2187 (Regarding establishment of a furniture unit by M/s Airtech Pvt. Ltd, Uttar Pradesh)**

The applicant -M/s. Airtech Pvt. Ltd. has filed these applications seeking permission for establishment of the furniture making unit at plot nos.50A & 50B, Sahibabad industrial area, Ghaziabad. CEC has examined the matter in consultation with the Principal Secretary, (Forests) and the Principal Chief Conservator of Forests, U.P. Forest Department.

The applicant had submitted that unit will not be having any facility for conversion of round timber into saw timber and also other conditions prescribed in the U.P. Forest Act. It is stated that no sawing activity as done in a saw mill shall be undertaken. The applicant has submitted before us that they have filed an application for issuance of a license in view of the definition of "saw mill" under the U.P. Establishment and Regulation of Saw Mill Rules, 1978. It is made clear by the learned counsel appearing for the applicant that they will not be running a saw mill and are only wanted to run a furniture making unit to cater to the needs of general public. The applicant is allowed to establish the unit subject to filing an undertaking before this Court that the unit will not be having any facility for conversion of round timber to sawn timber within two days and that activities done in a saw mill shall not be undertaken. Subject to this condition, necessary license

may be granted by the Govt. of U.P. and also subject to other regulations if any concerning the grant of license for starting such unit.

I.A. is disposed of accordingly.

▪ **I.A.No.1658 (Regarding change of legal status of forest land for rehabilitation of villages in Andhari Wildlife Sanctuary, Maharashtra)**

CEC has filed a report regarding the permission for change in the legal status of the forest land approved under the F.C.Act by the MoEF for the rehabilitation of villagers of the three villages namely Kosla, Botezari and Palasgaon (Single) in Andhari Wildlife Sanctuary in District Chandrapur, Maharashtra. It was also stated therein that the relocation of these villages is required because the boundary of the national park is to be extended and therefore, modification in the order passed by this Court on 13.11.2000 in Writ Petition (C)No.337/1995 is sought for. We make it clear that despite the order passed by this Court on 13.11.2000, the MoEF is permitted to change in the legal status of the forest land approved under the F.C.Act for relocation of these villages for the purpose of extending the boundary and for rehabilitation of the tribal people residing there.

Application is disposed of accordingly.

▪ **I.A.No.2318 (Regarding diversion of forest land for Darjeeling Water Supply Pumping Scheme, West Bengal)**

The Department of Public Health Engineering, Government of West Bengal seeks to implement a drinking water supply project namely "Darjeeling Water Supply Pumping Scheme" at an estimated cost of Rs.49.17 crores and as part of the project seeks permission for diversion of 0.99 ha. of forest land falling in Senchal Wildlife Sanctuary. The CEC has suggested that a sum of Rs.2.46 crore i.e. 5% of the project cost be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection of National Parks and Sanctuaries in the State of West Bengal by the State Government. Learned counsel appearing for the State of West Bengal submits that as only a portion of the project is falling within the sanctuary area, they may not be burdened with the cost of paying in relation to the total project. As this amount is paid for afforestation purpose, we do not think that the State should be excluded from such payment. Permission is granted to the project subject to the payment of Rs.2.46 crores in the CAMPA Fund and such amount will be utilised for the purpose for which it was established; and fulfillment of other conditions stipulated by C.E.C.

I.A. is disposed of accordingly.

▪ **I.A.Nos.2293-2294, 2298 in 2167 (Regarding the construction of Human River Project, Maharashtra)**

This is with regard to the construction of a Human River Project in Chandrapur district of State of Maharashtra. The Assistant Inspector General of Forests (Forest Conservation Division), Ministry of Environment and Forest (MoEF), Government of India has filed an affidavit stating that the entire amount of NPV and Compensatory Afforestation would be deposited by the user agency in the CAMPA fund and the user agency has also agreed to all the conditions prescribed by Wildlife Institute of India. In view of the affidavit filed by the Assistant Inspector General of Forests (Forest

Conservation Division), Ministry of Environment and Forest (MoEF), Government of India, the application is allowed and necessary action be taken in this regard.

Application is disposed of accordingly.

- I.A.Nos.2160-2161 in 1399, 2185 in I.A.728, 2248-2249 in 1694, 2254, 2280, 2284-2286, 2314-2315, 2316-2317, 2323-2324, 2325-2327, 2376-2377, 2383-2385, 2393-2394 WITH W.P.(C)NO.23/2008 W.P.(C)NO.24/2008 W.P.(C)NO.33/2008 W.P.(C)NO.131/2008 W.P.(C)NO.522/207 W.P.(C)NO.116/2007 (Regarding saw mills in Uttar Pradesh)

The applicants are transferees of saw mills which were either not given licenses or these saw mills were not being operated. CEC has filed a report and has suggested that along with other applications received for renewal, subject to availability of timber in the State of U.P. and after meeting the requirement of license of wood based industries in the units covered by CEC report dated 6.5.2008 in I.A.No.2185 in 728 of the wood based industries and in terms of the orders passed by this Court on 18.5.2007 and 27.7.2007, these applications will also be considered. The applications for licenses may be considered by the CEC within a period of three weeks.

The applications/petitions are disposed of accordingly.

- I.A.No.2208 (Regarding Saw Mills in Andaman and Nicobar Islands)

The Andaman & Nicobar Islands Small Scale Wood Based Industries Association in Andaman & Nicobar Islands has filed this application seeking permission to have saw mills in the Andaman & Nicobar Islands. The CEC has made series of recommendations as to how the regulation of supply of timber and making available the timber to these units will have a serious impact leading to deforestation. The suggestions/ recommendations made by the CEC are acceptable to the applicant and it may take further steps in the matter to see that these suggestions/recommendations are complied with.

I.A. is disposed of accordingly.

CEC Recommends demolition of illegal construction in Mcleodganj, Himachal Pradesh: An Article

Lessons up the hill

On 18 September 2008, the Central Empowered Committee (CEC) of the Supreme Court's Godavarman bench finalised a set of well placed, straightforward and strong recommendations in Application No.1018 - which dealt with the irregularities in the construction of a parking lot and a bus stand in Mcleodganj, Himachal Pradesh.

This is a case I have written about previously in *India Together* (see [here](#) and [here](#)), and partly this article is a follow-up to the earlier ones. But this update is also relevant for another, important reason. The CEC's report calls for the demolition of one illegal structure, the

rectification of another, and - most importantly - blacklisting the project consultancy firm that had carried out illegal activities. If these recommendations are accepted by the Supreme Court, they will set an important precedent in regulating the way construction should take place in sensitive hill stations all across the country. It would also send out a signal to many other violators - and there are countless number of them - that the law may finally be catching up to their brazen-ness.

To recap, the key arguments of this case are as follow: two tracts of forest land had been cleared in 1997 and 2001 to establish a parking lot and bus stand in Banoi Reserve forests. The land diverted for the parking lot was 0.093 hectares and for the bus stand was 0.48 hectares. But the project authorities, M/s Prashanti Surya Construction Company had instead used the land identified for the parking lot to build a commercial complex and a hotel instead. At the bus stand site too, there were major deviations in the construction.

There were three hearings of the CEC in this case on 21 May, 10 July and 31 October - all in 2007. The Chairman of the committee also carried out a site inspection on 27 September 2007. As the case began to be heard by the CEC, some other very interesting and complex facts came to light which took the case beyond the scope of the Forest Conservation Act (FCA), 1980 under which the land was diverted for non-forest use in the first instance. It turned out that violations of many other kinds had taken place.

- The laws and rules pertaining to Town and Country Planning have a very significant role to play in the planning for development in sensitive hill areas. The CEC, in its report, notes that M/s Prashanti Surya started the construction of the bus stand complex in December 2005, without its drawings being approved by the concerned Town and Country Planning Department (TCPD). In fact the drawings were received by the TCPD only three months after the construction began. The TCPD also kept pointing out that the construction was in violation of zoning regulations for the land, but the HP Bus Stand Management and Development Authority (from whom the developer had leased the land) paid no heed to this.
- Eight months after the construction began, officials of the HPBSM&DA engaged an engineering consulting company to compare the drawings submitted by the construction company at the time they had bid for the project and those later submitted to the TCPD. Naturally (since the original approval was for a parking lot, and the actual construction was a hotel) major differences were found. The consultants clearly recorded that there were "major deviations" in the conceptual plan which is not permitted as per the contract. At the same time the TCPD issued notices to M/s Prashanti Surya for violating the Himachal Pradesh Town and Country Planning Act, 1977.
- Meanwhile, there was a parallel attempt to 'regularise' the illegal construction. In May 2007, the northern regional office of the Ministry of Environment and Forests (MoEF) in Chandigarh received a proposal from the Himachal Pradesh State Government to change the land use in the already approved proposals for the bus stand and parking place. This was when the construction was on in full swing in violation of the purpose for which clearances were granted. In June 2007, the MoEF regional office rejected the proposal and asked the state government to stop the work on the project.
- The CEC report records that there are huge variations in the area being constructed by M/s Prashanti Surya, compared to what was permitted. Although only 6459 square metres of construction were envisioned originally, the Board of Directors, HPBSM&DA approved the construction of an additional 1600 square metres for commercial use. Quite interestingly, the additional area was added under the chairmanship of G S Bali, the then state Minister for Transport, Tourism and Civil Aviation, who was also the chairman of the HPBSM&DA.

With all these facts in hand, as well as from the submissions made by the applicants, the allegedly violating company, TCPD and the state government, the CEC report concluded that there have been gross violations of law in this case. And its clarity on understanding the violations is followed by a strong set of observations and recommendations. The CEC report does not mince any words and clearly states, amongst other things that:

- the deviation in construction could not have been possible without the "... active connivance and support of the senior functionaries of the HPBSM&DA and the state and indicates blatant nepotism towards M/s Prashanti Surya."
- the CEC does not agree with the contention of the concerned company that the project has been undertaken in public interest and that the construction of a "small hotel is for public service."
- the five storey hotel structure with 40 rooms and shopping complex on forest land is totally unauthorized and illegal. It has been allowed to come up knowingly and brazenly in a location which is already facing serious parking problems and traffic bottlenecks. The same is for the bus stand complex, and the TCPD is yet to give approval of the same.

Based on these and several other substantive observations and conclusions, the CEC report recommended very clear cut and hard hitting steps. It vehemently states that "there has been absolute anarchy in the matter of construction of the parking space and Bus Stand. At the same time there is a very real need in Mcleodganj for both the parking space and Bus Stand complex on the two pieces of forest land. With a few to finding a way out from this terrible muddle created by the deep vested interests and at the same time ensuring that those who have connived in the serious lapse are not allowed to go scot free the following is recommended."

To state a few:

- the complete demolition of the hotel structure and that the forest land should be cleared of debris within three months. Followed by this the parking place originally envisaged should be constructed after the approval of the TCPD.
- rectification in the serious shortcomings in the construction of the Bus Stand Complex after the approval of the TCPD. For this a committee needs to be set up under the Chairpersonship of the Chief Secretary of the state. This committee is to propose in two months how the bus stand can be salvaged from the present mess.
- the state government of Himachal Pradesh needs to take the blame of the collective failure and serious lapses on the part of the officials and others connected with the illegal construction. Therefore the state government should deposit an amount of Rs.1 crore in a special fund for conservation and protection of wildlife.
- the state government to identify and initiate stringent and deterrent action against all the concerned persons for "complete abdication of their responsibility and accountability in the matter of governance and who are responsible for blatantly allowing" the construction.
- M/s Prashanti Surya Construction Company should be blacklisted and penalized.

This report is still to be accepted by the Supreme Court. If that happens it will send out a very important message to the rampant unproven illegalities that are taking place many of the hill stations across India. The conservation of these pristine habitats is very important to retain their ecological balance. As a MoEF report of 2002 states "Good healthy hill areas, besides being prosperous themselves, also bring prosperity downstream. Similarly, degraded hill or mountain areas bring poverty and drudgery downstream. Therefore, it is important to maintain the environmental balance and economic and social viability of hill areas, both for the sake of

mountain inhabitants and for those living in low land areas." (*Determination of Environmental and Ecological Sensitivity of Hill Stations- A report by the Ministry of Environment and Forests, 2002*).

The wake-up call long ago went unheeded. Now, perhaps the alarm bell will inspire action to remedy that failure.

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