

FOREST CASE UPDATE

Issue 44, March and April 2008

CONTENTS

1. Overview of the Godavarman Hearings in March and April 2008
2. Some Orders of the Godavarman Hearings in March and April 2008
3. Highlights of the Godavarman Hearing on 7th March 2008

Overview of the Godavarman Hearings in March and April 2008

Some of the most significant happenings were the hearing on the Net Present Value (NPV) for the diversion of forest land and that related to the **Compensatory Afforestation Management and Planning Authority (CAMPA)**. The Ministry of Environment and Forests (MoEF) has in principle agreed to the levy of NPV and the Solicitor General Ghulam Vahanavathi emphasized that the Government of India is committed to the protection of forest more so in the context of the global climate change occurring. The main opposition came from the Federation of Indian Mining Industries (FIMI), which emphasized that they agreed to NPV per se but not to the current categorisation especially when NPV is to be levied from degraded and open forest. According to Counsel for FIMI, very dense forests should be outside the scope of NPV in view of the fact these forests are irreplaceable and no amount of NPV can compensate for the losses. He stated that such dense forests are very limited in India and areas such as Silent Valley which had such forests are already protected. The very dense forests such as those of the Amazon and Borneo are a heritage to be preserved but the same does not apply to the most Indian forests. Hence levying of NPV in addition to funds for compensatory afforestation is unjustified. The matter stood adjourned for further hearing (Also see: <http://pib.nic.in/release/release.asp?relid=30277>; http://www.downtoearth.org.in/full6.asp?foldername=20080430&filename=news&sec_id=4&sid=5).

In a significant development, the Supreme Court issued notices on the Centre as well as the State Governments on a petition challenging the Constitutional validity of the **Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006**. The Act was challenged by a range of groups across the Country and on 28th March 2008, the case came up for admission before the Forest Bench. This case has not been filed as an Intervention Application but rather as a Writ Petition which was heard as part of the Godavarman case (Also see: <http://www.indianexpress.com/story/289294.html>; <http://www.livemint.com/2008/03/21002254/Forest-dwellers-Act-faces-yet.html>).

Another significant development was the appointment of A.D.N Rao, Advocate as an Amicus Curie in the Godavarman case. A.D.N Rao becomes the fourth amicus in the matter after Harish Salve, U.U Lalit, and Siddharth Choudhary. The appointment is significant in view of the fact that for many

years A.D.N Rao was the counsel for the Ministry of Environment and Forests and was removed rather abruptly. Rao's induction as Amicus curiae is significant in view of his experience with the matter.

In a matter which could have implication on the implementation of the Forest Rights Act, the Supreme Court **stayed the regularization of encroachment with respect to the state of Karnataka** in view of the Courts order dated 23-11-2002 prohibiting regularisation of encroachments.

A very specific and localized issue of tree felling in Delhi's Siri Fort area led advocate M.L Lahoty to file a case in person as an Intervention Application (IA). The issue related to the felling of trees in a park in view of the constructions due to the Commonwealth games. In a rare show of solidarity, many senior Counsels (Mukul Rohtagi, Abhishek Manu Singhvi) raised serious concern on the felling of trees in the park (a training Golf Course) which they regularly go for their walks and it adversely affects the right of residents to enjoy the environment and sought a scrapping of the constructions underway. According to them, the Government of India failed to consider alternative sites. The Supreme Court immediately put a stay on the ongoing construction so far as the park/ golf course is concerned and directed the Union of India to work out an alternative. It further agreed to the suggestion put forward by the Senior Counsels that a fact finding team of Senior Counsels along with the Solicitor general will visit the site on the 27th of April 2008 to work out a solution

Some Orders of the Godavarman Hearings in March and April 2008

Orders Dated 7.3.2008

I.A.Nos.2166, 2167, 2168, 2169, 2170 in I.A.Nos.1413, 1414, 1426, 1428, 1440, 1454, 1459,1460, 1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2130-2132, 2163, 2177-2178, 2179-2180, 2181-2182, 2183-2184 in 1413 In W.P.(C)No.202/1995

WITH

I.A.No.2126 IN 1413; I.A.No.2129 in 1413; I.A.Nos.1866-1867; I.A.Nos.2060-2061; I.A.No.1024 in 502; I.A.No.1789; I.A.No.1804; I.A.No.1992; (For clarification of order dated 4.8.2006); SLP(C)No.9241/2007; SLP(C)No.14575/2007 (*Report of CEC 3rd, 4th, 6th, 7th, for constitution of Forest Advisory Committee (FAC). These above applications are individual projects that have been recommended for by the FAC, are have received comments from the CEC*))

▪ I.A.NO.2167:

The C.E.C. and the MoEF have filed their respective reports. Learned senior counsel appearing on behalf of M/s. Jindal Steel and Power Ltd. seeks time to file documents to prove the demarcation of 111.409 ha. of land which is to be in possession of the Forest Department.

List on 28th March, 2008 along with I.A.No. 1440.

- I.A.Nos.2166, 2168, 2169, 2170 in I.A.Nos.1413, 1414, 1426, 1428, 1454, 1459,1460, 1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2130-2132, 2177-2178, 2179-2180, 2181-2182, 2183-2184 in 1413 (*Regarding:4th, 5th and 6th Reports of the C.E.C*)

The newly constituted C.E.C. is to meet shortly and it will examine these proposals afresh and the learned Solicitor General for India has submitted that the MoEF if required will file its response to the further report. The facts stated in the report already filed by MoEF would also be taken into consideration and a fresh report would be submitted within three weeks. List on 28th March, 2008.

- **I.A.No.2163 (Regarding Diversion of forest land for Teesta Stage VI hydro-electric project, Sikkim)**

In this application, the applicant seeks diversion of 89.4266 ha. of forest land for the purpose of implementation of Stage VI of the Teesta Hydroelectric Project. The C.E.C. has expressed some doubt as to whether extensive study had been done in the matter of this project. Learned senior counsel appearing for the applicant-Lanco Energy Pvt. Ltd. states that extensive study has already been done but the material has not been looked into by the C.E.C. and is prepared to handover all the records to the C.E.C., so that the newly constituted C.E.C. can examine this material and express its opinion by 28th March, 2008. Learned Solicitor General for India will extend all the co-operation if necessary when the newly constituted C.E.C. examines the matter. Post this matter as 1st item on 28th March, 2008.

- **I.A.Nos.1866-67 and 2060-61 (Regarding diversion of forest land to erect a transmission line by Madhya Pradesh State Electricity Board)**

Madhya Pradesh State Electricity Board proposes to erect high tension transmission lines across Sidhi Mauganj DCSS and LILO-Birsinghpur Rewa (across Sone river (notified as Ghariyal sanctuary). The proposal was examined by C.E.C., which has recommended the project subject to certain stipulations and conditions. Subject to fulfillment of the stipulations and conditions imposed by the C.E.C., which are acceptable to the Board, the project is cleared. The applications are disposed of.

- **I.A.No.1789 (Regarding permission for widening and improvement of Jauljibi-Tawaghat section of the Pithoragarh-Tawaghat Road by Ministry of Defence, Uttarakhand)**

By this application, Ministry of Defence, has sought permission for widening and improvement of the Jauljibi-Tawaghat section of the Pithoragarh-Tawaghat Road. The C.E.C. has examined the matter and subject to fulfillment of the following conditions, has recommended acceptance of the prayer:

1. *For use of the forest land, approval under the F.C.Act will be obtained;*
2. *NPV at the present rate will be deposited in the Compensatory Afforestation Fund alongwith an undertaking to pay additional amount as per directions of this Hon'ble Court.*
3. *5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the Askote Wildlife Sanctuary;*
4. *labour camps will be established only in the locations approved by the Chief Wildlife Warden;*
5. *no dumping of the debris will be allowed inside the Sanctuary. The dumping will be done outside the sanctuary at the places approved by the Chief Wildlife Warden; and*
6. *the conditions imposed by the Chief Wildlife Warden for undertaking the works will be strictly complied with.*

The applicant can go-ahead with the project, subject to fulfillment of the above conditions. The application is disposed of accordingly.

See further in the update for a detailed reporting on the highlights of the hearing dated 7th March 2008

Orders dated 27.3.2008

I.A.NOS.1000 with 982-984, 1026-28 & 1123-24, 1197-99 AND 1210-11, 1250-51, 1512

WITH

I.A.Nos.1485 & 1507 AND I.A.nos.1412 in I.A.No.887; WITH I.A.No.1992; S.L.P.(C) No.9241/2007; S.L.P.(C) No.14575/2007

WITH Net Present Value (NPV) MATTER

I.A.Nos.826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 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, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in IA 1441, 1980-1981, 1993, 2013, 2074-2076, 2077-2078 in 1441 & 2098 in 1233 in 1135-1136, 2145-2146, 2147-2148, 2149-2150 & 2153-2154 in 566 (Applications related to the payment for Net Present Value for diversion of forest land for non-forest use)

Heard learned counsel at length.

List tomorrow, the 28th March, 2008.

Learned counsel for the State of Bihar seeks permission to withdraw their objections. Permission granted. Objections are dismissed as withdrawn.

Rest of the matters (Buffer Zone, Exemption from depositing NPV etc.):

List tomorrow, the 28th March, 2008.

Permission granted to State of Maharashtra to file a detailed compilation of papers in I.A.No.1229.

Orders dated 28.3.2008

I.A.NOS.1000 with 982-984, 1026-28 & 1123-24, 1197-99 AND 1210-11, 1250-51, 1512

WITH

I.A.Nos.1485 & 1507 AND I.A.nos.1412 in I.A.No.887; WITH I.A.No.1992; S.L.P.(C) No.9241/2007; S.L.P.(C) No.14575/2007

WITH Net Present Value (NPV) MATTER

I.A.Nos.826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 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, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in IA 1441, 1980-1981, 1993, 2013, 2074-2076, 2077-2078 in 1441 & 2098 in 1233 in 1135-1136, 2145-2146, 2147-2148, 2149-2150 & 2153-2154 in 566 (Applications related to the payment for Net Present Value for diversion of forest land for non-forest use)

List the transmission lines, wind energy, Govt.project matters, public utility project matters, Hydro-electric power project matters, hydel and irrigation projects, construction of roads on acquired land, railways on 24th April, 2008 at 2.00 p.m. Rest of the NPV Matters (including Mining)- list after two weeks thereafter.

Orders dated 4.4.2008

- I.A.No.2167 WITH I.A.NO.1440 IN 1413 IN W.P.(C)No.202/1995 WITH I.A.No.2217-2218 IN 2167 IN W.P.(C)No.202/1995 WITH I.A.NO.2166,2168,2169,2170 IN I.A.NO.1413,1414, 1426, 1428, 1454,1459,1460,1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2130-2132,2133, 2177-2178, 2179- 2180, 2181-2182, 2183-2184, 2126, 2129,2216,2222 IN 1413 IN W.P.(C) NO.202/1995 WITH I.A.NO.2163 IN 1413 (*Reports of CEC in the matter related to the constitution of Forest Advisory Committee (FAC). These above applications are individual projects that have been recommended for by the FAC, are have received comments from the CEC*)

List on 25.4.2008 along with the matters of M/s. Lanco, Teesta, Jindal and POSCO i.e. I.A. Nos.2167 in IA 1440, I.A.Nos. 2166, 2169, 2170, 2126, 2129, 2163, 2164 in I.A.No.1413.

Rest of the I.As. may be listed on 2.5.2008.

- I.A.NO.2108-2109 (Regarding permission for establishment of MDF/Partical Board Plant in the State of Karnataka)

These applications are filed seeking permission for establishment of MDF/Partical Board Plant in the State of Karnataka. This Court had disposed of similar matters on 29.2.2008 in I.A.No.1797. These applications are also disposed of in terms of the order passed on 29.2.2008 in I.A.No.1797.

- I.A.NO.2171 In Appln. No.940 (Regarding use of forest land in Nargu Wild Life Sanctuary by M/s Milestone Power Generation Ltd. Himachal Pradesh)

M/s. Milestone Power Generation Ltd. has filed application seeking permission for the use of Forest Land falling in Nargu Wildlife Sanctuary in Mandi, H.P. for construction of 1.5 MW hydro power project. CEC has examined and subject to the following conditions has approved the project:

- a) *for use of the forest land approval under the FC Act will be obtained.*
- b) *5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection measures in the Nagru Wildlife Sanctuary;*
- c) *the NPV at the present rate will be deposited in the Compensatory Afforestation Fund along with an undertaking to pay additional NPV as per the decision by this Hon'ble Court;*
- d) *the conditions imposed by the Chief Wildlife Warden for the implementation of the project will be strictly followed; and*
- e) *adequate arrangements for meeting the energy needs of the labourers working on the project will be made. No labour camp will be established inside the forest area or within the Sanctuary.*

Subject to fulfilling the above conditions, permission is granted. I.A. is allowed.

Highlights of the Godavarman Hearing on 7th March 2008

In Flash News 118 we had sent out the list of matters to be heard during the Godavarman Hearing on 7th March 2008. The hearing dealt with some interesting cases from all across the country.

One of the first matters that came up was when an application was moved before the forest (Godavarman) bench against the illegal tree felling near the Siri Fort Sports Complex, New Delhi for the purpose of construction related to the upcoming Commonwealth Games. The counsel for the petitioners highlighted that 14 acres of land has been acquired for this purpose in the area in question. However the Commonwealth Game in this area. However the project authorities have begun encroaching in the green belt around the area, and a number of trees have been illegally cut down. A request was made that the matter be referred to the CEC, which can examine the issue in detail and submit a report to the Supreme Court. However the Supreme Court took a view to hear the issue again on 28th March 2008 and decide on it further.

For the next matter listed the Amicus Curiae, U. U. Lalit started with the discussion on the 4th report of the CEC in the matters recommended for clearance by the Forest Advisory Committee (FAC). The first project discussed was related to the POSCO steel plant where the CEC in its report of November 2007 had raised concerns. After a brief intervention by the counsel for Ministry of Environment and Forests (MoEF) and Mukul Rohtagi, counsel representing POSCO, it was decided that the matter will be heard on 28th March 2008.

Following this was I.A. No. 2167 related to the forest clearance for a mining project with a lease of 201 hectares. The project proponent had applied for a forest clearance of 90 hectares for the diversion of forest land. For the rest of the area they have applied for prospecting license. The forest bench enquired about the details of the blasting involve in the mining process. Mukul Rohtagi, the counsel for the project proponent denied this, and stated that they could also apply for forest clearance for the rest of the lease area. The Amicus gave the reference of I.A. No. 1440 (related to the Jindal group) where there is gross violation of the Forest Conservation Act. The case was listed for 28th March, 2008.

It was also highlighted that out of 42 recommendations towards forest clearance some of the proposals have not been considered by the FAC as some of them have not fulfilled the basic technicalities. One proposal from Jharkhand has been withdrawn. (Note: It was not possible to infer the details of these in court)

In the discussion that followed, the Counsel for MoEF highlighted that a meeting of the new constituted CEC will be held on 11th March, 2008, therefore this new CEC may verify all the recommendations of the FAC and submit its report before the Supreme Court. The Amicus, U.U. Lalit has accepted the suggestion and stated that let the 4th 5th and 6th Report including that related to the POSCO Steel project be considered by the newly constituted CEC for its recommendation.

Another matter related to the forest clearance recommendation of the by the FAC was discussed with reference to the TEESTA VI hydro-electric project in Sikkim. The CEC had taken a view that the diversion of the Teesta River for the project through tunnels will have negative impacts on the river ecology and environment. The counsel representing the project proponent, Shri Venugopal responded saying that there would no such stated negative impact of the project. Further, there is no objection from the local community as there is no displacement involved in this project and they

have welcomed the project. He also highlighted that the project does not propose to divert all the water through the tunnel and the minimum flow of 10% (as required) will be maintained through the river and 90% through the tunnel. The forest bench enquired whether the water from the river will be completely diverted, or will it rejoin the main river at some point after it flows out of the tunnel. The Amicus, U. U. Lalit said that the flow out of the tunnel will rejoin the Teesta River at a distance of 19 k.m. from the dam site. The counsel for the project proponent mentioned that there are also some other streams which will join the river within the said stretch and therefore there will be no impact due to the diversion. The forest bench of the Supreme Court asked the Amicus as to what is the concern in this case when there will be no impact on the River ecology. The Amicus responded that the CEC has only asked for a better, in-depth and proper study of the area and impacts by the project proponent. The counsel for the MoEF said that they have a number of studies with them already. The court then asked them to hand over all the documents to the newly constituted CEC who will examine those and give the report.

Finally, I.A. No. 170-175 related to mining in Goa was heard. Raj Panjwani, counsel for the applicant said that the mining activity in Goa by the project proponent is within an ecologically sensitive area (ESA). The committee looking at the declaration of ESAs had during a meeting 27.5.2005 had directed all Chief Wildlife Wardens in the state to identify and declare 10 kilometres of Protected Areas ESAs. Following this the Supreme Court in its order dated 4th December 2006 had directed all the State governments to file their response on the declarations of these ESAs. Venugopal, Senior counsel representing the mining companies highlighted that the Indian Board for Wildlife (IBWL) in its meeting dated 17th March 2005 had stated that the ESAs shall not be general and must be site specific. He also highlighted that the geographical features of Goa don't allow the declaration of 10km radius of the protected area as ESA. The Court referred the matter to the National Board for Wild Life (NBWL).

Editors: Ritwick Dutta and Kanchi Kohli

For further information and clarifications please write to 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

A special thanks to Priyabrat Sathapathy for the reporting on the 7th March 2008 hearing.

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.