

FOREST CASE UPDATE

Issue 42, January 2008

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Highlights of the Godavarman Hearing on 4th January 2008

The first matter that came up was I.A.828 with 833, which dealt with illegal mining in the Aravalli Hills across the states of Rajasthan and Haryana. State of Rajasthan had submitted an annual report regarding the same and it was to be reviewed by the CEC. It was to next to be held on 25th January 2008.

The next matter that was taken up was I.A. NO. 1413,1414,1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 & 2133 in 1413. This matter was part of the composition of the Forest Advisory Committee (FAC) in the MoEF. As per the 27th April 2007 order the CEC will give its recommendations on any decisions made by the FAC and then the Supreme Court shall look into the matter. The matter that was heard was regarding the second report of the CEC in this regard. The FAC had recommended the forest clearance for 18 mining licenses in the State of Goa. The CEC had studied the functioning of all these mining activities and found out that out of these 16 leases were functioning properly and according to the required guidelines. Moreover the Counsel appearing for the mining lease owners said that the mine owners have paid the entire NPV amount as was required by the concerned authority and that the compensatory afforestation work has already commenced. Taking all these factors into consideration the Supreme Court bench decided to permit the 16 leases with Temporary Working Permits (TWPs) to carry out the mining activities, subject to fulfillment of certain conditions (See order for more details). The State Government was asked to file their response within a period of six weeks whether such activities could be carried out (*See Forest Case Update Issues 20, 27, 31, 32, 33, 34 and 41*).

Another matter heard was I.A.NO.1349 IN 1246-1247, 1378-1380, 1446-1447 & 1502 where the CEC had pointed out that some of the lands included in the land bank have been again being utilized for the mining activities. This was contrary to the direction of the Supreme Court. It was suggested that the matter requires consideration and hence be posted on 1st February 2008 for detailed hearing. The court asked both the state and central governments to file their affidavits.

Note: Some orders of the hearing are included in this newsletter. In order to see all the orders visit www.forestcaseindia.org.

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Highlights of the Godavarman Hearing on 11th January 2008

The first case to be heard was related to the composition of the Central Empowered Committee (CEC). There was a difference of opinion in the court between the counsel for the Ministry of Environment and Forests (MoEF) and the Amicus Curiae on the members, especially the key position of the Chairman of the committee. The Amicus did not agree with the suggestions made by MoEF and stated that they were not acceptable. On a previous occasion the MoEF had suggested that the office of Director General (DG) Forest, MoEF be the Chairman of CEC. Since there was no agreement arrived at, the Supreme Court bench directed both parties to work out a modus operandi at the earliest.

The next I.A that came up was I.A.No.1784 in 703 In W.P.(C)No.202/1995 which was regarding a regularization of pre-1980 encroachment in the Doyang Reserve Forest, Assam. The counsel for the State asked for permission to withdraw the application stating that a recent statute takes care of the situation. The bench expressed no opinion in this regard and the case was dismissed as withdrawn.

The following I.A. No. 979 in I. A. Nos. 443, 1204, 1245, 1357 & 2110. This was in relation to the identification of "Forest like areas" in Uttar Pradesh, in connection to the matter related to mining in Lalitpur. The Amicus pointed out that the guidelines have already been made for the same. The counsel for Uttar Pradesh stated that all such areas will be identified within a period of four months by abiding by the guidelines and that the same shall be handed over to the State Forest Department except in case of private areas, if any (*See: Forest Case Update Issues 7, 13, 30, 33 and 40*).

I.A.No.1354 in 1154 was heard next. This case was in relation to the construction of a road in the forest area in Arunachal Pradesh by the Army. The Supreme Court had referred the case to CEC which was of the opinion that the road should not be allowed to be built, as it would damage the forest as well as the ecology of the area. Accordingly the MoEF had suggested an alternative route to the Army, which the latter accepted. The CEC was of the opinion that in addition a task force would need to be set up by the Army so as to study the impact of the construction. It was finally decided by the Supreme Court bench given the facts and circumstances of the case that the Army shall do every thing possible to construct the road in a way that it does not cause much damage to the forest. Efforts will be taken to minimize harm to the ecology. The application was thus disposed off.

The next I.A was an interesting one related to a saw mill on a private property in Assam (In I.A.No.s.1358 in I.A.No.992) Komor Uddin Ahmed, wanted to set up a saw-mill in his private property in Dhubri district, Assam as he has got 7 acres of land which he owned. The contention was that that the trees found in the land are sufficient to run a saw mill privately. This argument was examined by the CEC and they came to the conclusion that that large scale felling of trees has been reported in the State of Assam on several occasions. Further, there are specific areas that have been identified as "Industrial Areas" for these units to function. Given this background, encouraging such an application would set a precedence that could result in the large-scale destruction of forests. This would defeat the purpose and intention of the 12.12.96 order of the Supreme Court in the Godavarman case. In addition to this the CEC had also pointed out that that such saw mills could be detrimental to the ecology as trees within a 7 acre ambit will not be sufficient to run a sawmill and that this may also encourage illegal felling. Thus the permission for the grant of license was denied and the application was thus dismissed.

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Lion Relocation Case Centre for Environmental Law (CEL), WWF vs Union of India and Ors

As part of the hearings in Centre for Environmental Law (CEL), WWF vs. Union of India and ors (WP No 337 of 1995), one of the critical issues that have been discussed in the last few hearings has been a case related to the relocation of Asiatic Lion from the Gir Forests in Gujarat to Kuno Wildlife Sanctuary in Madhya Pradesh. This was in response to a petition filed by the Biodiversity Conservation Trust of India (BCTI) through its trustee Faiyaz Khudsar and represented by Advocate Raj Panjwani.

Background

The Asiatic Lion is today considered to be one of the most endangered carnivores in the world. They had once enjoyed an extensive distribution in Northern and Central India. But the decline of the Lion was very rapid by 1988. India's last Lions could be found only within the confines of the Gir Forest in Gujarat. According to studies by the Wildlife Institute of India the Gir Population is totally insecure because of two reasons;

1. The population has risen from a very small base whereby making the population genetically homogenous.
2. When a small population is restricted to a single site, an epidemic could prove catastrophic and wipe out the entire population.

Thus so as to reestablish a second home for these Lions the Wildlife Institute of India in the year 1993 undertook a survey to identify the potential second home of the Asiatic Lion. Accordingly the Kuno Wildlife Sanctuary (Madhya Pradesh) comprising an area of 345 sq km notified in 1981 was identified as the most suitable site for this purpose.

In order to reestablish the home the ambitious project for the 'Re-introduction of Asiatic Lion' in Kuno Wildlife sanctuary of Madhya Pradesh was launched by the Government of India and the Government of Madhya Pradesh. Accordingly the project period was identified to a span of 20 years i.e. 1995 to 2015. The Phase i.e. the Pre translocation phase, which involved the translocation of villages located within the Sanctuary, has been implemented with fair degree of success.

But unfortunately the Phase II could not be completed because of lack of cooperation by the Gujarat Government and the Central Government respectively. This resulted in the filing of the present case.

The contention raised by the Madhya Pradesh Government:

To begin with for the recent poaching that occurred in Gir has stimulated a need for conservation of Lions in the country. They feel that the proposed relocation of Lions would prove beneficial in the long run as the new population of these species can only add to the long term security of the sub species and can no- way be harmful or counter- productive. The Government also feels that even though the Kuno sanctuary is inhabited by tigers both will be able to co-exist through a process called niche-sharing and niche-separation. At this juncture it was also pointed out by the Government that that the cultural and climatic surrounding of both Kuno and Gir sanctuary is pretty much similar and hence the Lions will not be vulnerable to new pathogens. Further a lot of

investments have already been made so as to implement the project and that the attitude shown by the Gujarat Government is just jeopardizing the whole plan of action.

The contention raised by the Gujarat Government:

To begin with the Gujarat Government feels that the present application has been filed so as to pressurize both the Central and State Governments. Moreover they also feel that the Kuno Wildlife Sanctuary already has a good Tiger population and that both tiger and lion cannot coexist in the same environment. They also argued that the cultural differences that exist in both the Sanctuaries will also have serious repercussions over the Lions as they will find it difficult to get acclimatized with the new surroundings. They also pointed out that there will be difficulty in transporting the Lions would amount to torturing them. The Gujarat Government also negated the contention raised by the Madhya Pradesh Government as according to them the Lions have developed immunity against the local pathogens. They also felt that action plan that has been conceived for the relocation process does not provide a scientific analysis or justification. A major project like interaction of a new carnivore in an area that is likely to cause impact on local food chain and ecology requires a detailed scientific study and analysis rather than merely finding which one of the three sites are more suitable. As for the contention raised by the Madhya Pradesh with regards to poaching the state government and the people of Gujarat have resolved to take all necessary steps to prevent poaching by professional poaching gangs from Madhya Pradesh. It is also learnt from various media reports that the population of tiger is reducing in Madhya Pradesh as per the surveys carried out by WII. Hence, one has to be cautious while shifting the lions to the Kuno sanctuary.

Current Status of the Case

Accordingly when the matter came up for hearing before the Supreme Court on the 6th of February 2008 the Supreme Court suggested that the National Wildlife Board hear matter and that both parties could present their contentions before the Board. The Board is in turn expected to share their observation with the Court in the month of April when the matter comes up for hearing again.

Also see: <http://asiatic-lion.blogspot.com/2007/11/lion-relocation-issue-in-supreme-court.html>;
<http://www.hindu.com/2007/11/01/stories/2007110161230700.htm>;

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Orders in the Godavarman Hearings in January 2008

4th January 2008

- I.A.NOS.828 WITH 833, 834-835, 837-838, 846-847, 893-894, 901-902, 903, 904, 1310-1310A in I.A.No.833 in I.A.No.828, 1329, 1330, 1331-1332, 1450-1452 in 1310, 2086 in 1329-1330 in 1310 (Regarding Monitoring Report of CEC regarding illegal mining in Aravalli Hills)

State of Rajasthan has filed Annual Progress Report 2006-07. The C.E.C. will file its response regarding the Report within a period of two weeks. All the matters relating to mining operation of both States of Haryana and Rajasthan be posted on 25.1.2008.

- I.A. NO. 1413,1414,1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 & 2133 in 1413 (CEC recommendations in their 2nd report on clearances granted by FAC in the matter dealing with constitution of FAC)

18 Temporary Licences were granted in the State of Goa and the licensees were doing mining activities. C.E.C. has examined the viability of the functioning of these mining activities and found that out of the 18 Temporary Licencees, 16 Licencees are working properly. C.E.C. has stated that subject to fulfillment of certain conditions, they can function. The learned counsel appearing for the said 16 Temporary Licence Holders submitted that the entire NPV amount demanded by the Authority has been paid by the licencees and the compensatory afforestation work is under way. Therefore, we permit the 16 Temporary Licence Holders to carry out the mining activities, subject to fulfillment of the following conditions:

(i)The NPV for the entire forest area included in the mining lease will be payable by the mining lease holders after deducting the amount of the NPV already paid;

(ii) The amount for carrying out Compensatory Afforestation in degraded forest land, twice the forest area included in the mining lease after excluding the forest area broken up prior to 1987 and broken thereafter with valid permissions, will be payable by the lease holders;

(iii)In respect of mines where mining has continued beyond 20.6.197 without obtaining the approval under the FC Act i.e. after the constitutional validity of the Goa, Daman and Diu Concession (Abolition & Declaration) Act, 1987 has been upheld by the Hon'ble High Court of Bombay, Panaji Bench in Writ Petition No.293 of 1989, penal Compensatory Afforestation charges are payable by the lease holders for carrying out mining during the period between 1987 and till the date on which the approvals under the FC Act were accorded. It is recommended that in such cases the lease holders may be asked to pay charges for penal Compensatory Afforestation over degraded forest land, twice the forest area included in the mining leases; and

(iv) a realistic and effective plan for reclamation and rehabilitation of mined area should be drawn up along with specific time limits for each prescribed activity and an effective monitoring mechanism should be put in place for this purpose. As regards the rest two Temporary Licence Holders T.C.No.63/51 C.F. Naik (TWP application by Rajesh Timblo) and T.C.No.67/52 of M/s. A.V.S. Velingkar, according to C.E.C. there are procedural lapses in granting the licences. These parties may reply to the Report of C.E.C. within a period of three weeks. Adjourned by four weeks. If any NPV remains to be paid, the same has to be deposited within a period of four weeks from the date of demand. The Forest Department, State of Goa has stated that there is no degraded forest land available for afforestation work and the State is finding it difficult to utilize the money received towards the Compensatory Afforestation. The C.E.C. has suggested that if the degraded forest land is not available, the money can be utilized for improving forests and also mangroves, National Parks and Wildlife Sanctuaries. State Government to file its response within a period of six weeks whether such activities could be carried out. List thereafter.

Third Report of C.E.C. in I.A.No.1413 & 1414 be listed after three weeks. I.A.NOS.1335, 1356, 1388 IN 989 in W.P.(C)NO.202/1995 Ministry of Coal and M/s. Aryan Coal Benefication (P) Ltd. shall file response to the C.E.C. report within a period of four weeks.

- I.A.NO.1349 IN 1246-1247, 1378-1380, 1446-1447 & 1502 (Recommendation of C.E.C. in I.A. 1246-47 (Dealing with land bank areas being utilized for mining)

The C.E.C. has pointed out that some of lands included in the land bank have been again being utilized for the mining activities contrary to the direction of this Court. The matter requires consideration. State as well as the Union of India has filed their affidavits. The matter be posted for hearing on 1.2.2008.

11th January 2008

- I.A.No.2143: (Report of the C.E.C. regarding the non-utilization of funds received towards the Net Present Value (NPV), Compensatory Afforestation etc. and the proposed mechanism for its utilization):

Taken on board.

Issue notice to MoEF returnable within four weeks.

- I.A.No.1784 in 703 (Regarding regularization of pre-1980 encroachments in Doyang Reserve Forests):

This matter relates to the regularization of pre-1980 encroachment in the Doyang Reserve Forest in the State of Assam. Learned counsel appearing for the State seeks permission to withdraw the application stating that a recent statute takes care of the situation. We express no opinion in that regard.

The application is dismissed as withdrawn.

- I.A.No.979 in I.A.Nos.443, 1204, 1245, 1357 & 2110 (Regarding Identification of forests in Uttar Pradesh)

These matters relate to the identification of the "forest like areas" in the various districts in the State of Uttar Pradesh. Now the guidelines have been issued as to how these areas are to be identified.

Learned senior counsel for the State of Uttar Pradesh submits that steps would be taken to identify "forest like areas" in all the districts in the State of Uttar Pradesh within a period of four months and such areas would be handed over to the Forest Department except the private areas, if any.

I.A.NOs.991, 1004, 1185, 1273, 1280, 1294, 1443, 1611, 2018 & 2073

Learned counsel for the State of Uttar Pradesh shall produce the Government of Uttar Pradesh Gazette Notification No. 766214Kha-20(243)-70 dated December 1970, within a period of three weeks.

The State may also file its reply, if any, within a period of three weeks.

List on 15.2.2008.

- I.A.No.1354 in 1154 (Regarding Construction of Road by the Army in Arunachal Pradesh):

The Army wanted to construct a road in the forest area in the State of Arunachal Pradesh. The proposal was examined by the C.E.C. . and C.E.C. . was of the view that initially the proposal was not feasible as it would cause more damage to the forest and ecological balance and the MoEF has suggested an alternative proposal and it was accepted by the Army. The C.E.C. . was also of the view that the Army would set up a task force for assessing damage to the forest.

Having regard to the facts and circumstances of the case, we hope that the Army will carry out the work without causing any damage to the forest area and also would do some afforestation work.

The application is disposed of accordingly.

- I.A.Nos.1358 in I.A.No.992 (Regarding setting up of a saw mill on private property in Assam):

Mr.Komor Uddin Ahmed, wanted to set up a saw-mill in his private property on the ground that he has got 7 acres of land in Dhubri District in Assam and the trees forming his 7 acres of land would be sufficient to meet the requirements of the saw-mill which he proposed to start in his property. The matter was examined by C.E.C. It may be recalled that as there was a large scale felling of trees in these areas, the saw mills in these parts of Assam were allowed to be located in the industrial area so that there may not be any illegal transport of timber. Under the above circumstances, it is not feasible to allow an individual to start a separate saw-mill in his private property. Moreover the timber which may be produced in his 7 acres of land may not be sufficient to sustain the saw-mill and it is likely that there would be some illegal supply of timber to this saw-mill. Hence, permission is declined and the application is rejected.

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