FOREST CASE UPDATE

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CONTENTS

1. Extracts of the Judgment of the Godavarman Bench on Ban of Mining in the Aravalli Hills

2. Extracts of the Order of the Central Information Commission on CEC as a Public Authority

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Extracts of the Judgment of the Godavarman Bench Related to the Ban on Mining in the Aravalli Hills

On 8th May 2009 the forest bench of the Supreme Court pronounced its judgement on the critical issue of mining in the Aravalli ranges in the state of Haryana. Presented below are extracts from this judgment. For full text please visit www.forestcaseindia.org

[I.A. No. 1967 in I.A. No. 1785 IN Writ Petition (C) No. 4677 of 1985 *with* I.A. No. 1785, I.A. No. 2152 in I.A. No. 1785, I.A. Nos. 1962 & 2143 in I.A. No. 1785, I.A. No. 2186 in I.A. No. 1785, I.A. No. 2168 in I.A. No.1785 and I.A. No. 2385 in I.A. No. 1785. *with* I.A. No. 1465 and I.A. Nos. 2426-2427 IN Writ Petition (C) No. 202 of 1995]

Judgment

Has the situation (optimization of land and ecological degradation in an area admeasuring approximately 448 sq. kms. in the Aravalli Hill Range falling in the Districts of Faridabad and Gurgaon including Mewat) predicted in para 89 of the Judgment in M.C. Mehta1 case come about so as to warrant total stoppage of mining activity as stated in para 96(6) of the said judgment; and if so, what should be the duration of such ban/stoppage?

4. The question to be answered at the outset is why did this Court impose a complete ban on mining in the Aravalli range falling in the State of Haryana which broadly falls in District Gurgaon and District Faridabad including Mewat? The statistical data placed before this Court indicated that, in October, 2002, twenty six mines were inspected which indicated wide scale

non-compliance of statutory Rules and Regulations applicable to mines. Broadly stated, most of these mines failed to obtain environmental clearances. Most of these mines failed to submit environmental management plan. In some cases, the status of mining indicated below groundwater table. Mining pits were turned into huge groundwater lakes. No efforts were made to create plantation. Broadly, these were silica sand mines. In some cases, even groundwater stood extracted. Deep mining pits with large water bodies were detected. Huge amounts of overburden were also seen in the area. These are some of the defects which were highlighted by EPCA in various Reports as far back as October, 2002. These non-compliances have also been highlighted with the names of the mines meticulously in para 18 of the judgment in the case of M.C. Mehta (supra). It is important to note that by Notification dated 7.5.1992 issued by MoEF under Section 3(2)(v) of the Environment (Protection) Act, 1986 ("EP Act" for short), as amended, all new mining operations including renewal leases stood banned. The Notification further laid down the procedure for taking prior permissionbefore undertaking mining activity. At this stage it may be noted that by Notification dated 27.1.1994 as amended on 4.5.1994 issued by MoEF under Section 3(2) of the EP Act, 1986 read with Rule 6, Environment Impact Assessment ("EIA") before commencement of any mining operation became mandatory. Therefore, by Order dated 29/30.10.2002, when this Court found large scale mining without Approved Plans, it decided to ban all mining activities in the Aravalli Range.

II. Fall out of the Order dated 29/30.10.2002:

5. After Order dated 29/30.10.2002, I.As. were moved saying that applications have been filed for EIA and for approval of plans and it is at this stage that this Court ordered that no mining activity could be carried out without remedial measures being taken and for that purpose, it was necessary that EIA had to be done before any mining activity could be permitted. (see 2004 (12) SCC 118 at p.185).

6. At this stage, one event needs to be highlighted. The powers vested in the Central Government in terms of Notification dated 7.5.1992 were delegated to State Government concerned, namely, Rajasthan and Haryana, vide Notification dated 29.11.1999. But the delegation in favour of the State stood withdrawn when it was found that most of the mines in the State were operating in violation of Approved Plans. In most cases, mining operations were carried out unscientifically with the sole aim of maximizing profits which resulted in indiscriminate scattering of the overburden, wasteful manner of mining with complete disregard to mineral conservation aspect, rendering reclamation of mined area impossible. This Court further found that mining leases were granted by the State in areas where plantations were undertaken with the financial assistance provided by international donor agencies. That, mining was permitted in a manner which was destroying the groundwater table as also causing irreparable damage to the critical groundwater reserves. That, there was no effective mechanism to ensure compliance of various conditions stipulated while giving approvals and, lastly, no deterrent action was taken against mines for serious violations and non-compliance of conditions were found.

III. Consequences of Continuous Violation of the Rules:

7. As stated above, Notification dated 7.5.1992 was passed with a view to strictly implement the measures to protect the ecology of the Aravallis range. It was followed more in its breach. The Aravallis, the most distinctive and ancient mountain chain of Peninsular India,

mark the site of one of the oldest geological formations in the world. Due to its geological location, desertification is stopped and it prevents expansion of the desert into Delhi.

On account of extensive mining on a disproportionate scale without taking remedial measures has resulted irreversible changes in the environment at Aravalli. It is in the aforestated background that any mining activity came to be banned under Order dated 29/30.10.2002. Even as far back as 2002, the environmental problems in the Aravalli range in Gurgaon district came to be identified. Remedial measures including pollution control guidelines and action plan for various stakeholders came to be suggested by CMPDI.

Though guidelines for mining operations came to be issued by the State Government, the compliance was not there. Moreover, there was no mechanism to upgrade the mining technologies to minimize the impact due to mining in the eco-sensitive zones. CMPDI also noticed that in the Aravalli Hills a large number of activities, operations of stone crushers and deforestation had caused environmental degradation even in 2002 which is clear from para 63 of the above judgment in M.C. Mehta case (supra) and the tragedy is that despite all warnings, the mines continued their operations without Environment Management Plan. That, right from 18.3.2004, when this Court pronounced the judgment in M.C. Mehta case (supra), till date, number of Reports came to be submitted as the Court tried to balance mining activity on one hand with protection of environment on the other hand. In fact, in para 57 of the said judgment, this Court stated that so long as it is possible to undertake mining operations on the sustainable development principle, the Court should not impose complete ban on mining as it generates revenue for the State. However, vide para 89, a warning was given that if despite imposition of stringent conditions, the degradation of environment continuous and reaches a stage of no-return, then this Court may have to consider at a later date the closure of mining activity. This prediction has come true. The consequence is that the State now has decided to close the mining activity. Para 89 is also important from another angle.

The judgment in M.C. Mehta case (supra) has left it to this Court to consider at a later date the closure of mining activity. Even in para 96(6), this Court observed that mining activity can be permitted only on the basis of sustainable development and on compliance with stringent conditions as the Aravalli Hill Range has to be protected at any cost and in case despite stringent conditions, mining results in an irreversible consequence on the ecology in the said area then at a later date the total stoppage of mining activity may have to be considered. In other words, in the judgment of this Court in M.C. Mehta case (supra) decided on 18.3.2004, a window was left open for this Court to impose complete ban on mining operations if emergent situation arises.

The decision to ban/suspend mining in the above area has been taken by State of Haryana (see Minutes of the Meeting dated 7.1.2009 annexed as Exhibit R/4 to the Second Report dated 15.1.2009 of CEC). In the said meeting held on 7.1.2009, a consensus has been reached between CEC and the State of Haryana to declare the entire Aravalli Hill Range falling in the Districts of Faridabad and Gurgaon including Mewat as a "Prohibited Zone" so far as mining of major mineral is concerned. The decision of State of Haryana is also supported by MoEF, as submitted by Shri Parag Tripathi, learned Additional Solicitor General.

IV. Breach of Relevant Rules and Consequences thereof:

(d) Breaches:

11. As stated above, as far back as 18.3.2004 this Court noticed that in large number of cases no requisite clearances for mining operations were obtained. No environmental management plan was prepared. In some cases, mining perations were carried out below groundwater table. Groundwater was even extracted without obtaining clearances [see M.C. Mehta's case (supra)] The paradox is that there is no dearth of enactments, the problem lies in non-compliance and as a result mining on extensive scale without Approved Plans and without taking remedial measures has led to land and ecological degradation. At this stage, one point needs to be highlighted. Over the years, the focus was on individual mining leases. Over the years,this Court tried to balance mining operations vis-a-vis environmental protection. Even after noticing non-compliance of above Rules as far back as 2004, this Court, after sounding a warning to the existing mines to comply with the Rules, did not suggest a complete ban on mining operations so long as it was possible to undertake such operations on the principles of sustainable development. **However, the position did not improve. The position worsened. In the circumstances, the Court has now decided not to focus only on individual sites but to take a macro view of the matter, particularly while deciding the question of suspending mining operations.**

The Court is required to take a holistic view. It is important to note that most of the Applicants who are seeking to mine today in the virgin areas have mined out areas in the past without taking remedial measures. They have abandoned the sites after mining without rehabilitation of the degraded lands and the consequence is devastation.

The result is that mining operations have been carried out on a disproportionate scale in the Aravalli Hill mainly in Gurgaon and Faridabad including Mewat in the State of Haryana. The satellite images indicate the devastation caused to the area by the extensive mining operations.

Extraordinary situation demands extraordinary remedies. In the circumstances, we are of the view that mining operations should be immediately suspended in the above Area.

V. Net Effect of Orders passed by this Court earlier on 6.5.20022, 29/30.10.20023; 16.12.20024, 13.4.20065 and Judgment dated 18.3.20046 in M.C. Mehta's case:

15. It is true that, complete ban was imposed on mining Aravalli hills vide Order dated 29/30.10.2002, which came to be modified by Order dated 16.12.2002 and it is equally true that, vide judgment in M.C. Mehta case (supra), this Court observed that it was not suggesting a complete ban on mining operations so long as it is possible to undertake mining operations on the sustainable development principle (see para 57). At the same time, in paras 89 and 96(6) of the judgment dated 18.3.2004 this Court specifically suggested that if degradation of environment continues and reaches the stage of no return, this Court may consider closure of mining activities. In other words, a gateway was provided for this Court to impose the ban in future if degradation of environment becomes irreversible.

VI. Contentions and Answers thereto:

18. On the legal parameters, Shri Diwan and Shri Venugopal, learned senior counsel and Shri S.K. Dubey, learned counsel, submitted that where law requires a particular thing to be done in a particular manner, it must be done in that manner and other methods are strictly forbidden. In this connection, it was urged that when Section 4A postulates formation of an opinion by the Central Government, after consultation of the State Government, in the matter of cancellation of mining leases in cases of environmental degradation, the power needs to be exercised by the State Government upon receipt of request from the Central Government.

According to the learned counsel, therefore, this Court cannot cancel the mining leases if there is alleged environmental degradation as submitted by the learned amicus curiae. It was further submitted that measures under Section 3(2)(v) of EP Act, 1986 to restrict areas in which industries shall or shall not be carried out can only be undertaken by the Central Government where it deems expedient to protect and improve the quality of environment.

In fact, according to the learned counsel, when Aravalli's Notification wasissued on 7.5.1992 it was issued under Section 3(2)(v) by the Central Government. At that time, the Central Government thought it fit not to place a complete ban but to permit the industries in the mining sector to carry on its business/operations subject to restrictions enumerated in the said Notification. It was lastly submitted that the recommendations of CEC to impose complete ban on mining, particularly in cases where environmental clearances are obtained would amount to an exercise of power outside the 1957 Act and the Rules framed thereunder. That, this Court cannot exercise powers under Article 142 of the Constitution when specific provisions are made under various Forest and Environmental laws dealing with the manner and procedure for cancellation/termination of mining leases.

19. We find no merit in the above arguments. As stated above, in the past when mining leases were granted, requisite clearances for carrying out mining operations were not obtained which have resulted in land and environmental degradation. Despite such breaches, approvals had been granted for subsequent slots because in the past the Authorities have not taken into account the macro effect of such wide scale land and environmental degradation caused by absence of remedial measures (including rehabilitation plan). Time has now come, therefore, to suspend mining in the above Area till statutory provisions for restoration and reclamation are duly complied with, particularly in cases where pits/quarries have been left abandoned. Environment and ecology are national assets.

They are subject to inter-generational equity. Time has now come to suspend all mining in the above Area on Sustainable Development Principle which is part of Articles 21, 48A and 51A(g) of the Constitution of India. In fact, these Articles have been extensively discussed in the judgment in M.C. Mehta's case (supra) which keeps the option of imposing a ban in future open. Mining within the Principle of Sustainable Development comes within the concept of "balancing" whereas mining beyond the Principle of Sustainable Development comes within the concept of "banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of Precautionary Principle.

Conclusion:

21. None of the above provisions have been complied with. In the circumstance, by the present order, **we hereby suspend all mining operations in the Aravalli Hill Range falling**

in the State of Haryana within the area of approximately 448 sq. kms. in the Districts of Faridabad and Gurgaon including Mewat till Reclamation Plan duly certified by State of Haryana, MoEF and CEC is prepared in accordance with the above statutory provisions contained in various enactments enumerated above as well as in terms of the Rules framed thereunder and the Guidelines. The said Plan shall state what steps are needed to be taken to rehabilitate (including reclamation) follow ed by Status Reports on steps taken by the Authorities pursuant to the said Plan.

22. **The question still remains as to whether we should grant permission to the State of Haryana to excavate minor minerals from a localized area of 600 hectares out of 448 sq. kms. (approx.) for purposes of excavating construction material which is needed for construction of houses, sports complexes and other buildings.** In this connection, we may state that on this part the hearing will take place after the summer vacation. Accordingly, I.A. No. 1967 in I.A. No. 1785, I.A. No. 2186 in I.A. No. 1785 in Writ Petition (C) No. 4677/85 and I.A. No. 1465 in Writ Petition (C) No. 202/95 and other I.As., which have opposed imposition of ban on mining of major minerals stand disposed of. The I.As. which deal with mining of minor minerals are adjourned beyond summer vacation.

See also: http://www.thaindian.com/newsportal/enviornment/green-activists-welcome-extension-of-ban-on-aravalli-mining-lead_100190062.html; http://www.indianexpress.com/storyOld.php?storyId=13432; http://www.hindu.com/2009/05/09/stories/2009050957320100.htm

Extracts of the Order of the Central Information Commission on CEC as Public Authority, 12th March 2009

In Issue 47 of the Forest Case Update in August 2008, we had reported the decision of the Central Empowered Committee (CEC) related to the illegal construction of Hansi-Butana Canal through Saraswati Wildlife Sanctuary, Haryana. The order of the Central Information Commission (CIC) below is reference to this particular case, but more relevant in the light that the Central Empowered Committee of the Supreme Court is a public authority, before which RTI applications can be filed.

CIC/AD/C/2009/000137

Dated March 12, 2009

Background

1. The Applicant filed an RTI request on 14.10.2008 with the CPIO, Central Empowered Committee [hereinafter referred to as 'the CEC'], constituted under the orders of the Hon'ble Supreme Court of India. He requested for various information about the violation of the Wildlife Preservation Act, 1972; Forest Conservation Act, 1980; Supreme Court orders; action taken against violations, certified copies of the Statute/Act which empower the CEC to exempt offenders who had admittedly violated the provisions of the Wildlife Preservation Act,

1972 as well as the Forest Conservation Act, 1980 and those who had expressly infringed the Supreme Court orders on various occasions, despite clear observation by the CEC itself in its order dated 10.07.2008.

2. The Applicant filed an Appeal dated 26.12.2008 with the Central Information Commission on not receiving any reply from the CPIO. While referring to his RTI request, the Applicant, in his Appeal before the Commission, alleged that the CEC was established by a notification of the Central Government, in view of the orders of the Hon'ble Supreme Court and is being totally financed by the Central Government and hence it is a Public Authority as defined under Section 2(h) of the RTI Act 2005. However, despite being a Public Authority as defined in the RTI Act 2005, the CEC has not appointed any CPIO or First Appellate Authority as is mandatory for every Public Authority and has not complied with Sections 4(1) (b) (xvi) and 5(1) of the RTI Act 2005. The Appellant in his appeal made a three fold prayer before the Commission seeking information from the CEC as per his RTI request, seeking direction of the Commission for the appointment of CPIO and also appropriate action under Section 20 of the RTI Act 2005 against persons responsible for denial of information.

Decision

9. In the light of the foregoing submissions of both the parties, it would be pertinent to refer to the provisions of Section 2(h) of the RTI Act, which defines a "Public Authority" as under:

"2(h) "public authority" means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed ,directly or

indirectly by funds provided by the appropriate Government;"

10. The term "Public Authority" as defined u/s 2(h) of the Right to Information Act, 2005 therefore, means any authority or body or Institution established or constituted by or under the Constitution. The Supreme Court of India is an Institution created under provisions of the Article 124 of the Constitution and is, therefore, a Public Authority within the meaning of Section 2(h) of the Right to Information Act. Hence, any body or authority created under

orders of a Public Authority; in this case, the Supreme Court of India, is also a Public Authority.

The CEC being constituted by the Hon'ble Supreme Court by order dated 09.05.2002 and 09.09.2002 and formally constituted vide a notification dated 17.09.02 issued by the Ministry of Environment & Forests under sub-section (3) of Section 3 of the Environment Protection Act, 1986 is by all means a Public Authority as defined under provisions of the RTI Act, 2005. The foregoing discussion thus decides the First Issue and it is evident that the CEC being a body created and accountable to a Public Authority as also being wholly financed by a Public Authority, owes its origin and existence to a Public Authority viz the Supreme Court of India and is beyond doubt in itself also a Public Authority.

the Commission is of the opinion that the CEC, in the capacity of a Public Authority, not being above law, is bound by the law of the land like all other Public Authorities. Accordingly, the Respondent in the capacity of a Public Authority must comply with the provisions of the RTI Act 2005. Hence the Respondent is directed to forthwith appoint a CPIO and a First Appellate Authority and take all necessary measures to comply with the Sections 4 (1), 4(2) & 5(1) of the RTI Act 2005. A report of compliance shall be sent by the Respondent to the Commission indicating the compliance of the Sections 4 (1), 4(2) & 5(1) of the RTI Act 2005, within a month from the receipt of this order.

Following the hearing on 8th May 2009 where the orders related to the Aravalli Mining and other cases were issued, the Supreme Court of India has been on vacation. This is one of the reasons we don't have any further orders or details to report for this period. Once the court reopens we will continue to send out flash news and updates on a regular basis.

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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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