

FOREST CASE UPDATE

Issue 43, February 2008

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Dear friends,

The last month has seen a very crucial order related to the reconstitution of the Central Empowered Committee (CEC) Instead of a five member body it is now a seven member one, with the inclusion of *Shri P.R. Mohanty, Director General of Forests, MoEF, Shri S.K. Patnaik, Dr. M.K. Matthu and Sanjeev Chaddha as Deputy Member Secretary*. The order also means the non-continuation of NK Joshi and Valmik Thapar as members.

There have been also significant changes in Rules for the CEC. As per the Rules of 2002 an application could have been filed by any person before the CEC. Now it is restricted only to aggrieved person. Further, the term of the CEC which was fixed for five years in 2002 notification has now been renewed for further period of three years. However, the term need not continue for three years since according to the SC order dated 21.2.2008, the term is to be limited to three years or till further orders of the court, whichever is earlier.

As of now the Rules don't seem to provide the mode of decision making for the CEC. The inclusion of the DG Forests is also significant given the fact that the CEC is to examine approvals for forest clearance granted by the Forest Advisory Committee (FAC) of the MoEF. The DG Forests also heads the FAC. *(See order further in the newsletter)*

This month also saw the shift of office of the CEC from Jawaharlal Nehru Stadium (where hearings have been held for the last five years) to Chanakya Bhavan in Chanakya Puri, New Delhi.

Ritwick Dutta and Kanchi Kohli

Note on Application related to Illegal Construction on Hansi-Butana Canal, Haryana

An application was filed before Central Empowered Committee on 22nd August .2007 regarding the ongoing construction of Hansi-Butana Canal through Saraswati Wildlife Sanctuary against State of Haryana. The application was filed by Wildlife Trust of India, a wildlife conservation NGO.

Saraswati Wildlife Sanctuary spreads in an area of 4400 Ha and falls in Kurukshetra and Kaithal District of Haryana. It is a third major forest of Haryana and considered as prime habitat of Hog deer. The Sanctuary was notified on 29.7.88.

Information was received regarding construction of Hansi - Butana canal around the periphery of the above mentioned Sanctuary area. A field visit was conducted on 7th August, 2007. During the inspection it was found that a large area of the Sanctuary was diverted for the construction of Hansi-Butana Canal (in Kaithal District). The unauthorized construction of work was carried out on an area of about 5 acres of the Sanctuary (rectangle No. 25, 35 and 36 of Nawch reserve forest of this wildlife sanctuary).

It was alleged in the application that the ongoing construction was the blatant disregard to the provisions of Wildlife (Protection) Act, 1972 (WPA), Forest (Conservation) Act, 1980 and orders of Hon'ble Supreme Court in the T.N.Godavarman case.

Following are the violations alleged on State of Haryana:

- (i) The rectangle no. 25, 35 and 36 were on the periphery of the Sanctuary. This area was merged in the canal by the irrigation department, thereby altering the boundary of the Sanctuary. Hence Section 36 (A) (3) of WPA was violated.
- (ii) The construction of the canal resulted in the purport violation of Section.. 27 of the WPA as there were unhindered movements of the laborers and the vehicle inside the Sanctuary area which had posed great danger to the security of the wildlife and its habitat.
- (iii) The construction of the canal leads to the permanent removal of the wildlife from the construction site. This activity was the violation of Section 29 of the WPA, as no permission was sought from the Chief Wildlife Warden for the destruction of wildlife and in any circumstances the activity was not for the improvement and better management of wildlife.
- (iv) The construction was also a blatant violation of the orders of Supreme Court dated 14.2.2000 and 25.11.2005 in T. N. Godavarman vs Union of India W.P. (C). No. 202 of 1995. The activity was not among the conservation and protection related activities for the better management of Sanctuary area as well as it was not the part of the approved management plan as stipulated by the Supreme Court by its order dated 25.11.2005.
- (v) The construction was also the violation of Section 2 of the Forest (Conservation) Act, 1980 because no approval was sought from the Central Government for the diversion of the land for the non forestry purpose.

On 3rd October, 2007 the matter was heard before the Central Empowered Committee. After listening to the arguments from both the parties, the CEC imposed immediate ban on the construction of the canal and asked State of Haryana to file a detailed affidavit on the matter. Further on 3rd December, 2007, the State of Haryana sought more time for the submission of the

reply and they also informed that the Saraswati WLS has been denotified with effect from 11th.October 2007. The applicant has been of the view that the Sanctuary has been denotified for the construction of the Hansi-Butana Canal through the Sanctuary which will finally result in the bifurcation of the Sanctuary into two equal halves.

The final decision on the case is pending.

Also See: Forest Case Update, Issue 39, October 2007 on www.forestcaseindia.org

Some Orders in the Godavarman Hearings in February 2008

Orders Dated 1st February 2008

- I.A.Nos.826 In 566 with 955 in 566, 958,985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 1137, 1164, 1180-1181, 1182-1183, 1196, 1208-1209, 1222-1223, 1224-1225, 1229, 1233 in 1135-1136, 1248-1249, 1253, 1301-1302, 1303-1304, 1312, 1313, 1314, 1318, 1319 in 1137, 1325, 1364, 1365-1366, 1370-1370A, 1371, 1384, 1385- 1386, 1387, 1434, 1435-1437, 1438, 1441 with 1634, 1475-1476, 1513, 1573, 1639 in 1135- 1136 in IA 566, 1664, 1665, 1671, 1707, 1779 in 1164 in I.A.566, 1785-1786 in I.A.No.1441, 1980-1981, 2013, 2074-2076, 2077-2078 In 1441 & 2098 in 1233 in 1135-1136, 2145-2146, 2147-2148, 2149-2150, 2151-2152 & 2153-2154 In I.A.566 (NPV MATTER: Recommendation of C.E.C. in I.A. No.566 and application for modification of court's order/directions/permission to file application. for modification/impleadment/exemption from filing O.T., intervention/clarification of order and report/urgent listing of application. and placing on record the accompanying affidavit)

List the NPV Matters and Buffer matters on 27.3.2008, for the whole day. I.A.Nos.2151-2152 in I.A.566

These applications are filed for permission to survey the forest land in the State of J&K. The prayer is accepted.

I.As. are allowed accordingly.

- I.A.NO.2101 IN W.P.(C) NO.202/1995 (Seeking permission to divert forest land in Mahatma Gandhi Marine National Park for the purpose of a potable water pipeline, Andaman and Nicobar Islands)

This application is filed seeking permission for using 0.428 ha. of forest land falling in the Mahatma Gandhi Marine National Park for laying down pipelines for providing potable water from Dhankari Dam to Port Blair. CEC has examined the project and laid down the following conditions for permitting the project:

- i) Approval u/FC Act.

- ii) NPV to be deposited at the applicable rate in the Compensatory Afforestation Fund along with an undertaking to deposit the addl. Amount as per the directions of this Hon'ble Court.
- iii) 5% of the Project cost i.e. Rs. 1.5 crore will be deposited in Comp. Aff. Fund for carrying out conservation and protection works in the Mahatma Gandhi Marine National Park.
- iv) Reef Watch, an Institutional Member of the NBWL will be associated with regard to the placement and the safeguards to be implemented.

The learned counsel for the applicant submits that the conditions imposed by the CEC are acceptable to the applicant. The project may be carried out, subject to fulfilling the above conditions. I.A. is disposed of accordingly.

- I.A.NO.1349 IN 1246-1247 (Regarding Mining in Land Bank Areas. The matter is related to State of Madhya Pradesh)

13053.325 ha. forest land in Katni (M.P.) was earmarked for afforestation and put in the land bank for the purpose of carrying out the project. Now the State has cleared 29 ha. of land to be used for mining activities stating that for such purpose other land is not available and the area already earmarked for afforestation purpose should be de-linked. MoEF and CEC seek time to file a further report and MoEF may also give the details as to how much land was put in land bank and how much land was released for de-afforestation under FCA Act because of the certificate of Government land, that no forest land is available. Learned counsel for the State also submits that 29 ha. of equivalent other land could be made available for the land bank. The details of such land may be given to the CEC and the CEC may examine whether such land is enough for afforestation purpose.

Post on 14.3.2008.

- I.A.NO.2162 IN Appln.NO.1065 (Seeking permission for renovation and upgradation of Dr. Shyama Prasad Mukherjee Swimming Pool Complex, Talkatora, New Delhi)

This application is filed by the Commonwealth Games Division-VI, seeking permission for renovation and upgradation of Dr. Shyama Prasad Mukherjee Swimming Pool Complex, Talkatora falling in the Central Ridge. CEC has examined the project and laid down the following conditions for permitting the project:

- a) Approval under the FC Act for the use of the area notified under Section-4 of the Indian Forest Act will be obtained.
- b) 5% of the project cost i.e. Rs.7.25 crore will be deposited with the Ridge Management Board for conservation and protection works in the ridge area; and
- c) conditions stipulated by the Ridge Management Board will be strictly complied with.

The learned counsel for the applicant submits that the conditions imposed by CEC are acceptable to the applicant. The project may be carried out, subject to fulfilling the above conditions.

I.A. is disposed of accordingly.

Orders Dated 14th February 2008

- I.A.Nos.2116-2117 (Application by Reliance Gas seeking permission for laying underground gas pipeline through Great Indian Bustard Sanctuary, Maharashtra)

These IAs have been filed by M/s. Reliance Gas Transportation Infrastructure Ltd., seeking permission for laying the underground gas pipeline through the Great Indian Bustard Sanctuary in Maharashtra for the transportation of Natural Gas/Hydrocarbon. The project was examined by C.E.C. and C.E.C. has imposed the following conditions for clearance:

- 1. "5% of the estimated project cost of Rs.520 crores for laying of the pipeline in the Sanctuary area i.e. Rs.26 crore will be deposited by the applicant company in the Compensatory Afforestation Fund for undertaking conservation and protection works in the National Parks/Sanctuaries in Maharashtra. A small portion of this money may be used by the Maharashtra Forest Department for the establishment of an "Interpretation Centre" with a view to educate and increase the awareness of the local people about the importance of endangered species like Great Indian Bustard and the importance of our natural heritage;*
- 2. the conditions imposed by the Chief Wildlife Warden for laying the pipeline through the sanctuary area will be strictly complied with; and*
- 3. no forest land falling in the sanctuary area will be used."*

The above conditions are acceptable to the applicant. Subject to fulfillment of the above conditions, the applicant may go-ahead with its project. I.A.s are disposed of accordingly.

▪ ***I.A.Nos.2126 & 2129 (Regarding grant of mining leases in Goa)***

These applications relate to grant of mining lease. The applicants herein claims that the original licensee had executed a Will in his/their favour and have been given mining lease by the State of Goa. The C.E.C. has raised objections that mining lease could not be transferred by a Will executed by the original licensee, who is now dead. The Central Government may give its response, as under Rule 50 of the Mining Concession Rules, 1960, consent of the Central Government is required for carrying out the mining activities. The Central Government may file its response before 7th March, 2008.

List on 7th March, 2008.

Orders Dated 15th February 2008

▪ ***I.A.2166 (Related to report of C.E.C. on Forest Clearances recommended by Forest Advisory Committee)***

The following 11 projects are considered and cleared by CEC:

1) Diversion of 216.25 ha. of forest land for coal mining by M/s. Western Coalfields Ltd., Chandrapur area, Hindustan Lalpath Colliery in Chandrapur District, Maharashtra.

2) Diversion of additional 0.354 ha. of forest land in addition to already diverted 145.6207 ha. for Parbati Stage-II Hydro Electric Project by M/s. National Hydro-electric Power Corporation Ltd. in District Kullu of Himachal Pradesh.

3) Diversion of 181.97 ha. of forest land in Maujpur RF block of Alwar Forest Division, Rajasthan, for relocation of villages from Natinal Park Sariska.

4) Diversion of 116.56 ha. of forest land in different RFs of Adilabad and Nirmal divisions for up-gradation of existing road from 2 lanes to 4/6 lanes from Mah/AP border to Islamnagar to Kadtal

(km 175 to km 308) in Nagpur to Hyderabad section of NH-7 in Adilabad District of Andhra Pradesh in favour of National Highway Authority of India.

5) Diversion of 96.34 ha. of forest land in Kurumbapatty Reserve Forest of Salem Forest Division for mining of Magnesite and Dunite in favour of Tamil Nadu Magnesite Limited (TANMAG) Salem District of Tamil Nadu.

6) Diversion of 42.20 ha. of forest land for construction of Uttrakhand Open University at Haldwani in Nainital District of Uttarakhand.

7) Diversion of 43.08 ha. of forest land for construction of road between Ghastoli and Rattakona in Chamoli District of Uttarakhand.

8) Diversion of 65.00 ha. of forest land for construction of Haripura Minor Irrigation Tank Project in Jalgaon District of Maharashtra.

9) Diversion of 111.980 ha. of forest land for construction of 765 KV Seoni-Bina single circuit Transmission Line in favour of National Power Grid Corporation Limited in Madhya Pradesh.

10) Diversion of 214.112 ha. of forest land for regularization of pre- 1980 encroachments in Reserved Forest of Dhenkanal District, Orissa.

11) Diversion of 498.896 ha. of Forest Land for the construction of Modikuntavagu Medium Irrigation Project in Khamman District of Andhra Pradesh.

MoEF may further consider the report of the CEC and examine if any further conditions are to be stipulated or the projects can be unconditionally cleared and thereafter pass appropriate orders regarding clearance of these projects. Subject to further clearance by MoEF, the above-mentioned 11 projects are cleared and the I.A. is disposed of accordingly.

- *I.A.NO.2164, 2165,2167,2168,2169,2170 IN I.A.NO.1413,1414, 1426, 1428, 1440, 1456,1459,1460,1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2130-2132, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2188- 2189 IN 1413, I.A.NO.2163 IN 1413 (CEC 4TH REPORT) (Related to Report of C.E.C. on Forest Clearances recommended by Forest Advisory Committee)*

List the I.As. on 7.3.2008. The matters categorized as First category of matters are those where the response of the MoEF will be filed within two weeks and MoEF will file additional response in seven cases in the first category of matters and also in regard to POSCO as well as two cases relating to Goa Mines. Concerned I.A.Nos. may be supplied by learned A.C.

List the I.As. on 28.3.2008, so far as they relate to the matters categorized as Second category of matters where the response of the MoEF will be filed within four weeks. I.A.Nos. may be supplied by learned A.C.

List the I.As. on 11.4.2008, where the matters are categorized as Third category where the response of the MoEF will be filed within six weeks. I.A.Nos. may be supplied by learned A.C.

- *I.A.Nos.991, 1004,1185,1273, 1280, 1294, 1443, 1611, 2018 & 2073, 2175 IN W.P.(C) No.202/1995 WITH I.A.NO.979 IN I.A.NO.443, 1204,1245, 1357 & 2110, 2141 (Regarding mining in Choursil Reserve Forest, Lalitpur, Uttar Pradesh)*

The applicants herein had been granted mining lease in 1997. They claim that the mining area is outside the boundary of Choursil Reserve Forest. This area is near the forest boundary pillar Nos.

123 to 133 showing the boundary lines of the Choursil Reserve Forest near this area as per notification 29.12.1970. Learned counsel representing the State of U.P. submits that the mining area is within the forest area. Learned amicus curiae stated that there are serious disputes and these pillars distinguish the boundary area and it is also found that either they are removed or tampered. We would like to have a re-examination by the CEC so that the boundary of Reserve Forest area near this mining area be distinctly marked. The forest officers should also co-operate with the CEC to find out the real boundary of the Choursil Reserve Forest at this area. CEC may file its response within a period of six weeks.

- 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, 1488 in 891-892, 1590, 1612-1613, 2007-2008 & 2138-2139 IN 891-892, 1700-1703 (Regarding Monitoring Report of C.E.C. regarding illegal mining Aravalli Hills)

The matters relate to the mining in Haryana. We sought a report from MoEF regarding the impact of the mining activities amongst other on the water resources in the area. It is pointed out by learned amicus curiae that where mining permission has been granted to some of the applicants, the area is declared as dark area and whether there is acute scarcity of ground water or not, has not been examined. MoEF had filed an affidavit but necessary information is not there in the affidavit in line with earlier directions. MoEF is directed to further clarify and file a fresh affidavit regarding the water shortage that may happen in case the mining activities are carried out and whether water level is going down and water resource management plan, water resource status and natural resource of these areas are to be ascertained. MoEF may also examine how many mining licences can be granted in this area keeping in mind the above factors regarding scarcity of ground water in this area and other connected issues printed out above and in the earlier orders. MoEF may file its affidavit within a period of six weeks.

Order Related to Reconstitution of Central Empowered Committee

In Flash News 117 on 5th March 2008, we had informed you about the order passed on 21st February 2008 regarding the reconstitution of the Central Empowered Committee. This matter had been pending before the Supreme Court ever since the term of the CEC had expired in September 2007. Subsequently there were a few news reports giving indication on who the new members are. These names are different from what the final order passed was. The current constitution of the CEC has been mentioned in the order below.

I.A. NO. 2016 OF 2007 IN WRIT PETITION (C) NO. 202 OF 1995

We have considered the suggestions given by learned Solicitor General and learned Amicus Curiae regarding the constitution of the Central Empowered Committee. The composition of CEC shall be as follows:

- (1) Shri P.B. Jayakrishnan, Chairman
- (2) Shri P.R. Mohanty, Director General of Forests, MoEF
- (3) Shri M.K. Jiwrajka, Member Secretary

- (4) *Shri S.K. Patnaik*
- (5) *Dr. M.K. Matthu*
- (6) *Shri Mahendar Vyas*
- (7) *Shri Sanjeev Chaddha (Deputy Secretary)*

2. *Shri M.K. Jiwrajka is on deputation as of today as he belongs to the cadre of the Forest Officials in the State of Maharashtra which deputation is ordered to be continued till 31.3.2009.*

3. *Term of office of CEC would be three years or until further orders, whichever is earlier.*

Article on Central Empowered Committee Report on POSCO Steel Plant and Port, Orissa

Divide and conquer, with plant and port

The South Korean Pohang Steel Company (POSCO)'s investments in Orissa state have been marred with controversy, violence and stiff opposition. News about tension in Jagatsinghpur has been flashed over days in different newspapers and television channels. While local resistance against the project is a critical aspect of the issue, a new dimension to POSCO's plans has emerged which deserves more scrutiny.

POSCO's plans include setting up of a steel plant, mining operations, a captive port and allied activities in Orissa. With the delay in the grant of Special Economic Zone (SEZ) status, POSCO began pursuing environment and forest clearances for two components -- steel plant and port -- separately in May and June 2007. Both these components have since been granted environment clearance by the Ministry of Environment and Forests (MoEF), despite opposition at the mandatory public hearing in April 2007. And neither of the clearance processes tried to look at all the three components of the project as part of the same "plan" together nor were the environment and social impacts assessed cumulatively. (See: [Uneasy quiet on the POSCO front](#))

While the process was headed in POSCO's favour, the company had perhaps not anticipated that its decision to break up the project into three would become a problem. Today, it has.

The setting up of the steel plant and port at the cost of Rs.55,000 crores required a diversion of 1,253.255 hectares of forest land for non-forest use. This is a mandatory procedure to be followed as per the Forest Conservation Act, 1980. The grant of clearance would mean felling of about 280,000 trees. As per procedure, the proposal was considered by the Forest Advisory Committee (FAC) under the MoEF on 9 August 2007. This committee recommended the grant of forest clearance.

This is was not the final green signal that POSCO was looking for that would have allowed them to go ahead with pushing construction. The reason for this was a 27 April 2007 order of the Supreme Court. According to this order, all fresh decisions of the FAC would be subject to review by the Supreme Court bench in the *T N Godavarman v/s Thirumulpad* case. Before taking a final view, the apex court now seeks comments of the Central Empowered Committee (CEC) set up as a monitoring body by the same bench. (Also see: www.forestcaseindia.org and [Whose expert is an expert?](#))

Amongst other things this order said: "... We make it clear that pending the decision of the larger question, all clearances by the F.A.C. of fresh cases shall be subject to approval by this Court.

Before giving approval, we would like to have responses from C.E.C. in respect of each clearance. In order to avoid delay, we direct the concerned Ministry to give a copy of the clearance to C.E.C. so that C.E.C. would give its response expeditiously. We will examine each clearance and decide whether to grant or not to grant the approval thereto. Once the approval is granted by this Court, the matter may be placed before the Central Government for disposal in accordance with law..."

The CEC stepped in, assessed the facts at hand and submitted a report on 14 November 2007. It linked all three components of mining, steel plant and captive port in the report - a clear disagreement with the unbundling attempted by POSCO. The report establishes that POSCO's proposal is only for forest land for the integrated steel plant and captive minor port. The proposals for forest land required for the other components like mines, railways, road, corridor etc are in the process of finalisation. With these facts as a base, the CEC made two clear recommendations:

- "The CEC is of the view that instead of piecemeal diversion of forest land for the project, it would be appropriate that the total forest land required for the project including for mining is assessed and a decision for diversion of forest land is taken for the entire forest land after considering the ecological importance of the area, number of trees required to be felled, adequacy and effectiveness of the R&R plan for the project affected persons and benefits accruing to the State. The diversion of forest land for the plant, without taking a decision for the linked uses particularly the mining project may not be in order.
- "Since the number of trees involved is about 2.8 lakhs, it would be in order that an independent expert committee including representatives of the NGOs should undertake a site visit in order to assess the impact of the cutting of such a large number of trees and suggest mitigative measures for the area, specially since there is a large dependence of local population on these forests. Subject to the compliance of the above observations the proposed diversion of forest land may be permitted."

The Posco-India Chairman and Managing Director Soungsik Cho has been quoted in the Business Standard on 30 January as being baffled with the CEC's report; he says that the company is presently struggling to get a prospecting licence. POSCO is yet to procure a mining lease, carry out assessments and seek mandatory clearances for it. It is reported that the entire process could even take the company 3-4 years.

The mining site is proposed to be located the highly sensitive Khandadhar area of the state. The same area was earmarked for Kudremukh Iron Ore Company Ltd (KIOCL), because of which the mines ministry had returned POSCO's application for granting prospecting mining licence. Reports in a number of dailies show that this problem is yet to be resolved.

Meanwhile, the issue has been heard in the Supreme Court twice, in December 2007 and January 2008, after the CEC report was submitted. POSCO has allegedly stated in the apex court that the mining component is inherently not linked with the port and the refinery and these are not interdependent on each other.

Instances like this are a reminder of a reality that plagues our environment and forest clearance procedures. If the clearances had not gone through this additional step of scrutiny at the Supreme Court, it is likely POSCO's unbundling would not have been exposed for what it is. Project proponents often break up project components and seek separate environment clearances. Then each of these components goes and procures separate forest clearances. In the bargain the cumulative impacts of the project never get looked at. What also happens often is that grant of clearance of one part becomes a rallying point for expediting approvals of the others. This is the *fait accompli* argument (See also: [Mine, what mine?](#) and [MOEF fails to act](#)).

In all this, the role of the MoEF has also been exposed. There are different Expert Appraisal Committees (EACs) under the Environment Impact Assessment (EIA) notification that are to assess and recommend environment clearance of a project. Each of these operates in isolation. Should not the committee on thermal power projects check with the committee on river valley projects if there is a linked dam to feed water to the plant? (E.g. [The Tamnar thermal power plant and Rabo dam](#) in Chhatisgarh.) What about the committee on industrial projects checking with that looking at the mining projects? With lack of coordination within one single division (Impact Assessment) of the MoEF, can we expect it across divisions when it comes to grant of forest clearances? Can the FAC not draw from or build on the information received for the same project by the respective EACs?

Will the decision on POSCO also fall prey to these lacunae?

This article appeared in India Together (www.indiatogether.org) in February 2008. It can be viewed at <http://indiatogether.org/2008/feb/env-poscomp.htm>. The views expressed in the article are of the author and not of the editorial team of Forest Case Update.

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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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