

FOREST CASE UPDATE

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Forest Matter Today: An editorial comment

The month of August was surely will be a month to remember though surely not for happy reasons. The Supreme Court' forest bench approved the diversion of forest land for Korean company POSCO which means more than 2 lakhs trees to be 'Officially' and 'legally' felled, over 50, 000 trees again "officially' for Sterlite/ Vedanta mining in Kalahandi, Orissa and approval for Diamond mining in Panna Tiger Reserve. There are numerous other instances of trees felled for irrigation, road projects which will together definitely add to substantial numbers. As observers in the case for more than a decade, each Friday (when the Forest Bench hears matters) seems more depressing than the previous.

The assault on India's forest has never been so serious. We have reported on the Hansi Butana canal case wherein an entire canal was constructed without approval. Unfortunately, the National Board for Wildlife approved the denotification of the Sanctuary based on a proposal submitted earlier rendering the whole violation as only technical. Yet, there seems to be some lessons learnt in view of the apology of the State Government. In retrospect if one looks at the initial orders of the Godavarman case, one sees their in-depth nature as well as 'reformist' agenda in the various directions. This includes policy directives, towards improvement of the Forest Department or the issue of forest compensation requiring forest deficient states to compensate the forest rich states in view of the loss of revenue for maintaining the forests. The directions even extended to the service condition and the most significant one relates to the order of 2000 revoking the existing system of IAS officers writing the Annual Confidential report of Forest Officers with that of IFS officers. In 2001 it directed that transit permit shall be issued only in water marked paper. In the *Centre for Environmental law* in directed appointment of Honorary Wild Life Wardens and far reaching reforms in the Forest Departments.

The Supreme Courts' intervention in the forest matter is unparalleled in terms of its duration, scope and extent. The initial orders and judgments offered some direction and optimism in the face of growing assault on nature. On behalf of Forest Case Update, we only hope that we will soon get

an opportunity to report on positive and inspiring judgments. Since of late, we have been flooded with more a more depressing orders.

It is worthwhile to mention, that a hopeful sign did emerge in a recent judgment of the Supreme Court (*A. Chowgule Vs Goa Foundation, August 18th, 2008, CA No 5180/ 2001*) wherein in a case filed by Goa Foundation, a bench comprising Justice Bedi and Justice Chatterjee came out strongly against the whole compensatory afforestation issue and interestingly also drew the attention to the felling of trees due to road expansion. It is worthy to quote a part of the Judgment:

"Some arguments have flown during the course of the hearing that the appellants were willing to reforest an identical area in case the lease was allowed to be effectuated. In this connection, some observations need to be made. The basic question is as to what is implied by the terms afforestation or re-forestation. Is it merely the replacement of one tree with another or does it imply some thing a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past". In the present case, we are concerned with afforestation and the promise of the appellant to plant trees in an equivalent area. We, however, find from experience and observation that the re-forestation or afforestation that is being carried out in India does not meet the fundamentals and the planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. It must be borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the eco system dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago all arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveler but were a haven to a large variety and number of birds and other wild life peculiar to that area. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads, the shelter for birds has been destroyed and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well. Those who live in North India would do well to remember that a drive along the Grand Trunk Road, National Highway No.1, northwards of Delhi, particularly during the hours of dawn or dusk, was as if through an aviary with thousands of birds representing a myriad of species with their distinctive calls reaching a crescendo during early evening and gradually fading into silence as darkness set in. Sadly, all that can now be seen are crows feeding on the decaying and mutilated carcasses of dogs and other animals killed by speeding vehicles. Equally disturbing is the decrease in the reptilian population as the undergrowth in which it lived and prospered has been destroyed, and with the concomitant increase in the rodent population, colossal losses and damage to the farmer and in the storage of food grains"

Ironically the above judgment is not a part of the Godavarman Case. But we do hope that as such instances and the sensitivity stated become more of a norm than exception.

Supreme Court Order on Diamond Mining in Panna, Madhya Pradesh

In the previous issue of the F.C.Update we had reported about the Supreme Court granting permission for the diamond mining in Panna National Park/Wild Life Sanctuary. Presented below is the order on the same.

I.A.NO.1485 & 1507:
ORDER: 13.8.2008

These matters relate to the diamond mining project at Panna (M.P.). The project area is falling within the Panna National Park/Wildlife Sanctuary. This project was examined by CEC and it has approved, subject to fulfillment of the following conditions :

- (i) NPV as per the applicable rate will be deposited by NMDC for the 74.018 ha. under its possession and 70.202 ha. of forest land used for Earthen Dam;*
- (ii) 5% of the capital cost incurred on diamond mining project will be deposited for undertaking conservation and protection in the Panna National Park & Panna (Gangao) Wildlife Sanctuary;*
- (iii) A proper Mine Closure Plan, which includes reclamation and rehabilitation measures, will be drawn and implemented at the cost of the NMDC;*
- (iv) The notification dated 12.4.2006 issued by the appropriate authority will be withdrawn;*
- (v) A Monitoring Committee under the Chairmanship of the Chief Wildlife Warden with the Member Secretary, National Tiger Conservation Authority, Field Director, Panna National Park and a non-official Member of the National Board for Wildlife (to be nominated by the MoEF) as its members will be responsible for
 - (a) Approval of the mine closure plan;*
 - (b) Prescribing and Monitoring of various safeguards for operation of the mines;*
 - (c) Approval and Monitoring of the annual work plan for utilization of funds received from the NMDC towards the NPV and 5% of the project cost."**

We nominate Ms. Belinda Wright, as a non-official Member in the above said Monitoring Committee.

The above conditions are acceptable to the NMDC and the project is approved subject to fulfillment of the above conditions. Applications are disposed of accordingly.

Also See: <http://www.business-standard.com/india/storypage.php?autono=44666&tp=on;>
[http://in.news.yahoo.com/241/20080901/1264/tbs-nmdc-gets-prospecting-licence-to-min.html;](http://in.news.yahoo.com/241/20080901/1264/tbs-nmdc-gets-prospecting-licence-to-min.html)
<http://news.oneindia.in/2008/08/29/nmdc-to-revive--diamond-mining-at-panna-after-three-years-1220031143.html>

Hansi Butana Canal in Saraswati Wild Life Sanctuary, Haryana

Wildlife Trust of India Vs State of Haryana & Ors.
Application No. 1046 before Central Empowered Committee

Background Information

An application was filed before Central Empowered Committee on 22.8.2007 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, 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 August 7, 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).

The ongoing construction was the blatant disregard to the provisions of Wildlife (Protection) Act, 1972 (WLPA), Forest (Conservation) Act, 1980 and orders of Hon'ble Supreme Court.

Following are the violations alleged on State of Haryana:

- 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 Sec. 36 (A) (3) of WLPA was violated.
- The construction of the canal resulted in the purport violation of Sec. 27 of the WLPA 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.
- 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 WLPA, 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.

The construction was the 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.

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.

Hearings:

On October 3, 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 December 3, 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 11.Oct.2007. The applicant is 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 State of Haryana by its affidavit has mentioned its 'unconditional apology' for the construction of Hansi- Butana canal through the Saraswati Wildlife Sanctuary and said that the violation of the provisions of Wildlife (Protection) Act, 1972 and the Hon'ble Supreme Court orders are at the most of technical nature and totally unintentional.

Final Order

By its written order dated July 11, 2008, Central Empowered Committee imposed One crore fine on the Irrigation Department Haryana. The Saraswati Wild Life Sanctuary (WLS) which was denotified w.e.f. from October 11, 2007 has been declared as Conservation Reserve. The construction of the Hansi Butana canal has been allowed.

In its order the CEC stated, *"On examination of the details given by the applicant and the State of Haryana, it is seen that at the time the construction of canal was commenced, the area was a notified Wildlife Sanctuary. The construction works were started (a) without obtaining approval under the Forest (Conservation) Act, (b) in violation of the provision of the Wildlife (Protection) Act and (c) without obtaining the prior permission from the Hon'ble Supreme Court."* Further CEC stated, *"However, the Sanctuary has subsequently been de-notified after obtaining the clearance from the Standing Committee of National Board of Wildlife and the Hon'ble Supreme Court. Consequently the area wherein the canal construction work has been undertaken is no more a part of a notified Wildlife Sanctuary. It is also seen that subsequently approval under the Forest (Conservation) Act for use of the forest land for the construction of the canal has been accorded"*.

Finally CEC held, *"the Irrigation Department has voluntarily deposited Rs. One crore with the Forest Department for undertaking conservation and protection work of the Sanctuary, the CEC is of the view that no further action on the issues raised in the present application is required. However, it should be ensured that such violations are not repeated and the requisite permissions/ approvals are obtained before taking up any activity inside National Parks and Sanctuaries."*

Some Orders in the Godavarman Case in August 2008

ORDERS DATED 8.8.2008

- I.A.No.2166 in 1413: Forest Clearance for M/s POSCO for their Steel Plant in Orissa

M/s.POSCO, a Company registered in the Republic of Korea, proposes to start an integrated steel plant in the State of Orissa. The C.E.C. has examined the project and has recommended for

diversion of 1253.225 ha. of forest land. It is stated that about 2.8 lacs trees are to be cut and removed from this area. The Forest Advisory Committee (F.A.C.) has also examined the project and has given its report. The MoEF may take an appropriate decision in this regard and subject to the decision of the MoEF, this project is cleared. As regards mining operations, the matter is pending with the Orissa State Authorities and we are told that the matter has already heard by the appropriate authority.

The decision may be taken within a period of four weeks.

As there is involvement of cutting of a large number of trees, especially from the coastal side, examination of mitigating measures to be taken to protect this area from cyclone and other natural calamities is necessary. We appoint a Committee consisting of Shri S.K.Patnaik, presently acting as a Member of C.E.C., as Chairman. The Tribal Welfare Department of the State of Orissa will nominate a Member and also the MoEF will nominate another Member to this Committee. The Forest & Environment Department of State of Orissa may also nominate another Member to this Committee. The Committee shall examine the steps to be taken as mitigating measures. It may be noted that this part of the order is as an interim measure.

Also See:

http://timesofindia.indiatimes.com/Supreme_Court_nod_for_Poscos_steel_plant_in_Orissa/rssarticleshow/3343181.cms; <http://www.hindu.com/2008/08/09/stories/2008080950300100.htm>;
<http://www.merinews.com/catFull.jsp?articleID=139110>.

- **I.A.Nos.2331-32: Mining in Hospet, Karnataka**

These applications relate to the mining area in Hospet in Karnataka. C.E.C. has already examined and filed its report and has stated that the mining operation was not there for a long time i.e. 1994 and all of a sudden its renewal was granted in 2006. We are not aware of the circumstances under which the renewal was granted. We would like this matter to be examined by the Lok Ayukta of Karnataka which is also seized of a similar matter.

We request the Lok Ayukta of Karnataka to give a report within a period of six weeks.

Registry will send all the relevant/connected records in a sealed cover to the Lok Ayukta, Karnataka.

ORDERS DATED 13.8.2008

Note: The order related to Diamond Mining in Panna has been presented in a separate section.

- **I.A.No.2019: Forest clearance for Kundaw Pumped Storage Hydro Electric Project, Neelgiris, Tamil Nadu**

The applicant-Tamil Nadu Electricity Board proposes to execute Kundaw Pumped Storage Hydro Electric Project in Neelgiris District (T.N.). According to it, about 437 trees are to be cut and removed for the purpose of the said project including that of the proposed approach road. The CEC has examined the project and approved the same, subject to fulfillment of the following conditions :

"(i) Felling of 120 trees may be permitted for construction of proposed approach road;

(ii) Felling of 276 trees falling the right of way may not be permitted as these trees are not likely to cause any hindrance to laying of transmission line.

Instead, permission may be granted for pruning of these trees to facilitate stringing operation of the transmission line;

(iii) Feeling/pruning of trees should be done after obtaining approval under the F.C.Act, for non-forest use of forest land for the project."

Subject to fulfillment of the above conditions, permission is granted to the Tamil Nadu Electricity Board.

I.A. is disposed of accordingly.

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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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