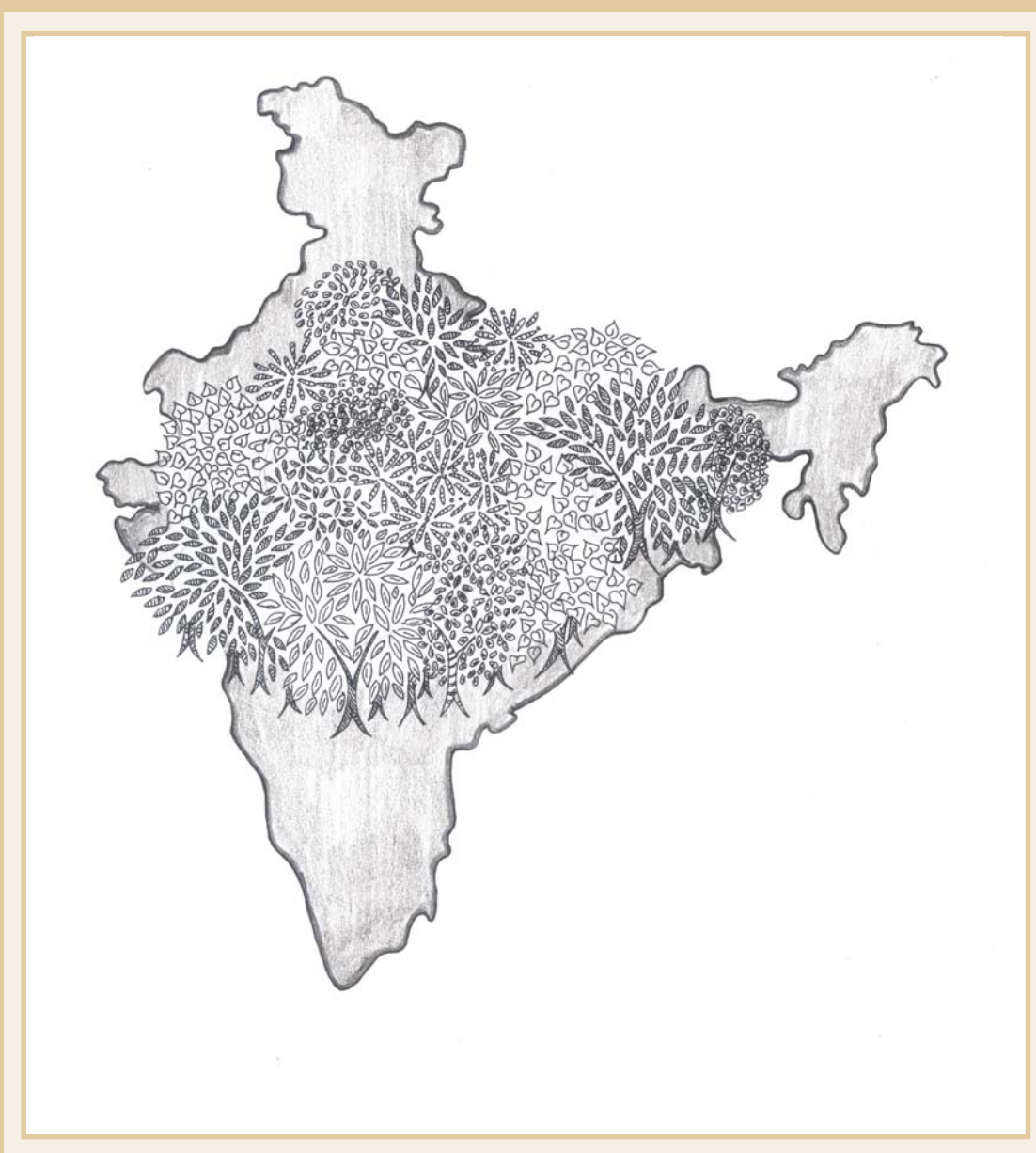




INDIA'S FORESTS AND THE JUDICIARY



THE GODAVARMAN STORY

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for a living planet®



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Note: *The map of India is not to scale and does not depict true boundaries and coast lines.*

Acknowledgements

The longest ever case on forestry with myriad of issues impacting governments, individuals, industry, state agencies, non governments, vulnerable and rich, associations and communities with so many significant orders changing the policy and legal discourse of Indian forestry can only be, at the most understood in parts, let alone written and analysed. Therefore this is a heroic and almost adventurous attempt to understand the Godavarman case in its entirety to see if there are emerging trends and patterns in judicial thinking. Understanding reams of legal documents, especially affidavits, Court orders, bad prints in any case has never been an easy task. Substantive legal analysis with precision therefore requires a team effort where so many people put in their bit although the primary authors take the credit. So let me begin by saying that although Shilpa, Archana and I are seen as principal authors of this effort, I would like to acknowledge our entire team at Enviro Legal Defence Firm including some who have left for greener pastures. Mohd Shawahiq Siddiqui, Amruta Sane, to name a few. ELDF interns have also put in their effort in putting this whole effort together. Saumya Tandon of Delhi University, Faculty of Law deserves special mention.

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Sanjay Upadhyay

Advocate, Supreme Court of India and
Managing Partner
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List of Acronyms

A.P.	Arunachal Pradesh
AAG	Assistant Advocate General
AC	Amicus Curiae
ACF	Assistant Conservator of Forest
AD	Allain Duhangan
ADIR	Additional Director
Adv.	Advocate
AIR	All India Reporter
ALT	Andhra Law Times
Anr.	Another
AOI	Area of Interest
ASG	Additional Solicitor General
ATR	Action Taken Report
B.S.N.L.	Bharat Sanchar Nigam Limited
BALCO	Bharat Aluminium Company
BMC	Bombay Municipal Corporation
CA	Civil Appeal
CAD	Computer Aided Designing
CAF	Compensatory Afforestation Fund
CAG Act	Comptroller and Auditor-General (Duties, Powers and Conditions of Service) Act
CAMPA	Compensatory Afforestation Fund Management and Planning Agency
CBI	Central Bureau of Investigation
CCF	Chief Conservator of Forest
CEC	Central Empowered Committee
CEL	Centre for Environmental Law
CEO	Chief Executive Officer
CHR	Cardamon Hill Reserve
CONMT.PET	Contempt Petition
CPWD	Central Public Works Department
CR	Confidential Report
CS	Chief Secretary
Cu.m	Cubic Meter
CVM	Contingent Value Method
CWP	Civil Writ Petition
DCSS	Digital Conferencing and Switching System
DDA	Delhi Development Authority
DFO	District Forest Officer

DGFA	Directorate General for Fiscal Audits
DGS & D	Directorate General of Supplies and Disposals
DIG	Deputy Inspector General
DM	District Magistrate
DUV	Direct Use Values
EC	Empowered Committee
EPA	Environment (Protection) Act
EPCA	Environment Pollution Control Authority
FCA	Forest Conservation Act
FDR	Fixed Deposit Receipt
FIMI	Foundation of Indian Minerals Industries
FIR	First Information Report
FSI	Forest Survey of India
GIS	Geographical Information System
GPS	Global Positioning System
GRIDCO	Grid Corporation of Orissa
ha	Hectares
HP	Horsepower
HPC	High Powered Committee
I.A.	Interim Application
IAS	Indian Administrative Service
ICFR&E	Indian Council for Forestry Research and Education
ICSSR	Indian Council of Social Sciences Research
IFS	Indian Forest Service
IG	Inspector General
IGF & SS	Inspector General of Forests and Special Secretary
IGP	Inspector General of Police
IIT	Indian Institute of Technology
IRS	Indian Remote Sensing Satellite
IUV	Indirect Use Values
J&K FCA	Jammu and Kashmir Forest Conservation Act
JSW	Jindal Steel Works
KIOCL	Kudremukh Iron Ore Company Limited
Kms	Kilometers
KPCL	Karnataka Power Corporation Limited
KV	Kilovolt
Ld.	Learned
LILO	Linux Loader
LISS	Linear Imaging Self Scanning Sensor
Ltd.	Limited
M.P.	Madhya Pradesh
MBD	Malhotra Book Depot

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

MD	Managing Director
MDSFC	Managing Director State Forest Corporation
MFP	Minor Forest Produce
MMRD	Mines and Minerals (Regulation and Development) Act
MoEF	Ministry of Environment and Forests
MOF	Ministry of Finance
M/s	Messrs
mt	Meters
MW	Megawatt
NBWL	National Board of Wildlife
NCT	National Capital Territory
NE	North East
NEC	North East Council
NHPC	National Hydroelectric Power Corporation
NMDC	National Mineral Development Corporation
NOC	No Objection Certificate
NP	National Park
NPV	Net Present Value
NRSA	National Remote Sensing Agency
NTFP	Non Timber Forest Products
NUV	Non Use Value
OCP	Open Cast Project
OFC	Optical Fibre Cable
OFDC	Orissa Forest Development Corporation
OMCL	Orissa Mining Corporation Limited
Ors.	Others
OV	Optional Value
PA	Protected Area
PCCF	Principal Chief Conservator of Forest
PGCIL	Power Grid Corporation of India Limited
PIL	Public Interest Litigation
PMGSY	Pradhan Mantri Gram Sadak Yojana
PSU	Public Sector Undertaking
PTR	Panna Tiger Reserve
PWD	Public Works Department
QPR	Quarterly Progress Report
R&D	Research and Development
R&R	Resettlement & Rehabilitation
RFO	Regional Forest Officer
ROI	Return on Investment
RRSSC	Regional Remote Sensing Service Centre
SBCA	Social Benefit Cost Analysis
SBM	Single Buoy Mooring

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Report
SECL	South Eastern Coalfields Limited
SHO	Station House Officer
SIIL	Sterlite Industries (India) Limited
SIT	Special Investigation Team
SIV	South India Viscose
SLP	Special Leave Petition
SPV	Special Purpose Vehicle
SRO	State Revenue Office
TANTEA	Tamil Nadu Tea Plantation Corporation Limited
TD	Timber Distribution
TDB	Travancore Devaswom Board
TEV	Total Economic Value
TWP	Temporary Working Permissions
U.P.	Uttar Pradesh
UOI	Union of India
USA	United States of America
UV	Use Values
WLPA	Wildlife Protection Act
WS	Wildlife Sanctuary

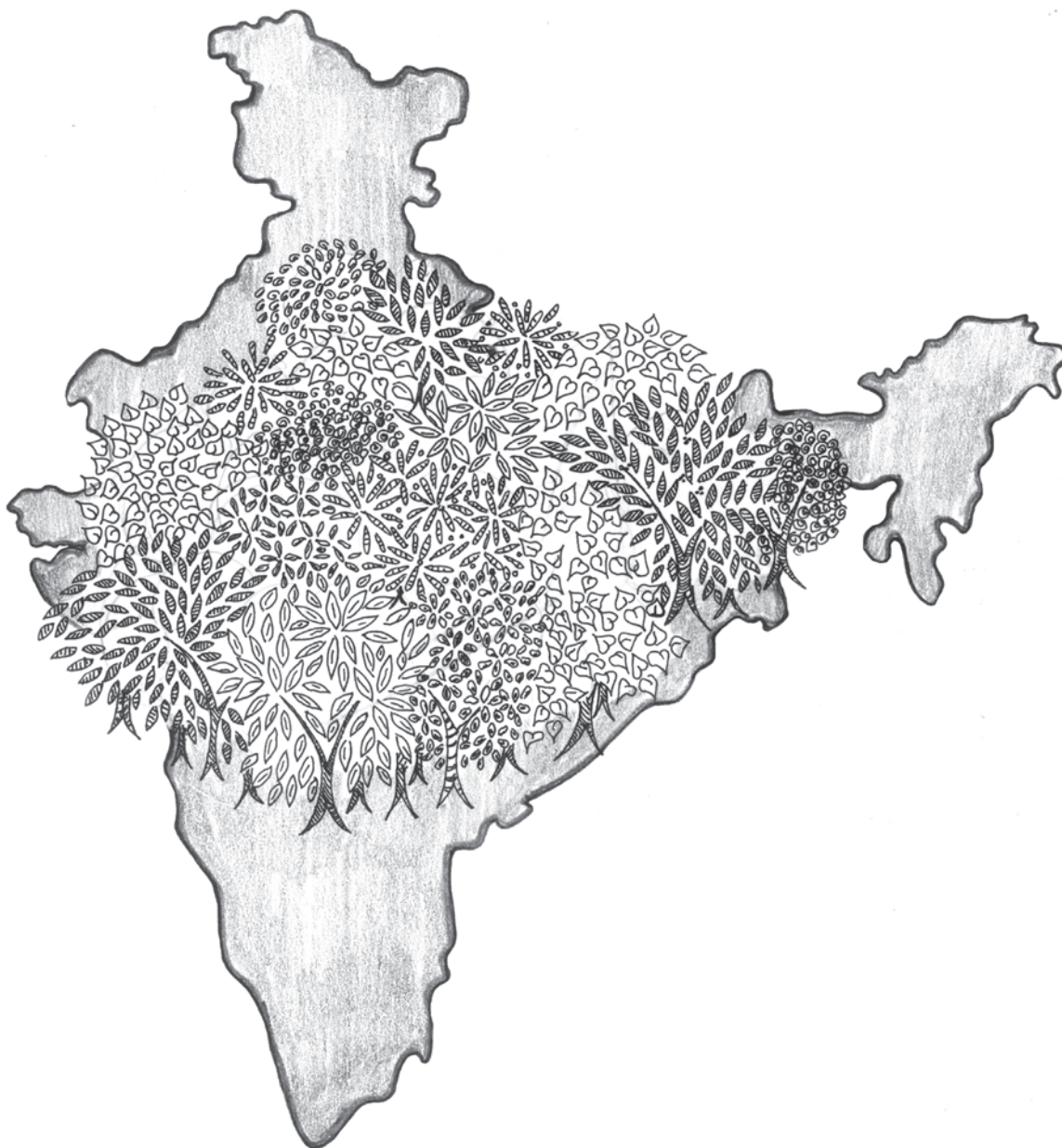


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Executive Summary

The term 'judicial activism' is explained in Black's Law Dictionary as, "Judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restraint expected of appellate Judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters." The Godavarman case is perhaps the most apt description of 'judicial activism' and is an attempt to define and redefine principles relating to conservation and protection of forests in the country. Over a period of time, the Apex Court has not only adjudicated on issues that were brought before them, but have also attempted to expand the scope of the petitions as well. This judicial activism has impacted the policy framework both at the National and the State level. It is thus, considered important to document, study and analyze the impact of these judicial pronouncements and interventions on forestry practices and wildlife management.

The genesis of Godavarman case is to a Civil Writ Petition titled T N Godavarman Thirumulpad Vs. Union of India and Others (W.P. (C) No. 202/1995) which was filed in 1995. This case was initially instituted to address timber felling in the Nilgiri range of Tamil Nadu. But subsequently, its scope has expanded manifold. The most significant order dated 12.12.1996 defined 'forest' for the first time wherein it explained that the word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of the Forest Conservation Act. The Court further explained the term 'forest land', and stated that the word forest land occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. It reiterated that prior approval of the Central Government is required for any non forest activity within the area of any forest in view of the new definition of forest. In accordance with section 2 of the Act, all ongoing activity within any forest in any State throughout the country, also needs prior approval of the Central Government. This historic definition brought in all the notified and recorded forest under the purview of not only the FCA but also under the scrutiny of the Supreme Court. Another significant aspect of the said order is the legal sanctity given to working plans. It was expressed in clear terms that the felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government.

Over the last thirteen years the Apex Court has followed the strategy of continuous mandamus and evolved several innovative methods to deal with the magnitude of the case. These include appointment of Amicus Curiae, expert committees of various nature including inquisitorial, fact finding and quasi-judicial. Several State level expert committees have been appointed on specific cases and other strategies include filing of bi-monthly Action Taken Reports (ATR), imposition of costs and contempt proceedings against erring officials. The most important strategy was the formation of Central Empowered Committee (CEC) in 2002 for monitoring the implementation of Apex Court's orders. It is perhaps the first of its kind where the Supreme Court has delegated its power to a non statutory body to perform part of their own functions.

One of the challenges faced by the Court is the enforcement of the existing statutory framework prescribed for the protection and conservation of forest resources. This includes the enforcement of the Forest Conservation Act on one hand and balancing commercial interests with ecological concerns on the other hand keeping in mind principles of sustainable development which is now a Constitutional requirement. This has led to development of

concept of Net Present Value (NPV) in the context of use of forest land for non forestry activity. The calculation of NPV is on economic terms and is payable at the time of diversion of forest land for non forest activity in addition to Compensatory Afforestation which is mandated under the Forest Conservation Act. The issue of non utilization of monies collected by States for compensatory afforestation received the attention of the Apex Court which first led to formation of Compensatory Afforestation Fund and then formation of an authority to manage the fund known as Compensatory Afforestation Fund Management and Planning Authority in 2004.

Several other issues have been the focus of the Apex Court which include were illegal timber extraction, issuance of transit passes, encroachment, buffer area, investigation into tiger poaching, temporary working permits, mining etc. Another related issue was the exploitation of the forests due to the forest based industries such as saw mills, veneer mills and plywood mills. The Court has directed that all unlicensed wood based industries be closed all over the country and it also made it clear that the CEC's permission shall be required for opening of a new wood based industry all over the country.

Another significant intervention by Apex Court was on constitution of Forest Advisory Committee (FAC) constituted under Forest Conservation Rules, 2004. **These rules are stayed by the Apex Court as there is tussle between the Court and MoEF on its constitution.** The Court realizing that approval under Forest Conservation Act cannot be stalled on account of the dispute on constitution of FAC evolved a process for grant of approval for diversion of forest land.

Apart from the national implications of this case the Apex Court has focused on site specific State contexts also. The Supreme Court has applied differential parameters in State contexts which provides lessons for comparisons but can also assist decision makers to understand different contexts and the necessity of applying different parameters to solve complex ecological, social and economic situations while preserving the rich ecological heritage of this country and ensuring improved livelihoods to forest dependent communities. Interestingly, the Godavarman case and the scrutiny of non forest use has also linked it to the other equally complicated Protected Area case filed by Centre for Environmental Law, WWF-India on conserving wildlife and Protected Areas. The use of forest areas for non forest purposes and diversion of such ecologically sensitive areas has prompted the Court to come up with several parameters including distance, science, vulnerability, international commitments and social and economic concerns for allowing or disallowing the diversion or non forestry purpose. This monograph is an attempt to analyse every order and its implications in the State and over all national context to bring out not only the complexity of forest conservation in the country but also highlight the strategies adopted by Courts and at the same time raise the larger concern of judicial overreach on executive domain.

Introduction and Rationale

The role of judiciary is an inseparable part of any legal discourse and forestry and wildlife are no exception to that. How the higher judiciary of a nation, especially the Apex Court adjudicates on issues pertaining to forestry and wildlife and the constant definition and redefinition of law by the judiciary on the subject matter, is of immense significance.

In India, the judicial intervention in forestry sector can be traced to early fifties. Here, a clear difference in the pattern of issues brought before the Courts and their resolution can be seen - prior and subsequent to the enactment of the Forest Conservation Act, 1980 (FCA). While prior to the FCA, the primary focus of judicial intervention was on commercial usage and derivation of economic benefits from forest resources¹, subsequently the commencement of the FCA led to a significant shift in focus of different State Governments and the forest bureaucracy to conservation of forest². Over a period of time, the Courts have not only demonstrated to adjudicate on those issues that were brought before them, but have also attempted to expand the scope of the petitions as well. The judicial activism has also impacted the policy framework both at the national and the State level. The Apex Court's orders and judgments on various cases relating to forestry and wildlife have not only infused a fresh perspective to the sector but have also resulted in refinement and development of forestry practices and principles.

The Godavarman Case³ since 1995, the Centre for Environment Law –WWF-India case⁴ also instituted in 1995 and the Navin Raheja case⁵ since 1998, ongoing before the Apex Court with over few thousand applications of intervention from various stakeholders are the three most prominent examples of judicial activism in the sphere of forests and wildlife. The Apex Court has, in the above mentioned three cases, dealt with an array of issues, such as, definition of forest and forest produce, transit of forest produces, use of forest land and encroachments, mining in forest areas, diversion of forestland for non forestry purposes, settlement of rights of people in and around PAs, depleting tiger population in the country and management of zoos, to name a few. The judicial activism in this sector has further resulted in creation of unique institutions for dispute resolution. In this regard the role of Central Empowered Committee (CEC) constituted in pursuance of an Apex Court order in the on going Godavarman Case has added a whole new dimension to forestry jurisprudence and hence merits a closer look.

It is, important to document, study and analyze the impact of these judicial pronouncements and interventions on forestry practices and wildlife management as judicial precedents often set the tone for policy and law making within both the State and National context.

It is important at this juncture to have a brief look at these three landmark cases and their status as till now. It may throw light on the future course of intervention and also serve as a ready reckoner for persons interested in forest and wildlife laws in India.

¹ These include definition of forest produce, lease of forestland for non-forest purpose, transit of forest produce among others.

² See for example, AIR 1994 SC 2218, (1996) 10 SCC 397

³ T N Godavarman Vs Union of Indian W.P.(C) 202 of 1995

⁴ CEL WWF-India Vs Union of Indian and Others W.P.(C) 337 of 1995

⁵ W.P.(C) No(s). 47 of 1998

The Godavarman Case: Refining and redefining forestry in India

The Godavarman case represents the single biggest judicial intervention in administration of forest in the country. This case was initially instituted to address timber felling in the Nilgiri range of Tamil Nadu. But subsequently, when several cases of similar nature were brought before the Court, they were tagged with the Godavarman case⁶. With time the array of parties multiplied as numerous interventions of affected parties were filed in this case. Judicial activism has been at its zenith in dealing with these numerous contentions from various forest stakeholders. It is estimated that since 1995, when the case was initiated, a couple of thousand Interlocutory Applications or Intervention Applications have been filed representing different interest groups from different States, different sectors, non government organizations, industrial sectors, traders, political interest, social activists, environmentalists, forest dwellers.....the list is endless. The Supreme Court, in this case, has innovatively utilized several methods of resolving the conflicts presented before it which have a bearing on the entire country. In its numerous orders, the attempt to define 'Forest' and 'Forest land', the appointment of various committees and commissions, reliance on experts' opinion on technical issues beyond the competence of the judiciary, the creative use of *Amicus Curiae* are several such methods which the Court has utilized in the interest of justice. The case has emerged as the largest judicial forum on all aspects of forest management including definition of forest, working plans, saw mills, dams, mining, infrastructure projects, use of forest land, encroachment, across the country and is not limited to any specific location or State. The case has also resulted in creation of new structures for example the National Level Committee on Forestry popularly known as the Central Empowered Committee (CEC) which has been created under the Environment Protection Act⁷.

From specific orders to general guidelines that are to be followed for forest conservation, the Judiciary has creatively used all for addressing conflicts related to forests. Thus, to understand forestry and its various aspects in India, it is imperative to closely study this case.

⁶ See order dated 22.07.1996. In W. P. (C) 202 of 1995 where another case titled Environmental Awareness Forum Vs State of J&K W. P.(C) 171 of 1996 was tagged with the Godavarman Case (Unreported order)

⁷ See order dated 09.05.2002 in W.P.(C) 202 of 1995

Chapter I

The Godavarman Story

1.1. *The premise*

07.04.1995 marks a watershed in Indian forestry when the Supreme Court of India entertained a petition titled T N Godavarman Thirumulpad Vs. Union of India⁸ and Others due to the large scale illegal felling of timber and denuding of the forests in Gudalur Taluk of Nilgiri in Tamil Nadu, India. An array of orders have been issued since then which has impacted forests and forestry management more than any thing else in Independent India's forest management strategies.

The Apex Court has touched on some substantive and definitional issues such as definition of forest, "encroachment", dereservation, wood based industry, working plans, to some ecological aspects of forests such as conservation of forests, ecologically sensitive areas, strategies to deal with diseases on forests (sal borer), removal of forest produce, restrictions on clear felling and green felling. Similarly it has dealt with the economic role of forests such as forest land valuation including compensatory afforestation and net present value to some staffing and budgetary issues such as financial outlays for forests and wildlife, salaries of staff to the role and constitution of Forest Advisory Committee. The Court has had to deal with the commercial and livelihood aspects of forestry too in relation to mining, sawmills, plantations and wood based industries.

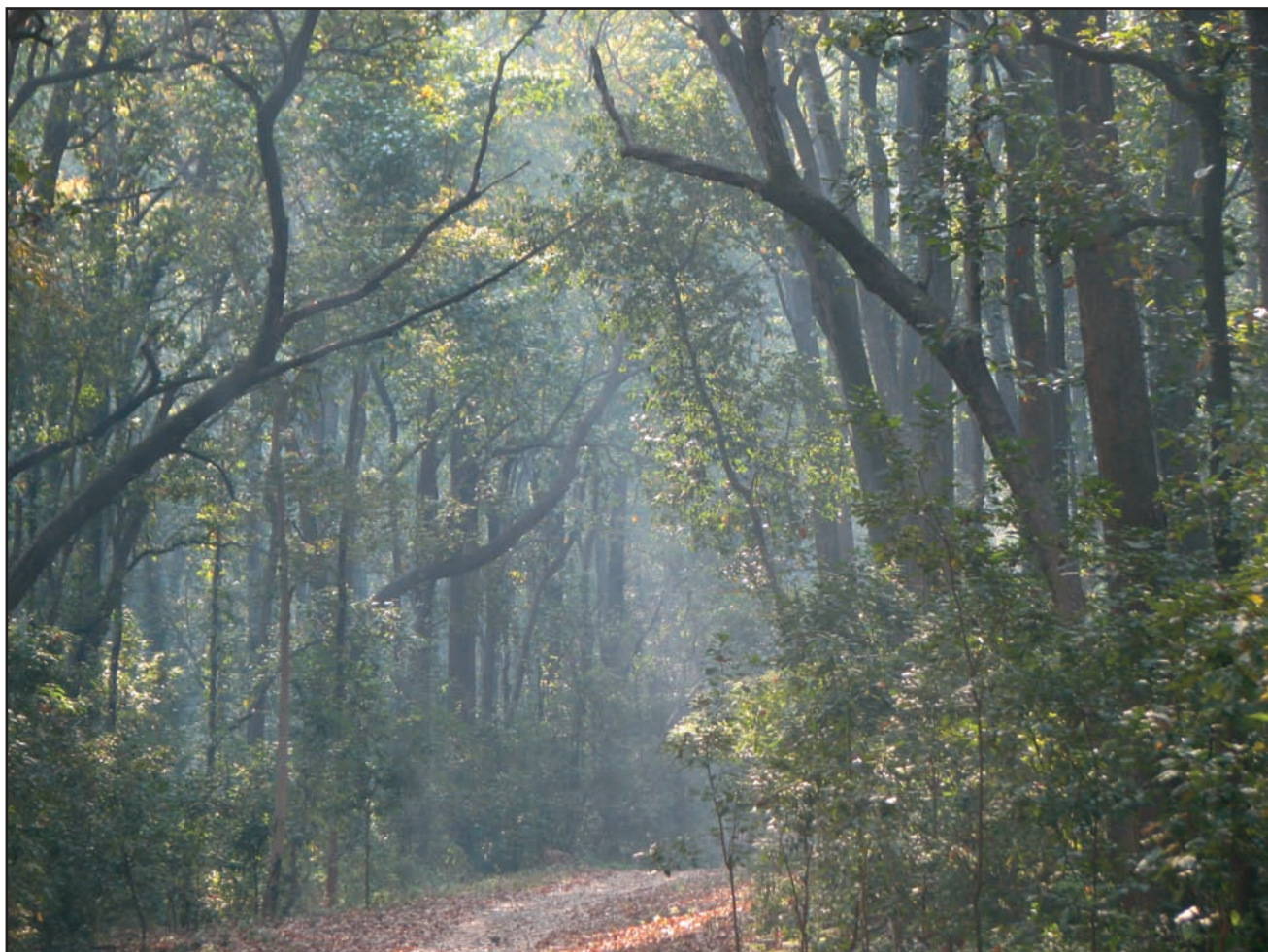
The Court has adopted numerous legal and judicial strategies through inquisitionary, advisory, judicial and statutory Committees to assist itself in arriving at fair and just decisions. It has adopted strategies to implement its own orders through new and innovative methods by imposing pecuniary restrictions to use of contempt proceedings. Last but not the least, the role of amicus curiae is perhaps the most evolved in this case. It is also important to critically examine this role especially in the nature of cases that are brought through them and their implications. This analysis also attempts to explore the challenges the judiciary faces and its own capacity to deal with such complex ecological and economic challenges posed by forestry. These complex maze of interim decisions and strategies need to be unraveled at three specific levels. First there are implications on thematic issues arising out of forestry at the national level. Secondly there are State specific contexts and finally there are site specific issues and strategies.

Lastly, its time to also critically assess the role of the Apex Court in terms of what has and what has not worked. Whether methods to approach can be improved for better results? Where do we go from here in terms of both process and substance? For we all seek in the end, that forests must be available for posterity and provide ecosystem services while taking care of economic and livelihood needs of those who are dependent on forests and those who eke out a living of forests and forest based resources.

From the time of admitting the case on Godavarman, in a series of hearings covering the various ambit of forest

⁸ W.P.(Civil) No. 202 of 1995

governance in India, the Supreme Court came to a conclusion that it requires a further in depth hearing to examine all the aspects relating to the National Forest Policy. Although the discussions in the Court raised several issues, the Court did pass some interim directions as short term measures on 12.12.1996. This is the turning point of Indian forestry management as these short term measures in the nature of interim directions have opened the clichéd pandora's box. More than fourteen years have elapsed and the Godavarman saga continues unabated in the Apex Court. It is time to stop and think where has forestry management gone in this last decade due to this Supreme Intervention, have we achieved what we set out to do? What are the current challenges? How do we overcome them? What are the now emerging short term and long term measures that are required? A critical look at the state of affairs from the judicial standpoint is long overdue. Should this matter continue in the present form or there is an urgent need to shift strategies. This Godavarman analysis attempts to address some of these questions. But before we set out to answer these looming questions it is important to understand in utmost detail, what has been the Court rulings so far, Nationally, State specifically and site specifically.



Chapter II

National Implications

While the Godavarman case has swung from generalities to specifics in varied forms, it is useful to assess the implications of the interim orders at the national level first. The following analysis is primarily based on the numerous Interim orders issued by the Honorable Supreme Court and analysis of the significant interventions by the various stakeholders.

2.1. *The beginning*

A Civil Writ Petition⁹ titled T N Godavarman Thirumulpad Vs. Union of India and Others was filed in 1995 and the first order was passed by the Court on 07.04. 1995¹⁰. It is important to assess the reasons why this case was filed in the first place and what were the main reliefs sought from the Apex Court. A perusal of orders made it clear seven months later and noted by the Court¹¹ that large scale illegal felling of timber and denuding of the forests in Gudalur Taluk of Nilgiri was continuing even after the notice had been issued to the State Government of Tamil Nadu. So it all began in an obscure manner from the State of Tamil Nadu where the main cause of entertaining the petition was illegal felling. The Supreme Court subsequent to this petition almost sprung in to action and passed numerous noteworthy orders which have changed the face of forest management. The tenor of various interim orders of the Courts made it amply clear that the Apex Court meant business. The Court did not hesitate to bring the erring officers and authorities to book whenever it was in the fitness of things and the contempt proceedings were initiated whenever the orders were not implemented at all or implemented without following the spirit of the order.

2.2. *The role of the senior counsel: The Amicus*

It was at the behest of a senior advocate that local state issue of forest felling assumed national importance on forest conservation¹². While how the State of Tamil Nadu story on Godavarman unfolded has been dealt with in the State context later, it is important to understand here that the counsels in the case sought to enlarge this petition by bringing to the notice of the Court other violations in other States' context. The most significant case in this regard which was brought to the notice of the Court¹³ was the matter from Kashmir (Environment Awareness Forum case) and certain other matters in the High Court which were presented as being of similar nature and in fact it was noted that some order of the learned single judge rubs contrary to the order of the Apex Court. The Court thus asked the matter to be tagged together and also directed to the authorities as well as the High Courts that **"the authorities are not required to Act on the directions given by the High Courtmatters in respect of the same subject matter and that the High Court or any other Court would not entertain any matter the subject matter of which is covered by the scope of these matters"**. In other words the Supreme Court made

⁹ W.P.(Civil) No. 202 Of 1995

¹⁰ Issue notice on the writ petition and application for stay

¹¹ See order dated 27.11.1995

¹² See order dated 19.02.1996

¹³ See order dated 22.07.1996

it clear that the forest related matters would be solely heard by it in the country. In fact on 02.09.1996, the Court also went on to issue notice to Chief Secretaries of all State Governments and made them parties in view of the nature of the petitions and points involved therein. Although it is not clear from the order whether the petitioner had asked this or was it the *suo motu* action of the Apex Court at the behest of some counsels, this order is historic in many ways. In fact, on 23.09.1996, the Court issued fresh notices to all State Governments as they had not complied with the last order. Without getting into the merit of this role of the Supreme Court or the senior counsels at work, it would be instructive to discuss and analyse the most significant order that was passed on 12.12.1996 by the Apex Court. In many ways, this order was and probably would remain the single most important order that completely changed the forestry debate in India.

2.3. The order of 12.12.1996: The turning point from policy to practice

After several hearings between the initial admission and some interim measures, the Supreme Court came to the conclusion that it requires a further in depth hearing to examine all the aspects relating to the National Forest Policy. Although the discussions in the Court raised several issues, the Court did pass some interim directions as short term measures. These short term measures in fact has led to not only reinterpreting the law but also institutional structures that the Court has used as a strategy to diagnose the real problems in forestry. The results have been mixed as will unfold in later Chapters, but at this point it will be useful to examine what these short term measures were, which have resulted in such long term implications.

2.4. Complete ban on felling of trees

It started with the Court reiterating on 12.12.1996, that there will be a complete ban on felling of trees in all 'forest' areas. This will however not apply to trees which have been planted and grown, and are not of spontaneous growth; and are in areas which were not 'forests' earlier but were cleared for any reason.

2.5. True scope of the Forest Conservation Act

The Court in the same order clarified the misconception about the true scope of the Forest Conservation Act, 1980 (FCA). It said: **"The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately resulted in ecological imbalances and therefore the provisions for the conservation of forests and for connected matters under the FCA, must apply to all forests irrespective of the nature of ownership or classification"**. This was novel way of interpreting the Act as Forest Conservation Act does not mention anything about the nature of ownership of the forests. The Forest Conservation Act is the primary legislation for conservation of forests.

For brief description of objectives and essential provisions see Table 1.

TABLE 1

Name of the Act	Objective	Essential Provisions	Applicability	Remarks
Forest Conservation Act, 1980	To check further deforestation and conserve forests	<ul style="list-style-type: none"> • Restricts use of forest for non forest purpose. • Restricts dereservation of reserve forests • Regulates diversion of forest land by way of lease to private industries and individuals. • Restricts clear felling of trees • Constitution of Advisory Committee for grant of approval for any of the activities above. 	Whole of India except the State of Jammu and Kashmir	The State of Jammu and Kashmir has its own Forest Conservation Act, 1990 on the lines of the FCA, 1980

2.6. Definition of forest

Perhaps the most significant aspect of the 1996 order was the Court's interim direction on the meaning of the word 'forest' used in Forest Conservation Act (FCA) which was explained in detail. The Court explained that the word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of the Forest Conservation Act¹⁴. It is important to emphasize that this was not the first time that the Court had assigned the meaning of the forest as per the dictionary meaning. In fact in 1953 in *Laxman Icharam Vs. DFO*¹⁵, the Madhya Pradesh High Court dealt with the definition of forest and expressly said **"the term forest has not been defined anywhere in the forest act. In the absence of such a definition the meaning of the term must be taken in its ordinary dictionary sense"**.

In the Godavarman Case the Court further explained the term 'forest land', and stated that the word forest land occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. The Court reiterated that this is how it has to be understood for the purpose of Section 2 of the Act. It further categorically stated that the provisions enacted in the Act for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This is significant because it is for the first time that the concept of conservation irrespective of ownership was brought into the definition of forest. Again without going into the merits of this interim order, the Apex Court further clarified the misconception about the need of prior approval of the Central Government¹⁶ as required by section 2 of FCA, in respect of certain activities in the forest area, which are more often of a commercial nature. It stated in clear terms that section 2 of FCA has to be complied with and any non forest activity is prohibited without prior approval of Central Government all over the country¹⁷. It reiterated that prior approval of the Central Government is required for any non forest activity within the area of any forest in view of the new definition of forest. In accordance with

¹⁴ Especially for the purposes of section 2(1) of the FCA

¹⁵ AIR 1953 Nag. 51 at p 54

¹⁶ See order dated 12.12.1996

¹⁷ Ibid

section 2 of the Act, all ongoing activity within any forest in any State throughout the country, also needs prior approval of the Central Government.

Accordingly, any such activity is *prima facie* violation of the provision of the Act. Every State Governments must promptly ensure total cessation of all such activities forthwith.

2.7. Working plans given legal sanctity

Another significant aspect of the order dated 12.12.1996 is the legal sanctity given to working plans. It was expressed in clear terms that the felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government¹⁸. *This order gave the management prescriptions (often popularly called as the bible of foresters) a legal colour. This assumes significance in at least two different ways. First it forced the State Governments to draw up and get the approval of the working plans wherever they were not made. Secondly, the felling of trees came to be regulated through a legal document and thus has increased the accountability within the forest department on felling, which was the root cause of the petition itself.*

2.8. Working plans also needed for non government forest area

The Court further clarified¹⁹ that working plans / schemes shall also be needed for felling of trees from any non government forest area including the lands which are required to be treated as 'forest' as per its order dated 12.12.1996. It added that while implementing the working plans/schemes approved by the Central Government, State Government or the concerned authority as the case may be, shall ensure that no felling is done unless and until sufficient financial provisions exist for regeneration of such areas as per the Court's directions dated 22.09.2000 which relates to general observations on compensatory afforestation described later.

2.9. Regulation of exploitation

The Supreme Court made some very far reaching observations on extraction and disposal of timber including the importance of local laws and customs vide its orders dated 15.01.1998. Among others, it directed that extraction of timber from forests, irrespective of ownership, is to be carried out only by State agency, except in private plantations. It further clarified that the States shall endeavour to adopt a pattern similar to the State of Himachal Pradesh as described in the Rajamani Committee Report²⁰. Realizing the importance of local and customary law, the Court observed that **if there be any local laws or customs relating to the forest in any State, the concerned State Government may apply to the Court for the needed modification, if any, with alternative proposal**. The Court further clarified its order dated 15.01.1998 regarding disposal of timber²¹ when some apprehension was expressed regarding its clarity. It said that the said explanation on disposal of timber²² shall not be construed as any restraint on the State Government to dispose of the timber belonging to or vesting in it which is lying on the floor of the forest or in the depots.

¹⁸ Ibid

¹⁹ See order dated 12.05.2001

²⁰ Specifically para 2.5.3 of the report.

²¹ SC order dated 10.09.1998 on I.A. No. 299

²² Clause (c) of para 7 of the signed order dated 15.01.1998 reads as "the State Government shall ensure disposal of illegal timber before permitting the conversion/disposal of legal/authorized timber available with the wood based industries".

2.10. Guidelines or rules to be framed for felling of trees from non forest area including plantations

The Supreme Court almost treads on the legislative jurisdiction of the Government in the following order²³. It stated that for felling of trees from non forest area including in respect of plantations on non forest areas, detailed guidelines or rules shall be framed by the concerned State Government which shall come into effect after the same are measured with modification, if any, by the Ministry of Environment and Forests (MoEF). The guidelines or rules shall also include provision for penalties and mode of disposal in respect of any felling done in violation of such guidelines or rules. Till such guidelines or rules become effective, no felling from any area other than under approved working plans or schemes or felling schemes shall be permitted. A period of three months was given to frame the schemes or guidelines or rules by the concerned State Government and approved by the MoEF within one month of the date of receipt. *It must be ascertained whether these guidelines are in place or not.*

2.11. Exploitation linked to Net Present Value

In a subsequent order²⁴ the Court directed that no approval for felling trees be granted by MoEF without imposing the condition related to net present value of forest land as per an earlier order dated 30.10.2002 relating to the payment of net present value of the forest land which is described later.

2.12. Detailed guidelines with specific instructions with components on forest management sought: Is the Court encroaching on executive functions?

The Supreme Court, as is evident in many orders, has often stepped on the executive's foot in order to streamline the process of forestry management. The 12.05.2001 order is a clear testimony to that. The Court specifically asked for periodic reconciliation of records regarding receipt, conversion, disposal and movement of timber or timber products by various wood based units to be carried out and directed the MoEF for issuing detailed guidelines to that effect after consulting the State Governments and Railways within a period of two months. The Court further mandated that it shall be ensured by the concerned State Governments as well as the Railways that the guidelines so formulated are strictly adhered to. *Whether such guidelines are in place by the MoEF needs to be ascertained.*

2.13. Transit passes to be printed on water marked papers

The Court also had detailed instructions on not only the transit passes but also the kind of paper on which transit passes should be printed. It ordered **"Transit passes to be printed only on water marked papers and shall be used for transportation of timber or timber products with effect from a date to be fixed by MoEF which shall not be later than 01.12.2001"**²⁵. This seems to be micro management reaching Pico levels. Compliance of such orders and its reality on the ground is obviously the next research item.

²³ See order dated 12.05.2001

²⁴ I.A. Nos. 826,859, order dated 01.08.2003

²⁵ See order dated 12.05.2001

2.14. Detailed guidelines sought on plywood and veneer units too within a prescribed period

The Court observed²⁶ that in respect of plywood and veneer units, details guidelines shall be issued by MoEF for regulating maintenance and reconciliation of records by the unit as well as the State Government in respect of receipt of raw materials such as timber, veneer etc., conversion into finished products, disposal and movement. The guidelines were required to be issued within two months. *The status about these guidelines especially from the MoEF must be ascertained.*

2.15. Some sectoral observations with national implications

The 12.12.1996 order was historic in many ways. Apart from the general observations, the Court also touched upon some important sectors which have direct linkage to wood consumption. Wood based industries such as saw mills, plywood, veneer and railways are two such important sectors.

a) *Alternate for wood to be explored: Railway sleepers*

It was observed by the Court that Railway authorities are still using wooden sleepers for laying tracks. The Court directed the Ministry of Railways to give full particulars in this regard including the extent of wood consumed by them, the source of supply of wood and the steps taken by them to find alternative to the use of wood²⁷. Subsequently, the Court tightened the noose further when on an application²⁸ it restrained railways from procuring or using any wooden sleepers in the whole of India²⁹. The only exemption which came a few months later where the Railways were allowed to use wooden sleepers already produced and lying in the railways stores³⁰. Another minor exemption was given to the Madhya Pradesh Export Corporation which was allowed to supply already made wooden sleepers to the railways. In I.A. 589, the Madhya Pradesh Export Corporation stated that it has certain wooden sleepers which are ready for delivery, which were manufactured on the orders of the Railways. In another application³¹ it was stated that in certain areas there is no alternative but to use wooden sleepers and the requirement is only 20000 cubic mt. per annum. Only in these special circumstances the Court permitted the M.P. Export Corporation to sell the same to the Railways. The Court made it clear that the ban on use of wooden sleepers continues till date, however, thereafter, the Railways may use wooden sleepers manufactured only from imported wood from other countries³². *Whether an order of this nature without taking into account the larger land availability of degraded forest land and millions of hands in the form of labour that exists in the fringe forest areas would be a good strategy or not remains to be seen. The thrust for imported wood in a country which has three hundred million forest fringe population and several million ha of degraded forest land may not be a good strategy in the long run*³³.

b) *Forest based industries: Extent of exploitation, labour and licensing*

As was brought out in the hearings that one of the serious causes of degradation of forests was the lack of knowledge on the extent of exploitation of the forests and especially due to the forest based industries such as saw mills, veneer mills and plywood mills. The Court thus asked all State Governments to file a report regarding saw mills, veneer mills and plywood mills. Meanwhile the Court also directed that all

²⁶ See order dated 12.05.2001

²⁷ See order dated 12.12.1996

²⁸ I.A. No. 417

²⁹ See order dated 07.05.1999

³⁰ See order dated 21.02.2000 and I.A. No. 501

³¹ I.A. No. 680

³² I.A. Nos. 680, 589, order dated 18.02.2002

³³ Personal interaction with RC Sharma, former PCCF, Chhatisgarh

unlicensed wood based industries be closed all over the country. While realizing the implications of the closure on the work force the Court was quick to add that the workers of the closed saw mills, veneer mills, and plywood mills shall be paid their emoluments irrespective of closures pursuant to the orders of the Court dated 12.12.1996.

In fact, in an order dated 15.01.1998 it was brought before the Court that the earlier orders directing payment of wages etc. to be made to the workmen have not been complied with by several employers. **"If that be so, particulars of such instances be given in writing within one week to the counsel for the concerned State Governments and the State Governments shall have the matter enquired into by its Labour Commissioner or a similar authority and submit the factual report within four weeks thereafter. The matter would be considered on receipt of the report".** *Whether the forest based workers have been benefitted by this order is a matter of empirical inquiry.*

c) *Prohibition on unlicensed wood based industries: Central Empowered Committee (CEC) empowered*³⁴

The Court further reiterated on 30.10.2002 that no State or Union Territory shall permit any unlicensed saw mills, veneer, plywood industry to operate and they were directed to close all such unlicensed units forthwith. It also made it clear that the CEC's³⁵ permission shall be required for opening of a new wood based industry all over the country. It stated: **"No State Government or Union Territory will permit the opening of any saw mills, veneer or plywood industry without prior permission of the CEC. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the CEC".**

d) *Cross border timber trade regulation*

In a significant order³⁶, the Supreme Court touched on cross border timber trade regulation as well. To ensure that timber or forest produce smuggled across the border may not be used as a cover for trade in illegal timber, the Court also directed that all timber seized by Customs or Border Security Force should not be redeemed in favour of individuals who are smuggling it but should be confiscated and handed over to the concerned State forest department along with offenders, vehicles, tools and implements for prosecution under the relevant acts. *This order is significant in many ways as many times after commission of offence (which may or not be the actual value of the forest or the tree) the goods are handed over and therefore is not a deterrent to habitual offenders.*

e) *Regulatory measures on illegal timber trading and transit: Ministry of Environment and Forests further empowered*

The Supreme Court also empowered the MoEF in a case of seizure of illegal timber in railway wagons by MoEF by allowing them to take certain actions for detention, seizure and investigation of timber³⁷. The MoEF informed the Court that their officers had detected and detained sixty six wagons at Nangloi Railway Station and twenty eight wagons at Rajpur Railway Station containing illegal timber. They averred that action was taken by them as per another Court order in this case³⁸, whereby MoEF has been given liberty to issue suitable directions for the proper and effective implementation of the orders of this Court. The Supreme Court ratified all the actions taken by MoEF in regard to the seizure of the illegal timber and also authorized MoEF to take such steps as it deems proper for necessary/appropriate investigation,

³⁴ See order dated 30.10.2002

³⁵ The creation, rationale, functions and responsibilities of CEC are described later.

³⁶ SC order dated 13.01.1998

³⁷ See order dated 13.01.2000

³⁸ Under para 35 of this Court's order dated 15.01.1998

storage, disposal, etc., of the detained timber and also to carry out such actions in future, for detention, seizure and investigation of timber.

The Court also gave some specific directions which stated that the MoEF may take further actions in such cases which may include:

- (a) Seizure of timber during investigation and or confiscation of unclaimed timber or claimed timber for which complete details sought by MoEF are not furnished within stipulated period.
- (b) Directing State Governments/Railways/any other authority/consignees/consignors to furnish details/documents required for investigation.
- (c) Directing State Governments/Railways/Consignees/Consignors to keep custody of the timber.
- (d) Disposal of seized/confiscated timber through auctions/sealed tenders either directly or through State Governments or any other agency.
- (e) Constitution of a multi-disciplinary team to carry out investigations including investigating agencies.
- (f) Issue comprehensive guidelines and working instruction (sic) (issued) for regulating movement of timber and timber products, standardization of transit passes and reconciliation of movement of timber with its origin –for inside North East – as well as outside North East.
- (g) The applicant may delegate any of its powers to such officer or authority as it may deem necessary for giving effect to its orders.
- (h) Any other action deemed necessary in this regard.

f) *Courts barred from entertaining any grievance regarding seized timber*

The Court further directed that no other Court or authority in the country will entertain any petition, suit or application with regard to the above mentioned cases of timber which have been seized³⁹.

g) *Ministry of Environment and Forests empowered to suspend licences of saw mills dealing with illegal timber, seal them or cut off electricity to them*

In the same order⁴⁰, the Court also empowered the MoEF to have the power and jurisdiction to not only suspend the licences of the saw mills which are or have been dealing in illegal timber but it also has the powers to order the sealing of the delinquent units as well as authority to order cutting off of the electricity to such units.

h) *Seized timber to be sold off by public auction by Ministry of Environment and Forests*

The seized timber, to the extent which is illegal or in respect of which there is no lawful claimant was required to be sold by public action by the MoEF or by sealed tenders and the sale proceeds thereof shall be kept in a separate bank account. Any sale so made shall be reported to the Court for further orders regarding the utilisation of the sale proceeds⁴¹.

2.16. Forest based extractive industries like saw mills, veneer, plywood industry and other wood based industry: The Court response

One of the challenges faced by the Court is balancing the economic and environmental interests. The Court has by its various orders attempted to evolve a framework for sustainable management of forests to preserve its various complementary functions and uses. The Court has attempted to take a balanced consideration of forestry issues,

³⁹ See order dated 13.01.2000

⁴⁰ Ibid.

⁴¹ Ibid.

which commenced with prohibition of felling of timber and then traversed to conducting wood balance study for the States to arrive at the carrying capacity of the forests. There have been two significant orders namely orders dated 04.03.1997 and 30.10.2002 impacting the forest based extractive regime. The twin objectives of these orders were prohibition and then regulation of the forest based extractive industries and formulation and implementation of a regulatory regime where it was lacking. Two States, which have been in focus, are Uttar Pradesh and Maharashtra.

a) *Grant of licences to wood based industries*

The SC directed States to file its reply to the supplementary report of CEC for grant of licences⁴². The CEC had filed its report pursuant to the order dated 30.10.2002 regarding licences to wood based industries. The Court and the CEC held the view that before granting fresh licences to wood based industries in States, there is a need to consider the availability of timber from official sources and also look at the capacity of the existing units in the State. The CEC had asked different States to provide this information. As per information received it was indicated that in West Bengal, seven hundred fifty new units can be granted licence; none can be granted licence in Rajasthan; and there was no response from Gujarat. The other States have been asked to respond in this matter.

The SC also took cognizance of contempt petition alleging violation of orders dated 04.03.1997 and 30.10.2002 by States of Haryana, Uttarakhand and Andhra Pradesh⁴³. Further, a petition filed by one Mr. Naidu Prakash, resident of Secunderabad, alleged that one hundred private units were there in the country at the time when ban was imposed by SC and now the number has gone to seventeen hundred. On account of averments made by the petitioner the contempt petition is to be treated as an application and CEC is to be substituted as the petitioner. SC issued notice to the State of A.P., State of Haryana and State of Uttarakhand. In the meanwhile, the SC ordered⁴⁴ CEC to evolve a mechanism for working out the surplus timber before issuance of licences to eligible wood based units. The CEC's view is explained later.

b) *Ban on operation of unlicensed sandalwood oil extraction units*⁴⁵

The SC has ordered the closure of all unlicensed sandalwood oil extraction factories⁴⁶, operating in the country. The closure was directed on the basis of the recommendation contained in the report of CEC on the operation of the sandalwood oil extraction factories, which stated that the order dated 29-30.10.02, should be applied to the unlicensed units. Further, Essential Oil Manufacturers Association was asked to submit its view on the working of the sandalwood oil extraction units in the country. The application of the order dated 29-30.10.2002 was thus extended to other wood based industries involved in extraction of sandalwood oil. This was done on the premise of it being a wood based industry. CEC was directed to file a report on the working of the sandalwood industries in the country. This exercise was undertaken by CEC, but on the date of hearing it was submitted by owners of the sandalwood factories that they were not heard before giving such a report. SC directed⁴⁷ that CEC should hear them and then submit a fresh report. The SC thus ensured that principles of natural justice are complied with before any order is passed which might have far reaching consequences for the affected parties.

c) *Shifting of saw mills and distance from forests*

The SC permitted shifting of saw mill from one place to another keeping in view the optimum distance from the forest and also keeping in view the other guidelines issued in this regard⁴⁸.

⁴² See order date 09.03.2007 in I.A. Nos. 1429, 1519-1520, 1652-1654 and 1667-1670

⁴³ See order dated 09.12.2005 in Contempt Petition (C) No. 247/2005

⁴⁴ See order dated 25.08.2006 in I.A. Nos. 1429, 1519-1520

⁴⁵ See order dated 10.02.2006

⁴⁶ I.A. No. 1267

⁴⁷ See order dated 10.11.2008 in I.A. Nos. 1287, 1570-1571, 1624-1625, 1978, 2395

⁴⁸ See order dated 08.09.2006 in I.A. Nos. 1170 in I.A. Nos. 948-948A

d) *Permission granted by Supreme Court for setting up units for manufacturing of Medium Density Fiberboard (MDF) and Particle Board*⁴⁹

Further the Court also dealt with some specific wood based products. Thus, for example, issues relating to manufacturing of Medium Density Fiberboard (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka was also dealt with by the Court. The CEC was directed to file its report and it has stated that there is a growing trend to use more and more MDF/Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar etc. raised on the non forest area can be used by MDF/Particle Board plants. The CEC recommended approval of these units, subject to the following conditions:

- i. The applicant will deposit an amount of rupees thirty lakhs and rupees fifty lakhs lakh respectively for the establishment of MDF/Particle Board plant and for composite plant for the manufacture of MDF and Particle Board respectively. This amount will be kept in a designated account outside the Consolidated Fund and will be used by the forest department for activities identified and related to conservation and protection of forest;
- ii. The purchase/lease of the land and order for the plant and machinery will be placed within a period six months failing which the approval will automatically be deemed to have been canceled;
- iii. The ownership of the unit will not be transferred including by way of transfer of majority shareholding or change of partners before the unit starts commercial production; and
- iv. In addition, for the State of Uttarakhand it has been stipulated that the said unit should be located in an approved industrial estate.
- v. For Karnataka, it has been further stipulated that;
 - a. It will be confirmed by the Government of Karnataka in the forest department that as per the existing rules/guidelines there is no restriction on the establishment of MDF/Particle Board plants within a distance of ten kilometer from the boundary of nearby forest;
 - b. The unit will be located in an industrial estate;
 - c. As recommended by the State Level Committee, presently, grant of permission up to five MDF/Particle Board units in Kolan/Chikkaballapur districts and up to ten units in the remaining districts will be considered for clearance on the principle of first come first serve with a view to ensuring spatial distribution to the extent practical and feasible; and

On following the above stipulated conditions, the State Government can issue licence for setting up these manufacturing units.

2.17. *Encroachment: What is encroachment? Is the testimony of Amicus enough?*

In a significant move with far reaching consequences (as we would discover later) the Amicus Curiae filed an application⁵⁰ in the Supreme Court against the illegal encroachment of forest land in various States and Union

⁴⁹ See order dated 29.02.2008 in I.A. No.1797

⁵⁰ I.A. No. 502

Territories⁵¹. The Court took cognizance and issued an interim order in terms of prayer (a) of the application. *This relates to the fact that pending enquiries no regularization of encroachment should take place by the State Governments and Union Territories.*

Less than three months later, the Chief Secretaries of the State of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chhattisgarh and Kerala were directed⁵² to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, The Court further asked that it should also be indicated as to what steps have been taken to clear the encroachments from the forest which have taken place at an earlier point of time⁵³. *Note that the Court did not get into the question of what constitutes encroachment while it is also hearing a number of cases of disputed boundaries, unsettled rights, disputed claims on forest land simultaneously. Is this a case of overdependence on Amicus?*

2.18. Preventing vandalism: Advertisements at the cost of ecology prohibited

Another significant step taken by the Supreme Court was to prevent vandalism by way of painting advertisements on rocks in Himachal Pradesh first and subsequently in other States which received a lot of media attention. Firstly, the Central Empowered Committee was directed to carry out a spot verification of such vandalism⁵⁴ and as a pecuniary deterrent, the State of Himachal Pradesh was asked to deposit rupees one crore for restoration of ecology due to such advertisements painted on rocks in Himachal Pradesh⁵⁵. Several big companies including Coca Cola, Pepsi, MBD Books, State Bank of India, Fena Pvt. Ltd., Nestle India Ltd., Jugal's Sidharth Dining and Annapurna Restaurant were involved where the Court also imposed costs on them. The Court was also informed that on the National Highway-4 outside Bangalore similar advertisements have been painted on the rocks. The companies responsible in respect thereof includes among others ACC, Coromandal King, Rasna, Fertilizer Chemicals-Travancore, Alpine, Indo-tex and Indo-Chem. Notice was issued to these companies as well as to the State of Karnataka. Further, the MoEF was directed to report vandalism like painting advertisements on the rocks as in the States of Himachal Pradesh and Karnataka, and if any from other States. *What is significant in this order is not just the precedent it has set but the real challenge of this order is its compliance as well as its continuous monitoring.*

2.19. Resource mobilisation strategies and allocation methods: Micro managing finance?

The Supreme Court in its innovations has come up with various strategies for augmenting forest management strategies. These include not only resource mobilizing strategies but also ordering methods for their allocations and disbursements. The following order⁵⁶ will clarify this further.

a) Revolving fund to be created out of the penalties levied on the wood based industries

The Supreme Court orders⁵⁷ that the penalties levied on the wood based industries as ordered by the High Powered Committee⁵⁸ shall constitute the revolving fund to meet the expenses involved in collection and transportation of seized illegal timber. Further, these can be augmented by utilizing the funds generated by the initial sales of illegal timber already available in the forest depots.

⁵¹ See order dated 23.11.2001

⁵² SC order dated 18.02.2002

⁵³ I.A. No. 703, 502

⁵⁴ See order dated 02.09.2002

⁵⁵ See order dated 23.09.2002

⁵⁶ See order dated 13.01.1998

⁵⁷ See order dated 13.01.1998

⁵⁸ Described later in the North east context as a Court strategy

b) Allocation of Funds: State revenue to be credited with all the sale proceeds of seized timber and penalties

In the same order the Supreme Court also added that the total sale proceeds from the sale of seized timber, as well as timber products manufactured and disposed by the State Government and penalties would be credited to the State Revenues. Out of this, the State shall utilize one half of the amount for raising forest plantations by local tribal population and as assistance to the tribals. The remaining one half of the total sale proceeds, after deduction of the expenses there from, would go to the State coffers for other developmental activities in the State. *Again it would be useful to empirically verify the ground realities whether such orders are being carried out in reality or these remain on the judicial papers!*

c) Enhanced Budgetary Provisions

Significantly, the order dated 13.01.1998 also asked the State to ensure sufficient budget for wildlife protection and preservation of biodiversity. This assumes significance as this has been the demand from the many States including the centre as inadequate budgetary provisions has been singled out as biggest factor for inefficient forest and wildlife conservation. *It must be ascertained whether this order has had any impact on the State in terms of augmenting budgetary provisions for protecting and preserving biodiversity and wildlife.*

2.20. Efforts on streamlining: Authority, jurisdiction and ambit

The Supreme Court has made numerous efforts to ensure that their orders on forest issues are clear without ambiguity and not in conflict with any other existing authority and other High Courts. In a specific order⁵⁹ it stated that no authority as well as High Courts shall entertain any matter which falls within the scope of the subject matter of the forest case. The above order was issued when it was brought to the notice of the Court⁶⁰ that certain matters from Kashmir (Environment Awareness Forum and certain other matter in the High Court) are of similar nature and in fact some order of the learned single Judge rubs contrary to the order of the Apex Court. The Court thus asked the matter to be tagged together and also directed the authorities as well as the High Courts that **“the authorities are not required to act on the directions given by the High Court ...matters in respect of the same subject matter and that the High Court or any other Court would not entertain any matter, the subject matter of which is covered by the scope of these matters”**. The Court also went on to issue notice to Chief Secretaries of all State Governments and made them parties. *Although, it is not clear whether the petitioner asked this or it was the suo motu action of the Apex Court this can be seen as an important turning point in streamlining the efforts of forest conservation and management under Supreme Court orders.* Further, to avoid duplicity, the Court attached all the matters coming before it regarding any of the issue being touched upon under this case with this writ petition⁶¹. Thus, for example, the Rangarajan's Case⁶² relating to National Forest Policy was disposed of after a preliminary hearing.

a) Union Territories and autonomous districts also brought within purview

The Supreme Court reiterated that all the States, Union Territories and Autonomous Hill Councils shall abide by the orders of the Court about the issues being adjudicated upon irrespective of any other order⁶³. The Court said **“It is made clear again by the Court that the order passed by this Court in the matters mentioned in the order, including the order dated 12.12.1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments,**

⁵⁹ See order dated 22.07.1996

⁶⁰ See order dated 22.07.1996

⁶¹ See order dated 19.12.1996

⁶² W.P. (C) No. 897/96, A. Rangarajan and Others Vs. Union of India and Others

⁶³ See order dated 04.03.1997

notwithstanding any order or direction passed by a Court, including the High Court or Tribunal.”

It was also made clear in the same order that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these matters.

It took a few months to ensure that all related matters pending adjudication in any Court in the country is transferred to the Supreme Court to avoid duplicity of effort⁶⁴. In one instance, it was brought to the notice of the Honorable Court that a Public Interest Litigation (PIL) pending in the Shillong Bench of the Guwahati High Court, which has been filed by the Khasi Students Union, is also related to the present case. It was therefore, considered appropriate that the said case is also heard by this Court. **“In view of the fact that in the matters pending in the Court every facet of the problem throughout the country is under consideration, it is appropriate that no aspect of this matter be considered separately by any other Court in any form”**. In fact on 14.07.1997 the Supreme Court’s attention was drawn to non compliance of its orders by some States by the Amicus Curiae who produced in the Court the Second Report of the High Powered Committee for North Eastern Region dated 12.07.1997 and brought to the notice of the Court the failure of certain State Governments and other Authorities to comply with the directions given to them pursuant to the Court’s orders. The Court observed that **“the failure to comply with any such direction by any one is likely to be visited with penal and other consequences which may ensure from the failure of these authorities to comply with the directions given to them”**.

b) *Delay in replies: State reluctance a cause of Court’s perceived overreach*

Informal interviews by several key stakeholders reveal that the reluctance of the various State agencies is primarily a perception of Court’s overreach and especially CECs omnibus powers over State Governments. This has caused serious heart burns as the member secretary in the CEC is quite a junior officer in the larger forest bureaucracy but has been given immense powers over State Governments in assisting the Court.

2.21. Challenges of the Court itself

The Supreme Court’s efforts must be appreciated in this entire exercise and often the events that have developed over the years in this case have posed challenges for the Apex Court itself. In an order this challenge was quite visible where the Supreme Court demonstrated distress over non compliance or breach of its various orders in the country by various State and Union Territory Governments. The Court made it clear that it wants strict compliance of its orders in letter and spirit⁶⁵.

In another order of the Court, this dilemma becomes more prominent. The Court in another case of diversion of forest land under the Forest Conservation Act, 1980 observed that one of the challenges faced by the Court is the enforcement of the existing statutory framework prescribed for the protection and conservation of forest resources. This includes the enforcement of the Forest Conservation Act on one hand and balancing commercial interests with ecological concerns on the other hand keeping in mind principles of sustainable development which is now a Constitutional requirement⁶⁶.

⁶⁴ See order dated 08.05.1997

⁶⁵ See order dated 10.12.1998

⁶⁶ See order dated 23.11.2007 in I.A. No. 1324 and 1474

2.22. Court's procedural strategies

The Supreme Court has evolved several procedural strategies among others to deal with the magnitude of the Godavarman case. Some of these strategies reflected by Court order are described below:

a) *Expert committee: Time bound*

A common strategy applied by the Court was that all States were required to constitute an expert committee which is required to submit their report regarding compliance to the orders of the Apex Court⁶⁷.

b) *State to form expert committees to look in to the various aspects of the wood based industry*

The Court ordered that each State shall constitute a State Level Expert Committee for matters concerning the preparation of working with their implementation, development of industrial states, shifting of industrial units to these estates, rules and regulations regarding the grant and renewal of licences to wood based industry and other ancillary matters under the chairmanship of Principal Chief Conservator of Forests and with a nominee of MoEF as one of its members. Any decision of this Committee which is not acceptable to the State Government shall be referred to the Central Government⁶⁸.

c) *Enabling Ministry of Environment and Forests*

The Court also directed that for the proper and effective implementation of the orders, the MoEF will have the liberty to issue suitable directions consistent with the order. It would further have liberty to apply for modification or clarification in case of need⁶⁹.

d) *Monitoring: Bimonthly Action Taken Report (ATR) to be filed*

Further, action taken report to be filed by each State Government and the MoEF every two months.

e) *General direction to always supply a copy of any application filed in this writ to the Amicus Curiae and the Central agency*

There was another general direction issued that no application shall be entertained in this writ petition by the Court until a copy of that is served on the Amicus Curiae and the Central agency⁷⁰. *This also reflects the growing importance of the Amicus Curiae as described before.*

f) *Imposing costs*

The Court has also resorted to imposing costs to States for not replying in time. A case in point is when through an order dated 01.05.2000 the Court imposed costs of rupees five thousand to the States of Jammu and Kashmir, Haryana, Tamil Nadu, Kerala, Orissa, Bihar, Sikkim, Nagaland and Arunachal Pradesh for not replying on time.

g) *Awards to persons assisting the confiscation.*

In a significant order⁷¹ on felling of timber and consequent confiscation of timber, the Court ordered the Special Investigation Team (SIT) to utilize the amount of rupees one lakh fifty one thousand out of the penalty/sale proceeds of the confiscated timber for giving award of amounts to persons who assisted in the confiscation. *The process of starting incentive system for assisting in the confiscation of illegal timber is a welcome step to aid the efforts of the SIT in confiscating illegal timber. This is in some ways akin to the*

⁶⁷ See order dated 12.12.1996

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ SC order dated 10.12.1998

⁷¹ See order dated 15.09.2006 in I.A. No. 827

provisions in WLPA, which provides for payment of rewards to persons who give information about wildlife crimes.

h) Creating Central and State Level Authorities: Leading to the Central Empowered Committee

The Amicus Curiae reminded the Court of the orders dated 10.12.1998 and 13.04.2000 with regard to constitution of authorities in each State under section 3(3) of the Environment (Protection) Act and also an authority at the national level⁷². The Supreme Court directed the MoEF to file a status report regarding constitution of such authorities. On 07.05.2002 the Central Government admitted in principal that it is necessary and desirable that a National Empowered Committee should be constituted⁷³.

i) The Central Empowered Committee : Creation by the Court through the Central Government

The Central Empowered Committee was eventually constituted by the Supreme Court for monitoring the implementation of its orders and to place the non compliance cases before it. This was an interim arrangement till the Union of India constituted a national authority under section 3(3) of Environment Protection Act⁷⁴.

The Central Empowered Committee

The Supreme Court held that

- a. Till the Central Government constitutes a statutory agency as contemplated by section 3 of the Environment (Protection) Act, 1986, it is necessary and expedient that an authority be constituted at the national level to be called Central Empowered Committee (CEC) for monitoring the implementation of Honorable Court's orders and to place the non compliance cases before it, including in respect of encroachment removals implementations of working plans, compensatory afforestation, plantations and other conservation issues.
- b. The CEC shall comprise of a Chairman to be nominated by MoEF in consultation with the Amicus Curiae. It will have one nominee of the MoEF and two NGOs (also to be nominated in consultation with the Amicus Curiae). Shri M K Jivrajka will be its member Secretary. The persons so appointed (other than the nominee of the ministry) shall not be removed without leave of the Court.
- c. Pending interlocutory applications in these two writ petitions (WP 202/1995 and WP No. 171/1998)]as well as the reports and affidavits filed by the States in response to the orders made by the Court shall be examined by the Committee, and their recommendations will be placed before the Honorable Court for orders.
- d. Any individual having any grievance against any steps taken by the Government or any other authority in purported compliance with the orders passed by this Court will be at liberty to move the Committee for seeking suitable relief. The Committee may dispose of such applications in conformity with the orders passed by this Court. Any application which cannot be appropriately disposed of by the Committee may be referred by it to this Court.
- e. The Committee shall have the power to:
 - Call for any documents from any person or the Government of the Union or the State or any other official.
 - Summon any person and receive evidence from such person on oath either on affidavit or otherwise.
 - Seek assistance/presence of any person(s)/Official(s) required by it in relation to its work.

⁷² I.A. No. 295, order dated 18.02.2002

⁷³ I.A. No. 295

⁷⁴ I.A. No. 295, order dated 09.05.2002

- f. The Committee may decide its own procedure for dealing with applications and other issues. Union of India shall provide suitable and adequate office accommodation for the Committee. The expenditure incurred on the working of the Committee including salary/remuneration (to the extent not payable by the Government) to the members and supporting staff, may be met out of income accruing to the Special Investigation Team (SIT). Necessary procedure for this may be formulated by the Committee in consultation with the SIT.
- g. The Committee is empowered to co-opt one or more persons as its members or as special invitees for dealing with specific issues. While dealing with issues pertaining to a particular State, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State shall be co-opted as special invitees.
- h. The Committee shall submit quarterly reports to the Honorable Court. It will be at liberty to seek clarifications/modifications needed by it from Honorable Court.

Another order dated 09.09.2002 states that a draft of the proposed notification under section 3(3) of the Environment (Protection) Act 1986 constituting the CEC has been prepared. According to the draft, the Committee is being constituted for a period of five years. The constitution of the Committee would be: (i) Shri P V Jayakrishnan, Secretary to the Government of India, MoEF as Chairman; (ii) Shri N K Joshi, Additional Director General of Forests, MoEF as member; (iii) Shri Valmik Thapar, Ranthambore Foundation as member; (iv) Shri Mahendra Vyas, Advocate, Supreme Court of India as member and (v) Shri M K Jiwrajka, Inspector General of Forests, MoEF as Member Secretary. They all are appointed in their personal capacity. The Court clarified that as and when this notification is issued, whatever functions and responsibilities had been given to the CEC will now be exercised by this statutory Committee.

j) Supreme Court reconstitutes Central Empowered Committee⁷⁵

After the expiry of the term of CEC, it had been directed to constitute CEC as a Court appointed committee instead of MoEF constituting under the provision of the Environment Protection Act. The terms of reference of CEC are as follows:

- (i) To monitor the implementation of this Court's orders and place reports of non compliance before the Court and Central Government for appropriate action.
- (ii) to examine pending applications in the Writ petition (as may be referred to it by the Court) as well as the reports and affidavits filed by the States in response to the orders of the Court and place its recommendations before the Court for orders:
- (iii) To deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to Court in that behalf
- (iv) To examine and advise/recommend on any issue referred to the Committee.
- (v) The term of office of CEC is three years or until further orders, whichever is earlier.

The newly constituted CEC comprises of the following members⁷⁶:

- (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 Mathew (sic) (Dr. Maharaj Muthoo)
- (6) Shri Mahendar Vyas
- (7) Shri Sanjeev Chaddha (Deputy Secretary)

⁷⁵ See order dated 14.12.2007 in I.A. No. 2016

⁷⁶ I.A. No. 2016 in order dated 21.02.2008

2.23. Exploitation of forest and the Court's response

a) *Mining and forests: Guidelines on mining*

One of the primary threats to forests which impacts forest is mining. Mining has been also dealt with by the Supreme Court comprehensively⁷⁷. A number of nationally applicable guidelines were issued to regulate mining. For example, the Forest Conservation Act (FCA) permission was made mandatory retrospectively. Specifically where the lessee had not forwarded the particulars for seeking permission under the FCA, he was allowed to do so immediately; Secondly, all applications seeking mining permission, pending approval with all the State Governments were required to be forwarded to the Central Government. In fact, the Court set a deadline of two weeks for the State Government to forward all complete pending applications to the Central Government for requisite decisions. It bound the Central Government too to dispose of applications within a period of six weeks of receipt of such applications. A special condition was also added: **"where the grant of final clearance is delayed, the Central Government may consider the grant of working permission as per existing practice"**. *This innocuous addition has large implications as we discover later in large mining projects.*

b) *Mining allowed subject to clearance by MoEF and compensatory afforestation*

The Supreme Court subsequently did allow mining subject to clearance by MoEF and Compensatory Afforestation⁷⁸. A case in point is of National Mineral Development Corporation (NMDC) mining in the State of Madhya Pradesh. The NMDC was granted permission⁷⁹ to work the mines after the necessary clearance has been received by them⁸⁰. In this case the IAs filed by NMDC stated that it had acquired six leases in Bailadila area which is a forest land in which permission has been granted by the Central Government to carry on mining operations. It was stated that the State of M.P. had also granted the necessary permission on 20.08.1998, but has observed that while cutting the trees, special care should be taken to implement the order of this Court in T N Godavarman Thirumulkpad Vs. Union of India and Others, 1997(2) SCC 267.

The Court clarified that it had prohibited the carrying on of any non forest activity in a forest area without the permission of the Central Government. In the present case, the Central Government has granted permission subject to the conditions which have been or may be imposed. The applicant would, of course, be at liberty to operate on the said mines. In Court's words: **"What was prohibited by this Court was illegal cutting of tree and cutting of trees without the permission of the Central Government. It is nobody's case before us that cutting of trees in carrying on the mining operations in the present case would be environmentally hazardous or contrary to any law specially in view of the fact that an obligation has been cast on the applicant to carry out afforestation hopefully on an area greater or larger than the area on which the trees are to be cut. In this view of the matter, the permission to carry on the mining operations is granted"**.

c) *Comprehensive proposal for compensatory afforestation sought from Ministry of Environment and Forests by Supreme Court*

In an order dated 17.12.1999, the Court, while granting permission to the NMDC to work the mines after they had received all the requisite permissions from the Central Government, directed the MoEF to file a comprehensive proposal for compensatory afforestation to be placed before it by the next date of hearing. This initiated a formalization of the concept of compensatory afforestation.

⁷⁷ See order dated 04.03.1997

⁷⁸ The concept and genesis of Compensatory Afforestation is described later

⁷⁹ I.A. No. 499 in I.A. No. 480

⁸⁰ See order dated 17.12.1999

d) *Mining and compensatory afforestation: Responsibility of monitoring is with Ministry of Environment and Forests*

The Supreme Court while hearing the National Mineral Development Corporation (NMDC) seeking permission to mine, issued an important direction where it held that after grant of permission to mine, MoEF, the ministry responsible for grant of such permission should also monitor the fulfillment of conditions⁸¹. As per the affidavit of the MoEF only ten percent of the required compensatory afforestation was done by the NMDC⁸². The Court felt that there is no excuse for not carrying out the required afforestation. It observed that if the conditions for grant of the mining lease are not fulfilled, there is no reason as to why NMDC should be permitted to carry on the mining operations. However, more importantly, the Court said **"After grant of such permissions, we expect the said Ministry to monitor and see whether the conditions stipulated by them have been fulfilled or not rather than to leave it to the Court to point out that the conditions contained in letters granting permissions have not been fulfilled. The Ministry of Environment and Forests has clearly been remiss in this respect"**.

e) *Compensatory afforestation: A panacea for all non forestry evils?*

A perusal of many orders of the Supreme Court such as the above has clearly demonstrated that compensatory afforestation seems to be new mantra for all non forestry evils. This is evident from numerous cases on mining and other such destructive non forestry uses which have been brought before the Court. It is important to elaborate. The following examples are from Madhya Pradesh which only highlights the symptoms but may not necessarily cure the disease.

f) *Compensatory afforestation and mining: Utilisation of fund and evidence*

On National Mineral Development Corporation's applications⁸³ described above seeking permission to work the mines, the Supreme Court directed the MoEF, NMDC and State of Madhya Pradesh to file complete information regarding compensatory afforestation⁸⁴. In fact, the State of M.P. was also directed to file an affidavit indicating as to how much money it has received from NMDC for the purpose of afforestation, how that money has been utilized and what is the present status of afforestation, if it has been carried out. All the affidavits should be filed along with photographs or satellite imagery, if available or aerial photographs.

g) *Monitoring compensatory afforestation: Utilisation of funds*

The State of M.P. was further asked by the Supreme Court as to why the money deposited for compensatory afforestation by NMDC was not utilized⁸⁵. Upon information delivered by NMDC that the needful has been complied with, as far as compensatory afforestation is concerned and it has deposited money with the State of M.P. for carrying out afforestation in the degraded forest area which is not under the control of NMDC and which is revenue land, the Court directed the State to inform as to why the same was not done and rupees forty crores deposited by NMDC were not utilized.

h) *All erring States on compensatory afforestation issued notice and format for information given by the Court*

In fact, all erring States⁸⁶ where compensatory afforestation was not completed were issued notices asking them to explain⁸⁷. The information given by the State followed a format which included the position

⁸¹ See order dated 03.04.2000

⁸² I.A. Nos. 419 and 420

⁸³ I.A. Nos. 419 and 420

⁸⁴ See order dated 02.08.1999

⁸⁵ See order dated 17.04.2000

⁸⁶ These States are Arunachal Pradesh, Assam, Bihar, Haryana, Himachal Pradesh, Jammu and Kashmir, Madhya Pradesh, Mizoram, Orissa and Tamil Nadu.

⁸⁷ See order dated 17.04.2000

of the cases approved for diverting forest, land stipulation for compensatory afforestation under the Forest Conservation Act and the Compensatory afforestation done, funds to be utilized and actually utilized. What is important in this regard is that this kind of systematic information that has been collected may be actually utilized as benchmark information for future planning as well as monitoring the forestry management practices in India.

2.24. Compensatory afforestation, felling of trees and environment audit

In another case of M/s South Eastern Coalfields Ltd. the Supreme Court while granting permission to fell trees on fulfillment of the conditions of compensatory afforestation in M.P.⁸⁸ opined that the primary responsibility to carry out compensatory afforestation should be that of the applicant and it also recommended environment audit to ensure fulfillment of conditions. On the Government's request for time to consider these proposals the Supreme Court observed that safeguards should be in place to ensure that the project is not abandoned after the trees are cut⁸⁹.

a) Formalising compensatory afforestation: Use of forest land for non forestry purposes

After several case specific directions as described above, the Supreme Court finally took a suo moto action on the cases regarding forest land conversion to non forest use. It observed in an order⁹⁰, that large sums of money have been realized by various States from the user agencies to whom permission were granted for using forest land for non forest purposes. Monies were paid by them to the State Government for compensatory afforestation but the utilisation of the money for reforestation represents only about sixty three percent of the funds actually realized by the State Governments. The shortfall is of nearly rupees two hundred crores.

b) Parameters for compensatory afforestation

In order to consider the shortfall on utilization of funds as described above, the Court directed the MoEF to formulate a scheme including conditions for permission for change of use of forest land for non forest purposes. It also added that one of the conditions of the permission should be compensatory afforestation. Further the responsibility of compensatory afforestation should be that of the user agency and it should be required to set apart a sum of money for doing the needful. In such a case the State Governments concerned will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user agency or of the State Governments depending on the decision of the State Government. The scheme framed by the MoEF should be such as to ensure that afforestation takes place as per the permission which is granted and there should be no shortfall in that respect. The Union of India did accept this order and committed to the same.

c) Formalising compensatory afforestation: Recommendation of Central Empowered Committee- Compensatory Afforestation Fund: Does this amount to Court's overreach?

The CEC examined the question regarding proper utilisation of the funds for compensatory afforestation in respect of permission granted for user agency of forest land as per the order dated 23.11.2001 described above⁹¹. After notice to all State Governments and hearings, it submitted a report dated 05.09.2002. The Court after examining the said report accepted it and gave important directions in this regard. These include the following⁹²:

⁸⁸ See order dated 08.09.2000

⁸⁹ See order dated 08.09.2000

⁹⁰ SC order dated 23.11.2001 and I.A. No. 566

⁹¹ While dealing with I.A. No. 566

⁹² See order dated 30.10.2002

i) **Union of India to make comprehensive rules for Compensatory Afforestation Fund**

The Union of India shall frame comprehensive rules with regard to the constitution of a body and management of the Compensatory Afforestation Fund (CAF) in concurrence with the CEC. These rules shall be framed within eight weeks and necessary notification constituting this body will be issued simultaneously. *Yet, another case of imposing executive measures through judicial order.*

ii) **All funds to be transferred to Compensatory Afforestation Fund**

CAF which have not yet been realized as well as the unspent funds already realized by the States shall be transferred to the said body within six months of its constitution by the respective States and the user agencies.

iii) **The concept of payment of Net Present Value in addition to Compensatory Afforestation Fund by user agency for forest land converted for non forest purpose introduced**

In addition to CAF, while according transfer under Forest Conservation Act, 1980 for change in user agency from all non forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non forest purposes. The value determined then was to be recovered at the rate of rupees five lakhs per hectare to rupees nine lakhs twenty thousand per hectare of forest land depending upon the quantity and density of the land in question converted for non forest use. The Court also added that such amount would be subject to upward revision by the MoEF in conclusion with CEC as and when necessary. In fact, in subsequent orders explained later, a committee headed by a well known economist, Prof. Kanchan Chopra from a reputed national think tank, Institute of Economic Growth, Delhi was constituted which was entrusted with the task of evolving the methodology of arriving at a fair NPV. The Kanchan Chopra committee submitted its report to SC. CEC examined the report and made certain recommendations. The recommendations made by CEC have now been accepted by SC⁹³.

iv) **Compensatory Afforestation Fund rules, procedure and composition for management shall be finalised by the Ministry of Environment and Forests with the concurrence of CEC**

A CAF shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchments Area Treatment Plan Funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the CAF shall be finalised by the MoEF with the concurrence of CEC within one month i.e. 29.11.2002. *Note that the CAF has still not been finalized.*

v) **Unused and recovered amount related to compensatory afforestation also to be put in the Compensatory Afforestation Fund**

The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States or Union Territories or any amount that is yet to be recovered from the user agencies shall also be deposited in this Fund.

vi) **Compensatory Afforestation Fund to be used for artificial and assisted natural regeneration**

Besides artificial regeneration (plantations), the fund shall also be utilized for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner.

⁹³ See order dated 28.03.2008 and 09.05.2008

vii) Large public sector undertaking to form special purpose vehicle for compensatory afforestation

The user agencies especially the large public sector undertakings such as Power Grid Corporation, National Thermal Power Corporation, etc. which frequently require forest land for the projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle (SPV). The private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the MoEF with the concurrence of the CEC. *It must be ascertained whether such SPV has been created or procedure formulated in this regard.*

viii) Plantation must use local and indigenous species in compensatory afforestation

Plantation must use local and indigenous species since exotics have long term negative impacts on the environment.

ix) An independent system of concurrent monitoring and evaluation for Compensatory Afforestation Fund

An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the CAF to ensure effective and proper utilisation of funds. *Here again it would be important to ascertain whether such independent system of concurrent monitoring and evaluation is in place or not.*

It is clear from the above that the concept of Compensatory Afforestation and Net Present Value was a Court initiated strategy. Although, the Rules were asked to be framed by MoEF but they were to be formulated at the Supreme Court's terms. The procedure on transfer of funds, role of user agency, utilisation of funds, types of species to be planted, the monitoring process guided by CEC were all dictated by the Supreme Court. The role accorded to the Central Empowered Committee, a Court Baby, was particularly significant. It is a matter of debate whether such empowerment of a Court initiated body which has delegated powers of the Supreme Court and which has the potential to interfere in almost day to day functioning of the executive is beneficial or not. Clearly, this has turned out to be a bone of contention between the MoEF and the Supreme Court as we will discover in subsequent orders.

2.25. Compensatory Afforestation Fund Management and Planning Agency

On 19.04.2004, the Union of India informed the Supreme Court that a notification shall be issued to constitute Compensatory Afforestation Fund Management and Planning Agency (CAMPA) as per Supreme Court order dated 30.10.2002⁹⁴. So far as the composition of the authority is concerned, that will be worked out with the consultation of the Amicus Curiae. The Court granted a month to do the same.

On perusal of a notification dated 23.04.2004 constituting Compensatory Afforestation Fund Management and Planning Authority, the Supreme Court directed the Amicus Curiae to discuss with the Solicitor general and the other concerned persons. The Court asked for a joint note to be placed before it after examining the grey areas of the notification⁹⁵.

⁹⁴ I.A. No. 826 in 566 with I.A. Nos. 985, 1016-1018 and 1046 order dated 19.04.2004

⁹⁵ See order dated 17.09.2004

a) *Adhoc body on CAMPA*

On 05.05.2006 the Supreme Court directed the constitution of an adhoc body till the constitution of CAMPA⁹⁶. It observed that it had directed in its order dated 29.10.2002 for constitution of a compensatory afforestation fund where all monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, catchment area treatment plan funds, etc. was to be deposited. In spite of receiving the concurrence of Planning Commission and Ministry of Finance for setting up the body, the same has not taken place. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund have not been finalized by the MoEF with the concurrence of CEC. The report of CEC has highlighted diversion of funds. CEC had also suggested for setting up of an adhoc body till the time CAMPA is constituted. This has been accepted and SC ordered for composition of an adhoc body comprising of Director General of Forests and Special Secretary MoEF as Chairman, Inspector General of Forests, a representative of the Comptroller and Auditor General and a nominee of the Chairman of the CEC as members. After the constitution of this body, all the monies collected with effect from 30.10.2002 by the State Government and the Union Territories are to be transferred to this adhoc body. All the monies have to be audited which has been received from the user agencies on behalf of the CAMPA and the income earned thereon by the various State Government officials. The auditors may be appointed by the CAG. The audit may also examine whether proper financial procedure has been followed in investing the funds.

In the meanwhile the Supreme Court directed submission of various schemes received by adhoc CAMPA body for disbursal of funds for funding site specific schemes⁹⁷. Further, the MoEF has also appointed an acting CEO for the adhoc CAMPA with an undertaking that the regular CEO will be appointed on the constitution of the CAMPA⁹⁸.

2.26. Net Present Value

The concept of Net Present Value (hereinafter referred to as 'NPV') as applicable to forestry has evolved from the present case⁹⁹. The present statutory regime covering issue of diversion of forest land involves payment for compensatory afforestation. NPV as a concept evolved from the need to take precautionary measures in the event of diversion of forest land for non forest use to balance the interests of the economic development and environmental protection. NPV is the present value of the asset (forest) that has been diverted for non forestry purposes. NPV has to be paid at the time of diversion of forest for non forestry purposes in addition to compensatory afforestation.

The payment of NPV is for protection of environment and it has to be worked out on economic principles. In order to evolve sound principles for calculation of NPV, the Court directed the formation of an expert committee for identification and defining parameters on the basis of which each of the categories of values of forest land should be estimated. The main issues for consideration in these matters are the guidelines for determination of NPV, application of NPV whether it should be uniformly applied to all the projects or should certain class of projects be exempted from payment of NPV. The report submitted by the expert committee (Kanchan Chopra Committee) has been considered by CEC which made certain recommendations, which have now been accepted by SC¹⁰⁰.

⁹⁶ See order dated 05.05.06 I.A. No. 1337 with I.A. Nos. 827, 1122, 1216, 1473

⁹⁷ See order dated 15.09.06 in I.A. No. 1337

⁹⁸ See order dated 05.01.2007 In I.A. Nos. 827, 1122 and 1337, 1473, 1620 and 1693 in 1473

⁹⁹ Judgment dated 26.09.2005 reported in 2005 (7) SCALE 562 in I.A. No. 826 in 566, I.A. Nos.955, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046-1047, 1135-1136, 1137, 1164, 1180-1181 and 1182-1183, 1196, 1208-1209, 1222-1223, 1224-1225, 1229 and 1233

¹⁰⁰ See order dated 28.03.2008 and 09.05.2008

The Supreme Court exempted certain categories (these categories are not ascertainable from the order) at the present from the payment of NPV as an interim measure on undertaking that the amount determined to be paid as NPV would be paid within the time stipulated by this Court¹⁰¹.

a) *No Net Present Value for relocation of villages from National Parks and Sanctuaries: An interim measure*

Significantly the Court has also exempted MoEF from payment of NPV for relocation of villages from National Parks and Sanctuaries¹⁰². On the recommendation of CEC, the Court permitted MoEF to approve diversion of forest land under FCA for relocation of villagers from National Parks/Sanctuaries without, payment of NPV. This has been approved by the SC after considering the report of expert committee and CEC¹⁰³.

b) *Firing range and training areas of army exempted from Net Present Value*

The Supreme Court allowed Army authorities¹⁰⁴ to use firing range/training areas without payment of NPV. It had been contended by the Ministry of Defence that the use of firing ranges is not causing any damage to the forest area as the occupation of land is only for a limited period of time. The MoEF and CEC were directed to file its response to the contentions raised by ministry of Defence. The earlier interim order has now assumed finality by an order where SC has granted¹⁰⁵ total exemption from payment of NPV to Ministry of Defence for using forest areas for the purpose of Field Firing Ranges for training.

c) *Quantum of Net Present Value payable modified*

The Court modified its order¹⁰⁶ on the quantum of NPV in the peculiar circumstances¹⁰⁷ explained in the application reducing the amount from rupees fifteen crores fifteen lakhs eighty nine thousand and eight hundred to rupees thirty crores.

d) *Different criteria for underground mining and over ground mining*

The Court ordered that for under ground mining fifty percent of the NPV amount is to be paid with an undertaking to pay the balance amount later. As regards over ground mining one hundred percent amount of the NPV is to be paid¹⁰⁸. After the payment by the mining companies competent authorities may give necessary permission/approval for carrying on the mining activities in the various coal fields. This has been further clarified later where now only fifty percent of the NPV is required to be paid for underground mining¹⁰⁹.

e) *Clarifications on time lines of projects and Net Present Value*

An application was filed seeking modification and clarification of the order dated 29-30.10.02 and 01.08.2003. SC has categorically stated that while according transfer under the FCA for change of use from forest to non forest purposes, the user agency shall pay NPV of the forest land¹¹⁰. Therefore, NPV is required to be recovered in all cases approved by the Ministry for change of use under FCA after 29-30.10.2002, irrespective of the date on which, in principle (stage one) clearance may have been granted. In

¹⁰¹ I.A. Nos. 1194-1195 in order dated 28.01.2005

¹⁰² See order dated 28.04.2006

¹⁰³ See orders dated 28.03.2008 and 09.05.2008

¹⁰⁴ See order dated 05.05.2006 in I.A. Nos. 1387 and 1434

¹⁰⁵ See order dated 24.04.2008 in I.A. Nos. 1387, 1434 and 1665

¹⁰⁶ See order dated 21.07.2006 in I.A. No. 1597

¹⁰⁷ Peculiar circumstances not specified

¹⁰⁸ See order dated 23.02.2007 in I.A. Nos. 1677-1678 and 1679-1680 in 566 and 1713 in 1441 and order dated 27.04.2007 in I.A. Nos. 1677-78, 1679-80, 1707, 1721 in 1597, 1779 in 1664, 1785-86

¹⁰⁹ See order dated 09.05.2008

¹¹⁰ See order dated 15.09.06 in I.A. Nos. 1473 and 1620

principle (stage one) approval cannot amount to grant of permission under the FCA. It was directed that in case NPV has not been recovered from some project proponent then it should be recovered immediately.

f) Consideration of expert committee report and Central Empowered Committee report on Net Present Value

On the basis of the directions issued by the SC, an expert committee headed by Dr. Kanchan Chopra gave a report on the various issues relating to NPV and the same was examined by the CEC. The CEC report has now been accepted by SC, the recommendation contained were also acceptable to the Central Government. CEC classified forest taking in view the ecological role and value of the forests and for the purpose of the report, sixteen major forest types have been further grouped into six ecological classes depending upon their ecological functions. Following are the classifications¹¹¹.

Eco-Class 1 - Consisting of Tropical Wet Evergreen Forests, Tropical Semi Evergreen Forests and Tropical Moist Deciduous Forests

Eco- Class II - Consisting of Littoral and Swamp Forests

Eco-Class III - Consisting of Tropical Dry Deciduous Forests

Eco-Class IV - Consisting of Tropical Thorn Forests and Tropical Dry Evergreen Forests

Eco-Class V - Consisting of Sub-tropical Broad Leaved Hill Forests, Sub-Tropical Pine Forests and Sub Tropical Dry Evergreen Forests

Eco-Class VI - Consisting of Montane Wet Temperate Forests, Himalayan Moist Temperate Forests, Himalayan Dry Temperate Forests, Sub Alpine Forest. Moist Alpine Scrub and Dry Alpine Scrub

Further, based on the ecological importance of forest falling in different ecovalue and canopy density classes, relative weightage factors have also been taken into consideration. On the basis of this, the NPV has been revised at the rates given below:

Eco-Value	Very Dense Forest	Dense Forest	Open Forest
Class I	10,43,000	9,39,000	7,30,000
Class II	10,43,000	9,39,000	7,30,000
Class III	8,87,000	8,03,000	6,26.000
Class IV	6,26,000	5,63.000	4,38,000
Class V	9,39,000	8,45,000	6,57,000
Class VI	9,91,000	8,97,000	6,99,000

¹¹¹ See order dated 28.03.2008 in I.A. Nos. 826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-14, 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 I.A. Nos. 566, 1664, 1665, 1671, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in I.A. Nos. 1441, 1980-1981, 1993, 2013 2074-2076, 2077-2078 in 1441 and 2098 in 1233 in 1135-1136, 2145-2146, 2147-2148, 2149-2150 and 2153-2154 in I.A. No. 566 in W.P.(C) No. 202/1995.

f) Exemptions from payment of Net Present Value

One of the mandates of the Kanchan Chopra committee was to assess projects where payment of NPV is to be exempted. CEC has submitted its response to the exemptions¹¹² which have been approved by SC.

Category ¹¹³	Recommendation by CEC
i. Schools ii. Hospitals iii. Children's playground of non commercial nature iv. Community centers in rural areas v. Overhead tanks vi. Village tanks vii. Laying of underground drinking water pipeline up to 4 diameter viii. Electricity distribution line up to 22 KV in rural areas.	Full exemption up to 1 ha of forest land provided: (a) no felling of trees is involved; (b) alternate forest land is not available; (c) the project is of non commercial nature and is part of the Plan/Non Plan Scheme of Government; and (d) the area is outside National Park/Sanctuary
Relocation of villages from the National Parks/Sanctuary to alternate forest land	Full Exemption
Collection of boulders/silt from the river belts in the forest area	Full exemption provided:- (a) area is outside National Park/Sanctuary; (b) no mining lease is approved/signed in respect of this area; (c) the works including the sale of boulders/silt are carried out departmentally or through Government undertaking or through the Economic Development Committee or Joint Forest Management Committee; (d) the activity is necessary for conservation and protection of forests; and (e) the sale proceeds are used for protection/conservation of forests
Laying of underground optical fibre cable	Full exemption provided: (a) no felling of trees is involved; and (b) areas fall outside National Park/Sanctuary
Pre-1980 regularisation of encroachments and conversion of forest villages into revenue villages	Full exemption provided these are strictly in accordance with MoEF's Guidelines dated 18.09.1990.
Underground mining	Fifty percent of the NPV of the entire area
Wind Energy Projects	Fifty percent of the NPV at the minimum rate, provided no tree felling is involved ¹¹⁴ . It is important to see that expert committee had recommended ninety percent exemption but CEC recommendation of fifty percent has been accepted by SC.

¹¹² See order dated 09.05.2008 in I.A. Nos. 826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-14, 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 I.A. Nos. 566, 1664, 1665, 1671, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in I.A. Nos. 1441, 1980-1981, 1993, 2013 2074-2076, 2077-2078 in 1441 and 2098 in 1233 in 1135-1136, 2145-2146, 2147-2148, 2149-2150 and 2153-2154 in I.A. No. 566 in W.P.(C) No. 202/1995

¹¹³ This was corrected by order dated 09.05.2008

¹¹⁴ See order dated 24.04.2008 in I.A. Nos.1135 and 1136, 1224 and 1225, 1233, 1385-1386 and 1438 with 1639, 1671, 2098

It was further reiterated that if any project requires exemption due to its peculiarities, then SC would decide the issue on case to case basis. *It is important to see that the recommendations made by CEC on expert committee report were finally accepted giving primacy to the view of CEC overriding the expert view which was specifically constituted for this purpose.*

g) New guidelines for payment of Net Present Value¹¹⁵

The NPV rate presently approved by SC would be applicable for a period of three years and after that revision is permissible. The new NPV rates are applicable to future projects. One of the significant development is that use of forest land falling in National Parks/Wildlife Sanctuaries has become more prohibitive by imposition of a condition that prior permission of the Court is required and use would only be permitted in public interest and after payment of NPV of an amount equal to ten times in the case of National Parks and five times in the case of Sanctuaries. The use of non forest land falling within the National Parks and Wildlife Sanctuaries would be permitted on payment of an amount equal to the NPV payable for the adjoining forest area. In respect of non forest land falling "within marine National Parks/Wildlife Sanctuaries, the amount payable is fixed at five times the NPV payable for the adjoining forest area.

2.27. Leniency of the Court

The Court in some cases have been more than accommodating in providing opportunities for being heard, seeking information in a given time period. In a specific order¹¹⁶ the Court observed that in case the time specified for completion of the task by any of the Committees constituted pursuant to the orders of this Court has expired, the time is extended till the completion of the exercise by them or a period of three months. *It is not known why such largess is given and seems that it is largely discretionary.*

2.28. Non compliance or breach of Court orders taken very seriously

While the Court on one hand shown leniency on time lines, it has come down heavily on non compliance or breach of its orders. The contempt proceedings initiated against the mining officer of the Mirzapur area as well as on the legal counsel is a case in point¹¹⁷. This case has been described in more detail in the State analysis of Uttar Pradesh.

2.29. Contribution from forest deficient States to forest rich States

The Court also held that in order to ensure the preservation and regeneration of forests in the country, the Central Government should consider whether the deficient States should be asked to contribute towards the preservation of the existing forest cover and compensation/incentive given to the forest rich States to preserve and regenerate forest. In a sense, there should be a partnership of all the States to ensure the maintenance and improvement of the forest cover. This suggestion should be considered by a Committee of the Secretary (Finance) and Secretary MoEF in consultation with the Chief Secretary of all the States and a report be submitted preferably within eight weeks¹¹⁸. This has probably led the Central Government and specially the Thirteenth Finance Commission to embark on a study to ascertain what are the criteria that needs to be adopted to work out an incentive to forest rich States vis a vis forest deficient States¹¹⁹.

¹¹⁵ See order dated 28.03.2008

¹¹⁶ See order dated 08.05.1997

¹¹⁷ Reference contempt petition (c) 157/98 and order dated 29.01.1998

¹¹⁸ See order dated 22.09.2000

¹¹⁹ Personal communication with Prof MadhuVerma of IIFM presently engaged in such a study for the 13th Finance Commission.

Further in the same order on a request made by the State of M.P. regarding regularisation of encroachments in M.P., the Court opined that conditions imposed in relation to regularization should be fulfilled before any regularization is granted and asked the Central Government to consider the proposal.

a) ***Supreme Court's suggestion regarding all States contributing towards protection and preservation of forest since the same is a national wealth rejected by forest deficient States***

Pursuant to the Court's order dated 22.09.2000 in a significant I.A.¹²⁰ it was suggested that the Central Government should consider whether the States should not be asked to contribute towards a fund to be created for the protection of forests by States which are deficient in forest cover. The money out of this fund was to be given for the protection and preservation of forest to the forest rich States as forests is a national wealth and all States should therefore contribute in saving them. A report of the Committee of Secretaries informed the Court that there is no consensus amongst the States on the point in issue, while some of the States have welcomed the idea. The Committee had discussions with representatives of various State Governments but about twelve States which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court. These States are Tamil Nadu, Bihar, Rajasthan, Karnataka, Maharashtra, Delhi, Haryana, Uttar Pradesh, Orissa, Gujarat, Punjab, West Bengal and Andhra Pradesh¹²¹. In view of the stand taken by the States, the Supreme Court subsequently issued notice to the Union of India as to why they should not be asked to preserve forest as per the mandate of article 48A of the Constitution of India. The Court observed **"if in its opinion the States cannot be asked to contribute then why the Union of India should not be directed to bear the expense of maintaining the natural forest and the forest cover, especially in view of the provisions of Article 48A of the Constitution of India"**. The consequence of this order need to be further ascertained from the Union Government.

2.30. Personnel issues

a) ***Authority Competent to write a Confidential Report of forest department officer in Madhya Pradesh***¹²²

The Supreme Court also made a historic order between the traditionally competing administrative services and forest services impasse of writing confidential reports. The Court clarified as to who should be the authority competent to write a confidential report with regard to an officer belonging to the forest Department. The Court held that is logical, that up to the officer of the rank of Additional Principal Chief Conservator of Forests the reporting authority has to be immediately superior officer within the forest Department. For example, for the Assistant Conservator of Forests, the reporting authority can only be the Divisional Forest Officer and for him the reporting authority would be the Conservator of Forests for whom the reporting authority has to be the Chief Conservator of Forests and his reporting authority would be Additional Principal Chief Conservator of Forests and lastly his reporting authority would be the Principal Chief Conservator of Forests. Likewise the reviewing authority would also be the person within the same Department. It is only in case of the Principal Chief Conservator of Forests that the reporting authority will be a person other than one belonging to the Service because there is no one superior to the Principal Chief Conservator of Forests within the Service. As far as he is concerned, the reporting authority would be a person who is familiar with the work of Principal Chief Conservator of Forests and that will be person to whom he reports and who is superior to him in rank and hierarchy. The Court, therefore, directed the State of M.P. to pass appropriate orders enumerating the reporting authorities in the manner prescribed by it. The Union of India was also directed to bring to the notice of the other States the ratio of this decision as well.

¹²⁰ I.A. No. 424

¹²¹ SC order dated 08.01.2001

¹²² I.A. No. 424 order dated 22.09.2000

In fact, the Supreme Court reaffirmed the procedure for writing of Confidential Report of forest department official for all States¹²³. The Court held that several States were not following the recommendations of the CEC and the order dated 22.09.2000. It, therefore, directed that since the matter has already been decided all the States including the State of Chhattisgarh shall abide by the order dated 22.09.2000.

2.31. Protected Areas, wildlife trade and tiger conservation: Linkages with other similar petitions like CEL-WWF India and Navin Raheja case

The Godavarman and CEL-WWF India as it becomes increasingly clear are inextricably linked. Whether this is by design or default is a subject matter of another inquiry but it is sufficient to state that learning is incomplete without the other and they have an immense bearing on each other. There are numerous occasions where diversion of forest land within Sanctuaries and National Parks have been dealt with in Godavarman case instead of the CEL case whose primary aim, of course was implementation of provisions of WLPA. Further some issues brought before the Court also pertain to specific regulatory issues in Protected Areas which are covered under a different legislation, the Wildlife Protection Act rather than the Indian Forest Act or the Forest Conservation Act.

a) Minor forest produce: Bamboos and Protected Areas: Bamboo and cane ruled to be from grass family

It was clarified that the orders of 12.12.1996 does not cover minor forest produce (MFP) including bamboos etc. within its ambit¹²⁴. This innocuous looking order has a slight twist in the understanding of timber so far in this country. Perhaps for the first time, bamboo has been defined (and perhaps rightly so) as a minor forest produce. While realizing that this order may have serious implications in National Parks and Sanctuaries, more than four years later, the Court revised its stand on MFP exploitation including bamboo in the context of National Parks and Sanctuaries. The Supreme Court reiterated that the removal of forest produce like tendu leaves, harra, sal seeds, mahua flowers and mahua seeds from forest other than National Parks and Game Sanctuaries is not prohibited¹²⁵. Further, it ruled that cutting of trees does not include bamboo and cane which really belongs to the grass family; however it cannot be cut from the National Parks and the Sanctuaries. In other words, no bamboos including cane in National Parks and Sanctuaries can be cut but the same may be cut elsewhere¹²⁶.

b) Removal of dead, diseased, dying or wind fallen trees, drift wood and grasses in Protected Areas prohibited

An application was filed through the Amicus Curiae, inter alia; praying for clarification that the order dated 12.12.1996 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing tree from the areas notified under section 18 or 35 of the Wildlife Protection Act, 1972 i.e. in National Parks and Sanctuaries. The Supreme Court while issuing notice¹²⁷ to all the respondents directed that in the meantime, the ban on the removal of dead, diseased, dying or wind fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary or forest¹²⁸ was ordered to be continued. States were directed to modify any order if the same has already been passed by any of the respondent States.

Note that the above order describes the legal category of Sanctuary as a game Sanctuary which as a legal classification existed only in the Jammu and Kashmir Wildlife Protection Act, 1978. There is no legal category called game Sanctuary under the Wildlife Protection Act of 1972. The introduction of the word 'forest' also created immense ambiguity especially in the wake of the definition provided by the Supreme Court itself

¹²³ I.A. No. 1035 in I.A. No. 776

¹²⁴ See order dated 04.03.1997

¹²⁵ I.A. No. 617, 618, order dated 10.05.2001

¹²⁶ I.A. No. 707, order dated 18.02.2002

¹²⁷ See order dated 14.02.2000

¹²⁸ The words 'or forest' are ordered to be deleted by order dated 28.02.2000

and the Court quickly realized and deleted the word 'forest' by another order dated 28.02.2000.

c) Funds used in lieu of Protected Area diversion to be used exclusively for the protection of those Protected Areas only

In a very significant order having large implications on Protected Areas it was ordered by the Court¹²⁹ that the funds received from the user agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under section 18, 26A or 35 of the Wildlife (Protection) Act, 1972, for undertaking activities related to protection of biodiversity, wildlife, etc., shall also be deposited in the Compensatory Afforestation Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in Protected Areas of the respective States or Union Territories.

d) Special Authority for Protected Area supervision

The SC issued notice¹³⁰ on an application filed by the Amicus Curiae for constitution of an authority of persons named by the National Board of Wildlife (NBWL) under the Environment Protection Act (EPA) to oversee and supervise the functioning of twenty five National Parks/Sanctuaries listed in the application. On account of depletion of population of tigers and other important animals in National Parks and Sanctuaries, an application was filed by AC seeking directions, for constitution of an authority of persons named by NBWL under EPA to oversee and supervise the functioning of twenty five National Parks/Sanctuaries listed in application. Another prayer was for ensuring cooperation of the State Governments with the authority in deployment of staff manning these National Parks and Sanctuaries so as to check the menace of poaching. The application contained a photograph showing skins of leopards and as per reports, forty three such skins were seized recently which are recent and original. *This is obviously linked to the CEL case¹³¹. Whether this was done by design or in ignorance is not known but there seems to be more than meets the eye as regards control over turfs even within counsels assisting the Court.*

e) Investigation on Wildlife Trade to Central Bureau of Investigation-Special Investigation Team

In fact the SC directed the CBI to investigate seizure of forty five leopard and fourteen otter skins¹³² near tibetan colony of Majnu-ka-Tila in Delhi. The Court directed the CBI to ascertain the entire network of wildlife trade. Clearly the direction to CBI to investigate the wildlife trade and poaching cases highlights the failure of State investigative machinery to stop the wildlife trade. The SC further directed investigation regarding poaching of tigers in Ranthambore to SIT, CBI on approval by Central Government¹³³. The SC had first confined the probe of poaching of tigers in Ranthambore National Park then it was extended to Panna Tiger reserve and on the suggestion of AC, all Sansar Chand related poaching cases¹³⁴ were handed over for investigation to SIT, CBI. The MoEF has no objection to the investigation being done by SIT, CBI. *Clearly, the Amicus has played an important role in bringing the issues of wildlife trade. However, in our humble opinion the questions of wildlife trade are a serious one and needs a more holistic and comprehensive approach rather than adhoc interim measures as suggested by the Amicus.*

f) Tiger census

The SC also sought the opinion of Director, Wildlife Institute, Dehradun regarding fixing of modern gadgets/cameras at strategic points in various areas for nearly accurate census of tigers¹³⁵. *Here again the issue of tiger conservation is being comprehensively dealt with in the Navin Raheja case, however, it seems*

¹²⁹ See order dated 30.10.2002

¹³⁰ See order dated 08.04.2005

¹³¹ CWP No. 337 of 1995; CEL-WWF-India versus Union of India and others

¹³² See order dated 12.05.2005

¹³³ See order dated 06.01.2006 in I.A. No. 1455

¹³⁴ See order dated 24.02.2006 in I.A. No. 1308 and 1323

¹³⁵ See order dated 06.01.2006 in I.A. No. 1455

to be dragged in this case too. Whether this is by design or default, only time will tell.

g) Conservation and management of Protected Areas: Specified activities permitted: Is it judicial overreach?

The SC enumerated activities concerning conservation and for better management of PA¹³⁶. The CEC submitted its report on the activities that can be permitted within PA for the conservation, protection and better management of PA. These activities are given below:

1. Various activities such as removal of weeds, burning and clearing of vegetation for fire lines, maintenance of fair weather roads, habitat improvement, digging, temporary water holes, construction of anti-poaching camps, chowkies, check posts, entry barriers, water towers, small civil works, research and monitoring activities etc. are undertaken for protection and conservation of PA.
 - (i) Habitat improvement activities: Weed eradication, maintenance and development of meadows/grassland required for wild herbivores which are the prey base for the carnivores, digging and maintenance of the small water holes and small anicuts, earthen tanks, impoundment of rain water, relocation of villages outside the PA and habitat improvement of areas so vacated.
 - (ii) Fire protection measures: Clearance and maintenance of fire lines as prescribed in the management plan undertaking controlled cool or early burning and construction of watch towers.
 - (iii) Management of wet grassland habitat: Cool or early burning controlled winter burning of grasslands habitat such as in Kaziranga and Manas National Parks in Assam, to facilitate growth of fresh grass.
 - (iv) Communication and protection measures: Construction of wireless towers and improvement and maintenance of fair weather non tar roads not exceeding three meters in width, small bridges, culverts, fences.
 - (v) Antipoaching initiatives: Construction, maintenance of small antipoaching camps/chowkies, patrolling camps, check post, barriers, boundary walls, construction of small staff quarters for the front line staff.
 - (vi) Supreme Court permits certain specified activities in forest areas¹³⁷: As per order dated 14.02.2000 SC expressly prohibited certain activities in forest areas that included:
 - (a) Felling of trees and their removal;
 - (b) Removal of bamboo or grasses for any purpose;
 - (c) Removal of corals and other living forms from marine National Parks/Sanctuaries;
 - (d) Construction of tourist complexes, hotels and restaurants, zoos and safari Parks or any other building which is not for direct use for protection and management of wildlife and its habitat;
 - (vii) And other non forest activities: Subsequently, the SC, on the basis of CEC interim report, has expressly permitted certain non commercial activities within forest areas that are enumerated below:
 - Removal of weeds;
 - Clearing and burning of vegetation for fire lines;
 - Maintenance of fair weather roads;
 - Habitat improvement;
 - Digging;
 - Temporary water holes;

¹³⁶ See order dated 25.11.2005 in I.A. No. 1220 (interim report of CEC in I.A. No. 548) and I.A. No. 994

¹³⁷ See order dated 14.09.2007

- Construction of anti-poaching camps, chowkies, and check posts etc. for maintenance of forests and for supervision of the forests for the forest department¹³⁸;
- Laying of underground drinking water pipelines up to four inches diameter;
- Laying of 11 KV distribution lines for supply of electricity to rural areas;
- Laying of telephone lines or optical fiber for providing communication facilities in rural areas;
- Wells, hand pumps, small water tanks etc. for providing drinking water facilities to villagers, who are yet to be relocated from the Protected Area;
- Anganwadies, Government schools and Government dispensaries which are essential for the inhabitants of people living near forest areas and the Government can carry out construction activities in the forest area for these purposes without any cutting or felling of trees.

The SC also clarified that in case of any difficulty with the specified activities enumerated above the States have the liberty to approach Court for necessary orders.

2. The order dated 14.02.2002 will not be applicable to the activities given above provided that they
 - (i) are undertaken as per the management plan approved by the competent authority.
 - (ii) are consistent with provision of WLP.
 - (iii) are consistent with National Wildlife Action Plan.
 - (iv) are in conformity with the guidelines issued for the management of PA from time to time.
 - (v) the construction and related activities are designed to merge with the natural surroundings and as far as possible use forest friendly material.

2.32. Hydro power and diversion from Protected Areas: Some principles evolved

The National Hydroelectric Power Corporation (NHPC) is permitted to use forest land falling in Tale Wildlife Sanctuary for lower Subansiri Hydel Project on payment of NPV and other conditions¹³⁹. Parties are agreed that the project proposed by the National Hydroelectric Power Corporation Ltd. may be permitted by the MoEF subject to fulfilling the following conditions: -

a) Legal Status of land not to be changed

The legal status of the Sanctuary land i.e. 42 ha. will remain unchanged and will continue to be a part of the Sanctuary.

b) Adjoining area to be declared as National Park: Control and management

The Court has put a never before condition. The Reserve Forest area that forms part of the catchment of the Lower Subanari including the reservoir should be declared as a National Park or Sanctuary. And in fact also made provisions for funding the initiating process. It has asked that NHPC will provide funds for the survey and demarcation of the same. *This is a clear usurpation of executive powers where the power to declare Sanctuary or National Park is entirely a State or a Central Government function.* The Court further directed that the extent of area to be declared, as National Park or Sanctuary will be decided by the State Government in consultation with the MoEF and associating reputed forestry and wildlife experts. In terms of its control and management, the Court directed that the National Park or Sanctuary will be under the control of the Chief Wildlife Warden, Government of Arunachal Pradesh, to be managed by an officer of the rank of the Deputy Conservator of Forests and above.

¹³⁸ I.A. No. 1220 in I.A. Nos. 548 and 994

¹³⁹ I.A. Nos. 996, 1012

c) Relocation funds from user agency

Apart from the funds for demarcation and survey, the National Hydroelectric Power Corporation (NHPC) was also directed to provide funds for the relocation and resettlement of the people, if any, residing inside the proposed National Park or Sanctuary, at sites outside the Protected Area on land earmarked for the purpose by the State Government in advance. *Again, executive and policy implementation functions of the Government being dictated by the Court.*

d) Regulation of fuelwood for construction staff

The user agency, NHPC was also directed to make adequate arrangements for supply of fuel to the staff and workers engaged in the construction. The Court warned that under no circumstances, fuel wood will be removed from the Sanctuary or forest area.

e) No construction of dam upstream

Another observation of potentially far reaching implications was that there would be no construction of dam upstream of the Subansari river in future.

f) Cost of Sanctuary to be met by user agency

In perhaps a historic observation, it was directed by the Court that the State Government will provide dedicated field staff for the management and protection of the National Park/Sanctuary, which will include adequate number of ACFs, RFOs, Foresters, Guards and Watchmen etc.. Requisite infrastructure, communication, equipments and other facilities will be provided to the staff and the officials. The entire cost i.e. recurring and non recurring expenditure will be borne by NHPC for a period of ten years. The State Government will prepare and approve the management Plan for the National Park or Sanctuary for a period of ten years and submit to the NHPC for funding support. *Without getting into the merit of the above observation, it would be worthwhile to ask the Court to lay a standard parameter for any use of Sanctuary or National Park land for seemingly environment friendly infrastructure projects such as, hydro electric power generation.*

g) Ecological maintenance and restoration too by user agency

The Court went on to direct that the NHPC will also ensure that there is no siltation down the Subansari river during the construction phase. The spillage and diversion channels will be maintained as fish ladder. Further, under no circumstances, the excavated material will be dumped either in the river or any other part of the National Park or Sanctuary or the surrounding forests. Finally, the NHPC will also provide complete funds for reforestation of the degraded sites with indigenous species within the National Park or Sanctuary and ensure that there is no siltation down the Subansari river during construction phase. *Apart from an independent monitoring of these conditions, it must be ascertained from NHPC whether similar conditions are being put on other such infrastructure projects in the country and what are the increased costs of their projects post these directions of the Court.*

In another application for modification of conditions the State of Arunachal Pradesh has moved the Court for diversion of forest. In this case as stated above, the MoEF, had permitted the project proposed by the National Hydroelectric Power Corporation¹⁴⁰ on certain stipulated conditions. The State of Arunachal Pradesh moved an application seeking modification of condition nos. (ii) and (vii), as under:

- [ii] The Reserve Forest area that forms part of the catchment of the Lower Subansari including the reservoir should be declared as a National Park/Sanctuary. The funds for the survey and demarcation of the same should be provided by NHPC.

¹⁴⁰ I.A. Nos. 1362-1363 in I.A. Nos. 966 and 1012

- [vii] There would be no construction of dam upstream of the Subansari river in future. The Supreme Court has referred this matter to the Standing Committee of NBWL for its opinion¹⁴¹.

2.33. On encroachment in National Parks and Sanctuaries: Steps taken by Government?

In a significant order the Chief Secretaries of the State of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, M.P., Chhattisgarh and Kerala were directed¹⁴² to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular National Parks and Sanctuaries among other areas. *Note that the Court did not get into the question of what constitutes encroachment while it is also hearing a number of cases of disputed boundaries, unsettled rights, disputed claims on forest land.*

2.34. Streamlining process in Protected Areas

Reference to Standing Committee of the Indian Board of Wildlife in cases involving Protected Areas

The Supreme Court on applications of the Power Grid Corporation¹⁴³ laid down a process¹⁴⁴ where it stated that such applications is considered by the Standing Committee of Indian Board of Wildlife. The Board shall give a personal hearing to the applicant and after giving that opportunity shall submit its report to this Court within a period of eight weeks. *Although, the outcome of this case is yet to be known, it is important that a separate process was laid down by the Court to distinguish between forest lands generally and Protected Areas which are governed under two different sets of legislations.*

2.35. Enforcement of Forest Conservation Act and balancing commercial interest: A pattern emerging

One of the challenges faced by the Court is the enforcement of the existing statutory framework prescribed for the protection and conservation of forest resources. This includes the enforcement of the Forest Conservation Act on one hand and balancing commercial interests with ecological concerns on the other hand keeping in mind principles of sustainable development which is now a constitutional requirement¹⁴⁵.

The CEC has broadly evolved a set of similar conditionalities for imposition on project proponent seeking diversion of forest land for non forest purposes in a Sanctuary or National Park which have been approved by Supreme Court. There is some conditionality which is different in the case of diversion of forest land outside Protected Areas. These conditionalities are those which are common to most of diversion.

Conditions in case of diversion of land in Protected Areas

1. Approval under the FCA to be obtained.
2. Payment of five percent of the project cost in the compensatory afforestation fund for conservation and protection works in the Protected Area¹⁴⁶.
3. Payment of NPV at the present rate with an undertaking that additional NPV, if determined by Supreme Court to be paid by the project proponent.

¹⁴¹ See order dated 21.07.2006

¹⁴² SC order dated 18.02.2002

¹⁴³ I.A. Nos. 896 and 898

¹⁴⁴ See order dated 06.05.2003

¹⁴⁵ See order dated 23.11.2007 in I.A. Nos. 1324 and 1474

¹⁴⁶ As per general decision of NBWL that for the projects cleared for implementation inside National Park/Sanctuary, a payment of five percent of the project cost for the works to be carried out inside the PA, subject to a minimum amount of rupees one crore, will be stipulated. (contained in CEC report dated 16.07.2004)

4. Adherence to any other condition(s) stipulated by MoEF while granting approval under the FCA and by the standing committee of NBWL.
5. Conditions also have been imposed keeping in mind peculiarities of that National Park/Sanctuary

Conditions for diversion of forest land outside Protected Areas

1. Approval under the FCA to be obtained.
2. Payment of NPV at the present rate with an undertaking that additional NPV, if determined by Supreme Court will be paid by the project proponent.
3. Adherence to any other condition(s) stipulated by MoEF while granting approval under the FCA

Some examples on diversion of forest land based on the above conditionalities are enumerated below:

a) *Diversion of forest land in favour of railways*

The Supreme Court has granted permission for the construction of Broad Gauge line between Guna and Etawah falling within the National Wildlife Sanctuary¹⁴⁷ subject to compliance of conditions specified in CEC report dated 24.08.2005 and with an undertaking to deposit additional NPV as and when determined by the Court.

In a similar case related to transfer of forest land falling in National Chambal Wildlife Sanctuary to railways, this was allowed by the Supreme Court¹⁴⁸. By an earlier order of this Court some land was transferred to the railways for laying down new railway lines in the National Chambal Wildlife Sanctuary. In the present permission is sought for transfer of some more land for the same project. Permission granted on the adherence to the following conditions which are acceptable to the railways.

- (i) FCA approval to be obtained.
- (ii) Payment of five percent of the project cost in the compensatory afforestation fund.
- (iii) Payment of NPV with an undertaking that additional NPV, if determined by this Honorable Court will be paid.
- (iv) Other conditions stipulated by MoEF while granting approval under the FCA will be fulfilled.
- (v) Construction of pucca retaining walls of suitable dimension of 500 metres width on each side of the railway line on both banks to prevent any damage to the high banks through soil erosion.
- (vi) Railway authorities should carry out stone pitching on both sides of the railway embankment through its entire length within the Sanctuary area of M.P. and U.P..
- (vii) Railway authorities would pay cost of penal compensatory afforestation of locally occurring species over 50 ha. of forest land in the area adjoining the railway line in the Sanctuary of M.P. which is a revenue land.
- (viii) Substantial component of work should be under the ecodevelopment of the villages falling within one kilometer of the railway line within the Sanctuary area.
- (ix) Railway to ensure that no garbage is thrown into the Chambal Sanctuary from any train passing through the Sanctuary.

b) *Diversion of forest land falling within the National Park and Sanctuaries for drinking water supply*

In another order, the Court allowed diversion of forest land falling within the National Parks and Sanctuaries for nine drinking water supply¹⁴⁹ subject to compliance with the conditions imposed by CEC.

¹⁴⁷ See order dated 16.12.2005 in I.A. No. 1011

¹⁴⁸ See order dated 05.04.2007 in I.A. Nos. 1635-1636

¹⁴⁹ See order dated 27.01.2006 I.A. No. 1472

2.36. Mining in forest and Protected Areas

a) *Mining permit in a National Park: Violation of 12.12.1996 order?*

In an application filed through the Amicus Curiae, the Union of India was asked to explain why mining permit was granted in a National Park despite the Supreme Court's order dated 12.12.1996¹⁵⁰.

On 27.07.2001¹⁵¹ the MoEF filed an affidavit which states that it has been decided that no approval under the Forest (Conservation) Act would be accorded to Kudremukh Iron Ore Company Limited (KIOCL) for undertaking mining operations in any unbroken area. However, taking a holistic view, the Ministry is considering to allow KIOCL to continue the mining operations over the already broken up area upto a maximum of five years. The Court, in seeking to arrive at a consensual decision asked the parties concerned including the Amicus to suggest such measures which may be required to be taken keeping in mind the principle of sustainable development. Significantly, it also ordered that the State of Karnataka should consider afresh the final notification, which it had issued excluding the area in question from the National Park in the light of the additional affidavit filed on behalf of the MoEF. *This may again be seen as an encroachment of the executive space by the judiciary. However, the Court in its wisdom to uphold the principle of sustainable development issued such a direction.*

The matter regarding mining KIOCL inside Kudremukh National Park¹⁵² was also eventually referred to CEC. Incidentally, the forests in the area i.e. Western Ghats are among eighteen internationally recognised hotspots for biodiversity conservation in the world. The CEC recommended that KIOCL be asked to wind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, whichever is earlier in the already broken up area.

b) *Concept of buffer areas/safety zone*

The evolution of the concept of safety zone or buffer zone owes its genesis to mining activity in forest and Protected Areas. The devastating effect of mining has brought to the forefront the need to formalize this concept, which is known by different nomenclature like eco-sensitive zone, buffer area and safety zone.

In the CEC report dated 20.11.2003 on Jamwa Ramgarh Wildlife Sanctuary, the examination of mining activity in Jamwa Ramgarh Wildlife Sanctuary was undertaken by CEC on receipt of various representations alleging violation of FCA, WLPA and orders of SC. After an inquiry was conducted by CEC it has been averred on the effect of mining inside the Sanctuary and to quote CEC "during site visits to the Jamwa Ramgarh Sanctuary, the CEC came across a horrible and unbelievable picture of devastated ecosystem due to indiscriminate mining activity". "In the present form it may be more appropriate to rename the area as "Jamwa Ramgarh Wildlife Graveyard". In this report various aspects of mining are discussed. One that is significant is about prescription and enforcement of an existing safety zone around the Sanctuary. A safety zone of twenty five meters has been fixed for all the Sanctuaries in Rajasthan and five hundred meters for Ranthambore National Park. It has been recommended by CEC that minimum five hundred meters safety zone around PA is necessary where no mining, construction and other projects should be allowed. These recommendations of CEC are pending consideration before the Court¹⁵³.

¹⁵⁰ SC order dated 10.05.2001

¹⁵¹ I.A. No. 670 in the above dated SC order

¹⁵² I.A. No. 670

¹⁵³ Also see I.A. No. 1000 and order dated 17.09.2004

The SC has directed MoEF to respond on the question of prescribing buffer zone around PA¹⁵⁴. The Court directed MoEF to place on record its view on prescribing a buffer zone and the criteria to be adopted in terms of whether it should be uniform for all PAs or it should be site specific. The opinion of NBWL has to be ascertained on this issue by the ministry. This aspect is pending consideration before the Court. Note that a similar issue is being considered by the Supreme Court under the name of ecologically sensitive areas in and around PAs in the Goa Foundation case¹⁵⁵.

c) *Temporary Working Permits and diversion of forest land for non forestry purposes*

Temporary Working Permits (TWP) as the name suggests are interim arrangements for mining activities in the Protected Areas and forest areas granted to the mining companies who had applied for renewal of their mining lease. The TWP is granted for a period of three months with an extension being granted for period not more than a year. In some of the cases on account of approval/clearances not forthcoming due to non constitution of the Forest Advisory Committee, mining has continued unabated for periods more than the statutory limit. The Court has responded to this arrangement in various ways by granting extension of TWP by linking it up with NPV, eventually banning it and then reopening the mining through TWPs. Thus for example in one I.A. the Court granted permission for extension of temporary working permit on payment of NPV and on giving an undertaking to pay the balance amount of additional NPV. After the payment of the aforesaid amount MoEF was allowed to process the request of the project proponent¹⁵⁶. Taking a tough stand the Court observed that despite its orders the MoEF granted Temporary Working Permits¹⁵⁷. Hence, it directed that unless permission is sought under Forest Conservation Act 1980, no Temporary Working Permit or permission shall be granted for mining activities in the aforesaid areas. Further, mining activity would not continue under any Temporary Working Permits even if it may have been granted¹⁵⁸. However this blanket ban was again relaxed in another case where the Court exempted certain mining operations from the prohibition imposed on mining under TWP¹⁵⁹.

In some cases the directions for closure of mines was not applicable to such mines which were operating under temporary working permit and whose permits were likely to expire before the next date of hearing¹⁶⁰. All the mines operating under Temporary Working Permit as on 16.12.2005 would continue to operate until further orders were passed¹⁶¹.

d) *Temporary Working Permits and Protected Areas: Eligibility and procedure determined*

The Court has evolved the eligibility and procedures for granting Temporary Working Permits in Protected areas. In a significant order¹⁶² the Court clarified that in an earlier order on 16.09.2005, the Court issued an order that no Temporary Working Permits (TWP) or permissions would be granted for mining activities that were carried inside the Protected Areas including National Parks and Sanctuaries and forest areas.

Further, no mining activity would be continued under these permits even if granted. However, this order was later modified on the applications filed by some applicants and TWP were allowed to continue for mining activity. The Court has now prescribed certain preconditions/eligibility criteria for grant of TWPs after considering the suggestions that were filed by the Amicus, MoEF and the Foundation of Indian Minerals Industries (FIMI).

¹⁵⁴ See order dated 16.09.2005 in I.A. No. 1197-1199 and 1210-1211

¹⁵⁵ Goa Foundation Vs Union of India (W.P (C) No. 460 of 2004)

¹⁵⁶ See order dated 24.03.2006. In I.A. No. 1496 in I.A. Nos. 1315-16 in I.A. No. 566

¹⁵⁷ With reference to the affidavit filed by Mr. Anurag Bajpai on behalf of MoEF on 14.09.2005 and the statement showing grant of Temporary Working Permits from 01.01.2003 to 31.12.2004

¹⁵⁸ See order dated 16.09.2005 in I.A. No. 1000 with 982-984, 1026-1028, 1123-1124

¹⁵⁹ See order dated 30.09.2005 in I.A. No. 1413 and 1414 and order dated 21.10.2005 in I.A. Nos. 1426 and 1428

¹⁶⁰ See order dated 16.12.2005 in I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1439, 1444-45, 1454 and 1460

¹⁶¹ See order dated 06.01.2006 in I.A. No. 1413, 1414

¹⁶² See order dated 04.08.2006 in I.A. Nos. 1413, 1414, 1454, in I.A. Nos. 1413, 1426, 1428, 1440, 1439, 1441, 1444-1445, 1459 and 1460

Eligibility Conditions

- i) TWP's can only be granted for renewal of mining leases, and not where the lease is being granted for the first time to the user agency.
- ii) The mine is not located inside any National Park/Sanctuary notified under section 18, 26A or 35 of the WLPA.
- iii) The grant of the TWP would not result in any mining activity within the safety zone around such areas referred to in (ii) above, as an interim measure, one kilometer safety zone shall be maintained subject to the orders that may be made in I.A. No. 1000 regarding Jamua Ramgarh Sanctuary.
- iv) The user agency who has broken up the area of the mine (in respect of which the TWP is being sought) has or had the requisite environmental clearances and at no time prior to the grant of TWP, was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of FCA. In cases involving violation of FCA, a formal decision on merit should be taken under the Act after considering the gravity of the violation. However, the grant of a TWP may be considered where past violations have been regularized by the MoEF by the grant of an approval under FCA with retrospective effect.
- v) The conditions attached to the approval under the FCA for grant of the mining lease (or the renewal of the mining lease), have been fulfilled, particularly those in respect of (but not limited to) compensatory afforestation, reclamation plan and over burden dumping on the specified site.
- vi) The user agency has, within the stipulated time, already filed a proposal in conformity with the Forest (Conservation) Rules, 1980, for seeking an approval under the FCA along with the complete details as are required to be furnished. An application for the grant of the TWP in favour of the user agencies, who have either not filed a proper proposal should not be entertained.
- vii) A TWP shall be granted only limited to working in the area broken up legally and during the validity of the lease. No TWP can be granted in respect of, or extending to either unbroken area or the areas which have been broken after the expiry of the mining lease or have been broken in violation of the FCA or any other law for the time being in force.
- viii) In no circumstances can the duration of a TWP extend beyond the period of one year. Where an application for grant of permission under the FCA is not disposed of during the currency of TWP, the applicant, on the strength of the same TWP may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court.
- ix) Subsistence of a valid lease under the MMRD Act exists (including by way of a deemed extension in terms of Rule 24-A (6) of the Mineral Concession rules) in respect of the area of the TWP.

Procedure for grant of clearance under FCA and for issuance of TWPs

1. The user agency shall submit, in the first instance, to the State Government, proposals seeking renewal of the mining lease under the FC Act not less than two years prior to the expiry of the mining lease, except the leases which are due to expire before August, 2008, provided applications are made on or before 31.10.2006.
2. On receipt of the proposal within the stipulated time, and upon its examination, where the State Government is of the view that further details (besides the information submitted by the user agency in the prescribed formats) are necessary, the State Government shall give intimation not later than ninety days of the receipt of the proposal.
3. The State Government shall forward the proposal together with their recommendations to the Central Government not later than nine months after receipt of the proposal.
4. The Central Government shall ordinarily dispose of the application for grant of permission not later than four months of its receipt.
5. In a situation where the Central Government is unable to dispose of the application within four months as aforesaid, it shall record special reasons explaining the delay.
6. Where the application for grant of permission under the FCA is delayed beyond the periods stipulated

above, the user agency may then apply for the grant of a TWP.

7. In such cases, the user agency will have the option of applying for a TWP though the State Government in the prescribed Proforma by MoEF with an advance copy both to the MoEF and the Regional Office of MoEF. Such applications shall be made at any time after the expiry of thirteen months from the date of filing of the proposal with the State Government but not later than nine months prior to the expiry of the existing approval under the FCA. In cases where lease/renewal was granted prior to the enactment of FCA and the lease period has not expired, the application shall be made at least nine months prior to the expiry of lease period.
8. The proposal seeking the TWP shall be processed by the State Government and forwarded to the MoEF within a period of three months, who shall place the proposal before the FAC constituted under section 3 of the FC Act in its next meeting.
9. In the event of failure on the part of the State Government to send its recommendations on the proposal submitted by the user agency for grant of TWP within the stipulated period, the advance copy of the application, already sent by the user agency to the Central Government, can be placed before the FAC for its consideration. The FAC shall provide an opportunity to the State Government and user agency to be heard before giving its recommendations on the merits of the case.
10. If the State Government, for reasons to be recorded in writing, recommends a refusal of the request to grant a TWP the FAC will pass such orders as it thinks fit. The FAC shall be at liberty to evolve a suitable procedure for this purpose.
11. In respect of cases where no recommendation has been received from the State Government within the stipulated time, the FAC shall, after giving the State an opportunity to be heard, examine the proposal on merit and pass appropriate orders. The FAC should evolve a suitable procedure that shall be fair and reasonable and would ensure adherence with the time schedule.
12. All proposals for grant of FCA clearances and TWPs in respect of mining leases shall be placed before the FAC. Where the FAC, by order recommends the grant of a clearance or a TWP, the MoEF shall within a period of four weeks from the date of such order, issue orders for the grant of clearance on the usual terms, including those relating to payment of NPV.
13. Provided where a TWP is being granted, it shall only be for a period not exceeding one year and upon payment of NPV for the already broken up area.
14. Decision to grant TWP shall be taken before the expiry of the mining lease. Decision of the MoEF on the proposal for diversion of forest land for mining lease under the FC Act shall be conveyed to the user agency before the expiry of the TWP.
15. In case the MoEF disagrees with the recommendation of the FAC, it shall record its reasons in writing and communicate the same to the FAC, and the FAC may, after considering such reasons, pass such further orders as it thinks fit.
16. Provided where the Government still disagrees with the order passed by the FAC, it may seek appropriate directions from this Court.
17. All the orders of the FAC shall be made available to the user agency and the State Government.
18. In cases where the recommendations have been made by the FAC without ascertaining the views of the State Government, the TWP shall become effective only after the State Government confirms the details made available by the user agency within a maximum period of one month. In case the information furnished by the user agency is bound to be at variance with the factual position, the State Government shall refer the matter back to the MoEF, who may, if so advised, suspend the grant of the TWP.
19. The TWP shall become effective only after the payment of NPV for the already broken up area is deposited by the user agency.
20. In cases where site inspection by the Regional CCF is mandatory, the proposal for the TWP shall be examined by the FAC after considering the site inspection report of the Regional CCF, the Regional CCF shall ensure that the inspection is completed in such time as may be directed by the FAC.
21. At the time of payment of NPV at the present rate, the user agency shall also give an undertaking to pay the additional NPV, if so determined as per the final decision of this Court.

It was decided by the Court that the units which are operating with the TWPs under interim order granted by the Court would continue for a period of four months. These cases shall be decided by FAC within the said period of four months. *The current status need to be determined.*

2.37. Rejecting a huge Corporate Conglomerate on diversion but leaving a window for another

In a significant order, the Supreme Court rejected the application of Vedanta Alumina Ltd for diversion of forest land to set up Alumina Refinery in Niyamgiri hills, Orissa¹⁶³. However, there is more to it than meets the eye. An application was filed for seeking clearance of the proposal for use of 723.343 ha. of land (including 58.943 ha. of reserve forestland) in Lanjigarh Tehsil of Kalahandi district for setting up Alumina Refinery in Orissa by Vedanta Alumina Ltd. (VAL)¹⁶⁴. Mining of bauxite deposits was required to be done on the top of Niyamgiri hills. MoEF had given an environment clearance for this project. However, CEC objected to the grant of clearance as sought by M/s VAL on the ground that the refinery is totally dependent on the mining of bauxite from Niyamgiri hills, Lanjigarh, which is the only vital wildlife habitat. In fact, part of it constitutes an elephant corridor and also on the ground that the said project, including the mining area, would obstruct the proposed wildlife Sanctuary and the residence of tribes like Dongria Kondh. According to CEC, use of forestland in an ecologically sensitive area like Niyamgiri hills should not be permitted. M/s VAL had obtained all necessary clearances and has sought clearance of the project from this Court before it is placed before the Central Government. The application of Vedanta was dismissed on the ground that valuable national assets cannot be placed in the hand of a company whose credibility is at stake. This was in reference to a newspaper report wherein Vedanta Resources (M/s VAL) has been banned from Norway for non compliance of labour laws and for violation of human rights. After dismissal of the application of Vedanta, the Court attempted to balance development vis-à-vis protection of wildlife ecology and environment in view of the principle of sustainable development and evolved a rehabilitation strategy as a condition precedent for clearance of the project. The rehabilitation package suggested by the Court was to be jointly agreed by M/s SIIL, State of Orissa and OMC Ltd. If M/s SIIL is agreeable to abide with this rehabilitation package then an application can be moved seeking clearance for the project from the Court. These conditions contained in the rehabilitation package are as follows:

- 1) State of Orissa shall float a Special Purposes Vehicle (SPV) for scheduled area development of Lanjigarh Project in which the stakeholders shall be State of Orissa, OMC Limited and M/s SIIL.
- 2) The annual report of SPV shall be submitted to CEC every year and if CEC finds non utilization or misutilization of funds the same shall be brought to the notice of this Court. While calculating annual profits before tax and interests M/s SIIL shall do so on the basis of the market value of the material which is sold by OMC Ltd. to M/s SIIL or its nominee.
- 3) M/s SIIL would pay NPV of rupees fifty five crores and rupees fifty crores fifty three lakhs towards Wildlife Management Plan for conservation and management of wildlife around Lanjigarh Bauxite mine and rupees twelve crores twenty lakhs towards tribal development along with expenses towards compensatory afforestation.
- 4) A statement shall be filed by M/s SIIL with CEC within a period of eight weeks from the present order stating number of persons who shall be absorbed on permanent basis in M/s SIIL including land losers.
- 5) Certain suggestions were made by the State Government to the user agency for consideration
 - a) It shall demarcate the lease area on the ground.
 - b) Make arrangements for mutation and transfer of equivalent non forest land identified for compensatory afforestation to the ownership of the State Forest Department.

¹⁶³ See order dated 23.11.2007

¹⁶⁴ I.A. No. 1324 and 1474 with I.A. Nos. 2081-2082 @ W.P. (C) No. 549/2007

- c) The State Forest Department will take up compensatory afforestation at project cost with suitable indigenous species and will declare the said area identified for as "protected forest" under the Orissa Forest Act 1972 for the purpose of management.
- d) It shall undertake rehabilitation of Project Affected Families, if any as per the Orissa Rehabilitation and Resettlement Policy 2006.
- e) To undertake phased reclamation of mined out area. All overburden should be used for back filling and reclamation of the mined out areas
- f) To undertake fencing of the safety zone area and endeavor for protection as well as regeneration of the said area. It shall deposit funds with the State Forest Department for the protection and regeneration of the safety zone area.
- g) Adequate soil conservation measures shall be undertaken by the lessee on the overburden dumps to prevent contamination of stream flow.
- h) It shall undertake a comprehensive study on hydrogeology of the area and the impact of mining on the surrounding water quality and stream flow at regular interval and take effective measures so as to maintain the pre mining water condition as far as possible.
- i) A comprehensive study of the wildlife available in the area in association with institute of repute like Wildlife Institute of India, Dehradun, Forest Research Institute, Dehradun etc. and shall prepare a site specific comprehensive wildlife management plan for conservation and management of the wildlife in the project impact area under the guidance of the Chief Wildlife Warden of the State.
- j) It shall deposit of NPV of the forestland sought for diversion for undertaking mining operation.
- k) It shall prepare a comprehensive plan for the development of tribals in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle.
- l) As per the State Government policy, it shall earmark five percent of the net profit accrued in the project to be spent for the development of health, education, communication, irrigation and agriculture of the said schedule area within a radius of fifty kilometer.
- m) Controlled blasting may be used only in exigencies wherever needed to minimize the impact of noise on wildlife of the area.
- n) Development of greenery by way of plantation of suitable indigenous species in all vacant areas within the project.
- o) Trees shall be felled from the diverted area only when it is necessary with the strict supervision of the State Forest Department at the cost of the project.
- p) The forestland diverted shall be non transferable. Whenever the forestland is not required, the same shall be surrendered to the State Forest Department under intimation to Ministry of Environment and Forests, Government of India.

As stated earlier, the matter was heard on 26.10.2007 where by the Court was informed that M/s VAL is a subsidiary of M/s Sterlite Industries (India) Ltd. (M/s SILL, for short) and that M/s SILL would provide jobs on permanent basis to the tribals, particularly, land-losers. The Court made it clear that the application of VAL would be not be entertained and dismissed the application on the ground that valuable assets cannot be placed in the hands of a foreign company. *What is significant in the Vedanta matter is the reliance placed by the SC on a newspaper report where it was reported that the Polish Government had blacklisted VAL on account of violation of environmental norms while conducting its overseas businesses. In this matter the Supreme Court has traveled beyond imposition of conditions concerning the environment but has imposed conditions for rehabilitation of displaced tribals and ensured financial assistance for tribal development.* The State Government has proposed that the R&R for this project should be as per the existing Orissa Rehabilitation and Resettlement Policy 2006. Though submission of rehabilitation plan is part of the statutory framework while seeking FCA clearance. Pursuant to this

order an application¹⁶⁵ was preferred by M/s Sterlite Industries (India) Ltd. It was stated in the application that SILL, State of Orissa and Orissa Mining Corporation Ltd. (OMCL) unconditionally accept the terms and conditions and modalities suggested by SC under the heading "Rehabilitation Package" in its earlier order. CEC filed its report dated 24.04.2008 to the application of SILL. CEC submitted two main responses. One suggestion is that the SPV should work the Niyamgiri Bauxite Mine in a business like manner and that the mining lease of Niyamgiri Bauxite Mine be assigned to the SPV from OMCL. This suggestion was not accepted by SC as they were not in favour of changing leases/MoUs/Joint venture agreements signed between the parties at earlier point of time which have been approved by the Ministry of Mines, Government of India, and other authorities. Another suggestion of CEC was that there should be a predetermined mechanism for price fixation. SC ruled that at the preoperational stage, there was no requirement for applying the price mechanism suggested by CEC. But it left the door open by stating that if at the end of the accounting year of SILL, CEC finds that the annual profits before tax and interest is depressed by the pricing mechanism mentioned in joint venture agreement dated 05.10.2004 vide clause 2.3.3(a) then it would be open to CEC to move SC with the suggested price mechanism in its report. This is an important aspect as this mechanism determines payment by SILL towards the Scheduled area development. Subject to all these conditions SC accorded forest clearance¹⁶⁶ to undertake bauxite mining on the Niyamgiri hills in Lanjigarh.

2.38. Road and defence: Modification of plan by Central Empowered Committee

The Court directed the Ministry of Defence on the recommendation of CEC to construct the road on alternate route shown in 'Blue' colour in the report of CEC instead of the present route for which permission is being sought by the Ministry of Defence¹⁶⁷.

2.39. Imposition of fine on corporate body for violation of Forest Conservation Act and Supreme Court orders

The Court imposed fine of rupees one crore on Reliance Telecom Ltd. for violation of FCA, SC orders¹⁶⁸. In this case, the Reliance Telecom limited sought permission of the MP Forest Department to lay the optical fibers through the Madhav National Park. Even before the matter was examined by the CEC, the Chief Wildlife Warden of the State of MP granted permission for laying the optical fiber cable through the forest land. On the basis of this order the Reliance Telecom Ltd. laid its optical fiber cable without the matter being examined by CEC or MoEF and the SC. For violation of the orders of SC, a fine of rupees one crore imposed on Reliance Telecom Ltd. to be deposited in CAMPA Fund. *It must be examined whether the officer concerned has also been reprimanded or penalized while the corporate has been fined.*

2.40. Permission for survey for oil

The Supreme Court granted permission to Oil India Limited (a public sector undertaking) for survey¹⁶⁹ subject to the conditions mentioned in report dated 25.08.2006.

2.41. Transmission lines, diversion and Sanctuaries

The Supreme Court has granted permission to Power Grid Corporation Ltd. for use of forest land falling in Ratapani Wildlife Sanctuary for laying of Optical Fiber Cable (OFC) subject to adherence to the conditions recommended in

¹⁶⁵ I.A. No. 2134

¹⁶⁶ See order dated 08.08.2008 in I.A. No. 2134

¹⁶⁷ See order dated 21.07.2006 in I.A. No. 1354 in I.A. No. 1154

¹⁶⁸ See order dated 05.04.2007

¹⁶⁹ (Not sure if it is forest land per se or forest land in PA)

the CEC report dated 31.08.2006¹⁷⁰. On the third condition regarding deposit of five percent of the project cost for laying of OFC between Itarsi and Bhopal the amount has to be calculated not on the distance between Itarsi and Bhopal but on the distance of 12.8 km. which falls within the Ratapani Wildlife Sanctuary area. This in some ways clarifies the extent of project cost to be taken into account that forms the basis for calculation of five percent deposit towards conservation of Sanctuary. In another case, the Supreme Court granted permission¹⁷¹ to Power Grid Corporation of India Ltd for construction of two transmission lines for evacuation of power from the Rajasthan Atomic Power Plant through Jawahar Sagar Wildlife Sanctuary. The CEC in its report has prescribed certain conditions for sanction of the project. The SC has ordered that as far as five percent project cost is concerned it would be calculated on cost of laying up the transmission lines through Jawahar Sagar Wildlife Sanctuary. The cost is to be deposited in CAMPA fund. The actual felling of trees would be subject to the description given in paragraph twelve of the recommendations of the CEC. The issue as to determination of project cost for deposit of five percent is to be adjudicated later on.

2.42. Coal washery: Permissible or not: Going beyond the mandate?

The SC has issued notice to M/s Aryan Coal Beneficiation (Pvt.) Ltd. on coal washery activity¹⁷². In this case the CEC has filed a report on the process of coal washing by the M/s Aryan Coal Beneficiation Pvt. Ltd. who had been given the right to wash coal by M/s South Eastern Coalfields Ltd. The CEC report pointed out that as per the direction, there can be treatment of the coal and an agent has no right to sell any produce after the washing process is over. It is a specific condition under the agreement that the agent cannot sell the coal under the garb of reject. The CEC report has highlighted gross violations by M/s Aryan Coal Beneficiation (Pvt.) Ltd. of selling the coal under the garb of reject, after the washing process is over. Over this issue the SC has directed issuance of notice to M/S Aryan Coal Beneficiation Pvt. Ltd. and the Ministry of Coal.

2.43. Constitution of Forest Advisory Committee

The Forest Conservation Rules, 2003 provides for constitution of the Forest Advisory Committee (FAC) which is a crucial statutory body which examines the larger proposals on diversions of forest land among other things under the Forest Conservation Act.

As per the provisions of FCA, prior approval of the Central Government is essential for diversion of forest lands for the non forestry purposes. The basic objective of the Act is, to regulate the indiscriminate diversion of forest lands for non forestry uses and to maintain a balance between the developmental needs and the conservation of natural resources. Any activity which requires the diversion of forest land for non forest use has to be cleared by MoEF. The process of clearance stipulates a role of the Forest Advisory Committee (FAC). As per the rules every proposal is to be referred to FAC and the committee has to adjudge the proposal on the touchstone of the following parameters:

- Whether the forest land to be converted is part of a nature reserve, National Park wildlife Sanctuary, biosphere reserve or forms part of the habitat or any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;
- Whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro electric project;
- Whether all feasible alternatives have been considered by the State Government or the other authority and

¹⁷⁰ See order dated 08.09.2006 in I.A. No. 1632

¹⁷¹ See order dated 30.03.2007 in I.A. No. 1655-1657

¹⁷² See order dated 30.11.2007 in I.A. No. 1335, 1356, 1388 in I.A. No. 989

- that the required area is the minimum needed for the purpose; and
- Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation¹⁷³.

Following this scrutiny, the FAC advises the MoEF on whether the forest land should be diverted, and on what conditions and restrictions. There has been difference of opinion and in media glare between the Central Government and the Supreme Court on the constitution of FAC.

a) *Constitution of Forest Advisory Committee while Forest Conservation Rules, 2004 stayed*

The Supreme Court directed the MoEF to explain the constitution of FAC under amended rules (2004) and appointment of the non forest members in consultation with Amicus Curiae and CEC¹⁷⁴. As per the Court, FAC is to be constituted in terms of the Forest (Conservation) Rules, 2003 though the FAC was constituted under amended rules of 2004 that have been stayed. The Court had therefore, directed the Ministry to explain the constitution of FAC. The three eminent experts in forestry and allied disciplines (non forest members) in FAC were asked to be appointed in consultation with the Amicus Curiae and Chairperson of CEC.

b) *Constitution of Forest Advisory Committee a bone of contention between MoEF and Supreme Court*

MoEF rejected the members suggested by the Amicus Curiae and CEC on the grounds that they do not fulfill the guidelines framed by the Ministry for appointment of experts for the various committees of the Government. SC directed the Ministry to place on record the copy of the guidelines¹⁷⁵. SC was to consider the constitution of FAC after perusal of the guidelines. During the pendency of this issue, the Central Government has reconstituted the FAC including Prof. Madhav Gadgil, Dr. Ullas Karanth and Mr. Mahesh Rangarajan in place of the existing non official members. The interim procedure adopted by SC as explained below has now been done away¹⁷⁶, which essentially means that CEC would not be required to examine the clearances accorded by FAC and SC would not be involved in the process.

c) *Interim procedure for grant of forest clearance pending Forest Advisory Committee Constitution*

The Supreme Court in the meanwhile keeping in mind various projects requiring clearance evolved a procedure for grant of forest clearance pending decision on the constitution of FAC¹⁷⁷. In this process 15.09.2006 was taken as the cutoff date for categorization of the projects.

The following directions were given, pending decision on the larger question indicated herein above:

- The FAC to accord priority to projects, which need immediate clearances. In this regard, it may be stated that fresh cases may be cleared project wise by the FAC and thereafter such clearances shall be placed before this Court for approval. All clearances granted by FAC of fresh cases shall be subject to approval of SC. Before giving approval, report of CEC in respect of each clearance is to be furnished. The matter will be considered after the CEC report is received. Once the Court grants the approval, the matter may be placed before the Central Government for disposal in accordance with law.
- Post 15.09.2006, the former FAC has given clearances to projects and, therefore, in such cases it would not be necessary to place those clearances before the existing FAC once again.

¹⁷³ Rule 7, Forest (Conservation) Rules, 2003

¹⁷⁴ See order dated 15.09.2006 in I.A. Nos. 1612, 1613

¹⁷⁵ See order dated 05.01.2007 in I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1441, 1454, 1459, 1460, 1662-1663, 1675 in 1413 and 1634 in 1441

¹⁷⁶ See order dated 02.05.2008 in I.A. Nos. 2164 and 2167, 2168, 2169, 2170 in I.A. Nos. 1413, 1414, 1426, 1428, 1454, 1459, 1460, 1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2129, 2130-2132, 2133, 2216, 2217-2218, 2222, 2232-2233, in 1413

¹⁷⁷ See order dated 27.04.2007

- iii. There are certain projects on lands in National Parks and Sanctuaries where SC has passed orders relaxing certain conditions. In such cases, FAC and Central Government to pass appropriate orders without reference to CEC or to SC.
- iv. Matters where FAC has given their clearance after 15.09.2006, and CEC has also given its response. Then such matters should be placed before Court for approval.
- v. Pending the decision of SC on the larger issue regarding constitution of FAC the order dated 15.12.2006 staying reconstitution of FAC. (vide order dated 12.12.2006) stands modified to the extent indicated above.

d) *Supreme Court grants approval to projects seeking forest clearance: Is it judicial overreach on executive functions?*

The SC in terms of the procedure framed for granting clearances cleared fifty five projects where clearance has been given by FAC and CEC has also examined them¹⁷⁸. In terms of the direction previously laid down these cases will be examined for passing of appropriate orders. A batch of eleven projects was cleared by SC after examination by CEC¹⁷⁹ of the order passed by FAC. Some significant projects that were cleared are Teesta Hydroelectric project Stage VI¹⁸⁰ and steel plant project of M/s POSCO.¹⁸¹ Another batch of thirteen projects¹⁸² was cleared by SC where both CEC and FAC had given its approval¹⁸³. Further, four irrigation projects in Maharashtra¹⁸⁴ and one proposal for prospecting licence¹⁸⁵ and six proposals for grant of TWP¹⁸⁶ were cleared by SC.

¹⁷⁸ See order 28.09.2007 in I.A. Nos. 1413, 1414, 1426

¹⁷⁹ See order dated 15.02.2008 in I.A. No. 2166

¹⁸⁰ See order dated 25.04.2008 in I.A. No. 2163

¹⁸¹ See order dated 08.08.2008 in I.A. No. 2166 in I.A. No. 1413

¹⁸² 1. Diversion of 9.00 ha. of forest land for surface rights in favour of South Eastern Coal filed Ltd. in Katghora Forest Division in Kobra district of Chhattisgarh.
 2. 2D Seismic Survey Operation over 113.50 sq km. forest area in and around Deomali and is adjoining area in Arunachal Pradesh for Petroleum Exploration by M/s. Oil India Ltd.
 3. Diversion of 64.3258 ha. of forest land for laying of 220 KV transmission line from Prini to Panarsa/Banala in favour of M/s AD Hydro Power Ltd. in Kullu, Parbati and Seraj forest Divisions of Kullu district of H.P.
 4. Diversion of 63.969 ha. of forest land for Bhanwamal Tank Scheme of Water Resource Department in Sarguja Forest division in Sarguja district of Chhattisgarh.
 5. Diversion of 49.283 ha. of forest land for construction/improvement/upgradation of Gangtok-Chungthang-Gaigong (NSH) Sector KM 30.00 to KM 84.60 in North district of Sikkim by Border Road Organisation.
 6. Diversion of 56.984 ha. of forest land for the construction of Birsinghpur Tank Project in district Panna, M.P. in favour of Water Resources Department, M.P.
 7. Diversion of 127.174 ha. of forest land for Chhindwara-Nagpur Gauge Conversion project in favour of M/s South East Central Railway in Chhindwara district of M.P.
 8. Diversion of 68.337 ha. of forest land in favour of Chhattisgarh Rajya Vidyut Mandal for construction of 132 KV Transmission line between Bishrampur-Balrampur in Sarguja district of Chhattisgarh.
 9. Diversion of 209.73 ha. of forest land for construction of Pandhari Medium Irrigation Project under Wardha Division Scheme in Amravati district of Maharashtra.
 10. Diversion of 0.6942 ha. of additional forest land for the construction of 111 MW Sawra Kuddu Hydro Electric Project in favour of H.P. Sate Electricity Board in Shimla district H.P.
 11. Diversion of 175.69 ha. of forest land in Paloncha forest Division of Khammam district for open cast coal mining (OCP-II Managuru) in favour of Singareni Collieries Company Ltd.
 12. Diversion of 44.60 ha. (32.51 ha. for surface use and 12.09 ha. for under ground mining) of forest land for Uranium mining at Mahuldih Uranium Project in favour of Uranium Corporation of India, Jaduguda at district Saraikela in Jharkhand.
 13. Diversion of additional forest area of 4.20 ha. for surface use of forest land for Rajnagar OCP Cola Mining Project in favour of M/s SECL in Manendragarh Forest Division of Korba district in Chhattisgarh.

¹⁸³ See order dated 26.09.2008 Tenth report of CEC in I.A. No. 1413

¹⁸⁴ See order dated 02.05.2008 (section V and VII of the Fourth Report of CEC in I.A. No. 1413)

¹⁸⁵ See order dated 02.05.2008 (section III of the Fourth Report of CEC in I.A. No. 1413)

¹⁸⁶ See order dated 02.05.2008 (section IV of the Fourth Report of CEC in I.A. No. 1413)

2.44. Constitutional challenge to the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006

Two petitions¹⁸⁷ were filed by Bombay Natural History Society and Wildlife First challenging the constitutional validity of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. The SC issued notices¹⁸⁸ to the Centre as well as the State Governments. The case has been referred to a special bench as it raises constitutional questions and is being adjudicated. Further, similar cases have been filed in the High Court of six states and the Ministry of Tribal Affairs (nodal ministry for implementing the Forest Rights Act) has sought to transfer all such cases pending in the High Court to the Supreme Court. This has been done in order to ensure that all such cases can be adjudicated once and for all in the Apex Court.



¹⁸⁷ W.P. (C) No. 50/2008 and W.P. (C) No. 109/2008

¹⁸⁸ See order dated 28.03.2008

Chapter III

States on the Firing Line

Apart from the national implications of this historic case described in previous chapter, it is important to understand, especially due to the unique federal polity of this country, implications in the State contexts as well as site specific contexts of the orders of the Supreme Court. This would not only throw light on the differential parameters applied in State contexts and provide lessons for comparisons but also assist decision makers to understand different contexts and the necessity of applying different parameters to solve complex ecological, social and economic situations while preserving the rich ecological heritage of this country and ensuring improved livelihoods to forest dependent communities. The following State analysis does not follow an alphabetical order but rather a priority in terms of time line and not necessarily merit accorded by the Supreme Court. As we will discover, every State has a story of its own, not necessarily with a bearing on the other but certainly lessons for each. What is also to be borne in mind is that the States' story needs to be understood in addition to the orders that have national applications.

3. *The State of Tamil Nadu*

As stated earlier, it all started here in the State of Tamil Nadu. The first order was passed by the Court on 07.04.1995¹⁸⁹ where it was alleged that large scale illegal felling of timber and denuding of the forests in Gudalur Taluk of Nilgiri is continuing even after the notice has been issued to the State Government of Tamil Nadu¹⁹⁰. The Court followed a three pronged strategy of blanket prohibition, strict regulation and strategic inquiry into the information on forests and forest based products. In the first instance the Court ordered¹⁹¹ that subject to any order of this Court made in any other matter, the State should not permit felling of any trees in the area in the meantime.

3.1. *Blanket prohibition on removal of timber till further orders*¹⁹²

The Court tightened the noose further by ordering that no timber which had already been felled in that area shall be removed or permitted to be removed by the concerned authorities, until further orders irrespective of any permit or permission granted to that effect by any authority.

3.2. *Permission for Industry granted: An adhoc process of monitoring and supervision initiated*

The SIV industry filed for permission to cut and remove nine hundred eighty four eucalyptus trees, out of which approximately two hundred trees had already fallen¹⁹³. The urgency for granting permission to this effect was cited as the likely hazard from the continuance of the trees in the sensitive area of the Ordinance Factory. The Court while permitting the same however made it clear **"that the entire exercise of cutting as well as removal**

¹⁸⁹ Issue notice on the writ petition and application for stay.

¹⁹⁰ See order dated 27.11.1995

¹⁹¹ See order dated 11.12.1995

¹⁹² See order dated 19.02.1996

¹⁹³ I.A. No. 8

of the trees from the site would be carried on only by the Ordinance factory itself using its own vehicles for the purpose. These trees if not already hammer marked, should also be hammer marked by the DFO, Nilgiri¹⁹⁴". Further, the order of 19.02.1996 on blanket prohibition was modified for SIV Industries and permission of removal for three species of trees which have been already felled namely eucalyptus, pine and wattle was granted. The Court closed the matter of SIV Industries with the conditions of self consumption and removal of the felled trees by own vehicles etc.¹⁹⁵.

3.3. Tea and Coffee Plantations in Tamil Nadu

In a significant order relating to all the coffee, tea and cardamom plantations in the State of Tamil Nadu¹⁹⁶, the Court laid down several regulations, processes relating to lopping, removal, usage, disposal and exclusion of areas among others as follows:

In so far as the plantations (tea, coffee, cardamom etc.) are concerned, the Court directed that the felling of shade trees in these plantations will be limited to trees which have been planted and not those which have grown spontaneously; limited to the species identified in the TANTEA Report; in accordance with the recommendations of (including to the extent recommended by) TANTEA; and last but not the least under the supervision of the statutory committee constituted by the State Government.

3.4. Shade lopping of trees to be allowed after the technical opinion of the Committee

The Court directed that **"Shade lopping of trees providing shade to tea, coffee and cardamom plantations may be permitted wherever it is warranted as per the considered technical opinion of a Committee consisting of District Forest Officer and Collector or his nominee"**.

3.5. Removal of wind fallen trees also to be regulated by the Committee

The wind fallen trees may be permitted to be removed in order to protect other trees in the private lands and Government man made plantations. The above committee was given the power to permit the removal of such trees specifying the reasons for such order.

3.6. Cut wood to be used locally for fuel wood and other requirements on the plantations

The Court further observed **"The branches of the trees after the shade lopping are to be utilized within the Nilgiri district for fire wood only in order to meet out the local fuel wood requirements and other requirements within the plantation"**.

¹⁹⁴ See order dated 02.09.1996

¹⁹⁵ See order dated 23.09.1996

¹⁹⁶ See order dated 07.10.1996 in I.A. Nos. 7, 10-13. I.A. No. 3 in 171/96 and I.A. No. 14 in 202/95 also relates to tea and coffee plantation

3.7. Remaining lops and tops of cut wood may be allowed by the Committee to be sold

"The lops and tops (branches) and the wind fallen trees may be permitted by the said Committee to be removed and to be sold through the Government fuel wood depots maintained by the forest department and the remaining wood (timber and pulp wood) are to be given to the forest department for further allotment of sale to wood based industries as per the existing policy of the Government".

3.8. The Supreme Court seeks technical opinion of TANTEA

The Court was however reluctant to pass an order regarding cutting of the trees in these plantations. It sought to take the technical opinion of TANTEA (Tamil Nadu Tea Plantation Corporation Ltd., R&D Wing) regarding the same.

3.9. Special provision for fuel tree plantations

In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government was directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area was allowed be felled by them for their own use as permitted by the statutory committee.

3.10. Regulation on plantation: Expansion disallowed

The Court made it clear that no further expansion of plantation in a manner so as to involve encroachment upon (by way of clearing or otherwise) of 'forests' would be allowed and felling of shade trees and fuel trees in the plantation would be regulated. It further added that no such felling would be allowed in the forest area of the plantation which shall be identified by a Committee constituted by the State Government¹⁹⁷. The State Government was further directed to ascertain and identify those areas of the plantation, which are a 'forest' and are not in active use as a plantation.

3.11. Regulation of exploitation

Apart from the focus on the plantations and the private land, the Court also imposed restrictions on felling and prohibited removal of trees while issuing orders for regulating trees and timber in Tamil Nadu.

a) Restrictions on felling and Prohibition on removal of trees

The first order restricting felling of trees irrespective of permission granted by any authority in Tamil Nadu dates back to December, 1995¹⁹⁸.

b) Exceptions to trees not grown in forest area

Although, there was a complete ban on felling of trees¹⁹⁹ an exception was granted for trees which are not of spontaneous growth and also trees which are not grown in forest area.

¹⁹⁷ *ibid*

¹⁹⁸ See order dated 11.12.1995

¹⁹⁹ See order dated 12.12.1996

c) *Prohibition on removal of timber*

There was a blanket prohibition on removal of Timber in Tamil Nadu till further orders²⁰⁰.

3.12. Other exemptions: Janmam lands excluded

As a one time measure for removal of trees cut prior to 11.12.1995 the same was permitted to be removed provided they were not so felled from janmam land²⁰¹. The State Government was asked to verify these trees and mark them suitably to ensure that this order is duly complied with.

3.13. Felling of trees in janmam land to be governed by the outcome of pending appeals

In so far as felling of any trees in janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal No. 367 to 375 of 1977, in Civil Appeal Nos. 1344-45 of 1976. After the order is made in these Civil Appeals on the I.As. pending therein, if necessary, this aspect may be reexamined. *These appeals need to be followed to get a correct picture of felling of trees in Janmam lands.*

3.14. Tribal community exempted

It further made it clear that those tribals, who are part of the social forestry program and tilling patta lands other than forest, shall continue to do so as per the Government scheme provided that they grow and cut trees in accordance with the law applicable²⁰². *Here it is not clear whether the order applies only on forest as defined by Court or forest land generally. It is also not clear whether it covers disputed lands and forest villages,*

3.15. Prohibition on grant of pattas

On an I.A.²⁰³ the Supreme Court, while issuing notices to the Government of Tamil Nadu directed that in the meantime, no pattas with regard to any forest land shall be granted²⁰⁴.

3.16. Prohibition on regularization of encroachments

While issuing order for prohibiting grant of pattas the Supreme Court also directed the Government of Tamil Nadu that no encroachment shall be regularized²⁰⁵. In fact, subsequently, the Chief Secretary of the State of Tamil Nadu, among many other States was also directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.²⁰⁶. *It is important to emphasise here that while the order was categorical in prohibiting regularization of encroachments and perhaps rightly so, a significant question on what is encroachment and whether occupation on a land which is disputed due to internal boundary disputes between line departments such as revenue and forest should have been examined and dealt with by the Court.*

²⁰⁰ See order dated 19.02.1996

²⁰¹ Ibid

²⁰² See order dated 12.12.1996

²⁰³ Ref I.A. No. 418

²⁰⁴ See order dated 07.05.1999

²⁰⁵ See order dated 07.05.1999

²⁰⁶ I.A. Nos. 703, 502, see order dated 18.02.2002

3.17. Diversion of forest land

a) *Transmission line on forest land*

The Court allowed for diversion of 29,942 ha forest land²⁰⁷ for a project involving laying of a 220 KV transmission line from Pykara ultimate stage hydro electric project switchyard to Arasur 220 KV sub station in Tamil Nadu. The diversion was permitted in terms of the approval granted under FCA as per orders dated 07.05.2004 and 11.05.2004 subject to the applicant strictly adhering to all the imposed conditionality and ensuring that tree felling is kept at a minimum and that the diversion of the forest land is carried out under over all supervision of Regional Chief Conservator of Forests²⁰⁸.

b) *Permission for felling of trees for construction of Road*

The Court granted permission for felling of two thousand one hundred forty four trees in Tamil Nadu for the construction of Adukkam-Mumbakkarai road as per conditions stipulated below²⁰⁹:

- i. Approval under FCA to be obtained and any condition imposed to be complied;
- ii. Minimum tree felling;
- iii. Diversion under the overall supervision of the RCCF, Bangalore;
- iv. Payment of NPV at the existing rate;
- v. Undertaking to pay additional NPV as and when determined.

c) *Felling of trees for Irrigation Project*

The Supreme Court granted permission to Tamil Nadu for felling of fifty eight trees of spontaneous growth in the Reserved Forests of Suranganar Forest in Theni Forest Division for construction of an irrigation project²¹⁰. The permission has been granted on the fulfillment of the following conditions:

- i. Before any felling of the trees is undertaken, the approval under the FCA for the non forest use of the forest land involved in the project to be obtained.
- ii. NPV to be deposited of the forest land at the present rate in the Compensatory afforestation fund with an undertaking that additional NPV, if determined will have to be paid.

d) *Felling of trees for hydro electric power project*

The Tamil Nadu Electricity Board sought permission for felling four hundred thirty seven trees for execution of Kundaw Pumped Storage Hydro Electric Project in Nilgiris district. The CEC examined the project and imposed following conditions which have been approved²¹¹ by SC:

- (i) Felling of one hundred twenty trees are permitted for construction of the proposed approach road;
- (ii) Felling of two hundred seventy six trees falling in the right of way are 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) Felling/pruning of trees should be done after obtaining approval under the FCA, for non forest use of forest land for the project.

²⁰⁷ See order dated 28.01.2005

²⁰⁸ I.A. No. 1230

²⁰⁹ See order dated 24.03.2006 in I.A. Nos. 1487, 1492, 1508, 1126 and 1121, 1509-1511, 1497-1498

²¹⁰ See order dated 05.04.2007 in I.A. No. 1666

²¹¹ See order dated 13.08.2008 in I.A. No. 2019

e) Construction of high level bridge across Pulicat lake

SC granted permission²¹² to State of Tamil Nadu for construction of a high level bridge across Pulicat Lake in Pulicat lake Bird Sanctuary in Ponneri Taluk, Turuvallore district after its acceptance of the following conditions imposed by CEC :

- i) Work is to be carried out only during day time ;
- ii) Construction material to be sourced from outside the Sanctuary area;
- iii) Disposal sites will be located outside the Sanctuary area;
- iv) Machineries to be removed from work site immediately after the work is over;
- v) No labour camps will be erected in the Sanctuary and
- vi) Approval under FCA is to be obtained for use of forest land;
- vii) Five percent of the project cost of rupees ten crores i.e. rupees fifty lakhs will be deposited in the CAF for conservation and protection of the Sanctuary and
- viii) The conditions on which the proposed use of forest land within the Sanctuary has been recommended by the Standing Committee, NBWL to be strictly complied with.



²¹² See order dated 21.11.2008 in I.A. No. 2176 in 548

4. *The State of Rajasthan*

4.1. *Mining Prohibited: Aravalli hills as a focus and Ecologically Sensitive Area as per Environment (Protection) Act a further focus*

The 12.12.1996 order also had significant implications on mining in Rajasthan. It held that the stand taken by the State of Rajasthan, relating to permissions granted for mining in such area, is in contravention of the orders of the Supreme Court²¹³. It, therefore, directed the State Government to correct its stance as per this understanding and take the necessary remedial measures without any further delay. The Amicus Curiae filed another application regarding violations with regard to mining by the State as ascertainable by another order dated 17.12.1999. The Court eventually prohibited and banned all mining activity in the entire Aravalli hills based on the Second Monitoring report of the CEC dated 28.10.2002²¹⁴. It was clarified that the said ban is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Dholpur²¹⁵ to Rajasthan. Especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act.

4.2. *Compliance by Chief Secretary sought on ban on mining in Aravalli hills*²¹⁶

By order dated 29.10.2002, the Chief Secretaries of State of Rajasthan as well as Haryana were directed to ensure that no mining activity in the Aravalli hills is carried out especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act. The said order prohibited and banned all mining activities in the entire Aravalli hills. It was observed that the Chief Secretaries have not filed the compliance report and they should do so by the next date of hearing i.e. on 16.12.2002. The CEC was also asked to respond to the application.

4.3. *Supreme Court takes cognizance of illegal mining in forest areas of Rajasthan*

The contempt petition is ordered to be treated as an application and cognizance was taken of the illegal mining taking place in forest areas of Aravalli hills falling in the State of Rajasthan. As an interim measure any kind of mining in any area in Aravalli hills falling in the State of Rajasthan is prohibited²¹⁷.

a) *Ban on mining in Aravalli hills*

The order dated 30.10.2002 was significant as it prohibited mining in the Aravalli ranges spanning the States of Haryana and Rajasthan. The issue of mining has extensively been dealt with by the Supreme Court in another Public Interest Litigation²¹⁸ dealing with the issue of protecting the ridge in Delhi. This matter resulted in a significant judgment²¹⁹ which banned mining in Aravalli ranges spanning the State of Haryana till the Monitoring Committee constituted by the Court gave its report on the status of mining

²¹³ See order dated 12.12.1996

²¹⁴ See order dated 30.10.2002

²¹⁵ The word 'Dholpur' would be read as 'Haryana' as amended in order 18.11.2002

²¹⁶ I.A. No. 833

²¹⁷ See order dated 08.04.2005 in Contempt Petition (C) No.412/2004 in I.A. No. 833 in I.A. No. 828

²¹⁸ I.A. No. 1785 in W.P. (C) No. 4677/1985 (Delhi Ridge matter)

²¹⁹ Reported in 2004(12) SCC 118

and its resultant effect on the ecology of the Aravalli ranges. So it can be seen that both the PILs have inter-linkages on the issue of mining and it is important that the same bench adjudicates both these matters. The monitoring committee had not filed its report as per directions of the Court. The SC issued notice to Monitoring Committee, MoEF for filing of the report²²⁰. CEC has filed its monitoring report and response to the same is to be submitted by the concerned parties and the matter is awaiting adjudication²²¹.

b) *Taking cognizance of impacts of mining on water shortage and effect on ground water in Aravalli hills*

The SC directed MoEF to file a comprehensive report on the factors to be considered for granting mining leases especially in relation to water shortage, effect and impact on ground water level in case mining licences/leases are granted in Aravalli hills²²². The ministry has to file its comprehensive report taking into account CEC reports dated 12.09.2007 and 05.12.2007. Subsequently, CEC filed its supplementary report dated 26.02.2008 to which the State Government was asked to submit²²³ its response and also details on the number of mining leases that are in operation. The issue is still not resolved.

4.4 *Mount Abu in Rajasthan to be declared an ecosensitive zone*²²⁴

An I.A.²²⁵ was filed by the Amicus Curiae seeking appropriate orders from the Court to prevent indiscriminate destruction of forest in and around Mount Abu in Rajasthan. The main issue brought before the Court was that Mount Abu is an ecosensitive zone in the Aravalli hill range having about 328 sq. km. forest area. Rampant commercialization and indiscriminate construction activity going on in the area is causing destruction of forest in particular and the deterioration of the environment in general. The CEC in this matter had recommended that Mount Abu be declared as an eco sensitive area under the Environment Protection Act, 1986, within a period of two months and final notification should be issued within a period of six months. Further, construction work of any type should not be allowed and any construction done in contravention of the Supreme Court order dated 09.05.2002²²⁶ should be demolished in a time bound manner. The Court while accepting the recommendations of the CEC ordered that till the Notification is issued, the State Government of Rajasthan would constitute a Committee within a period of one month comprising of three members in consultation with CEC for the purpose of granting permission for carrying out repairs or renovation of the existing structures within the municipal limit.

4.5. *Linkages to CEL case and implementation of Wildlife Protection Act*

The Court in the present case has expanded its arch in the realm of another public interest litigation dealing specifically with the implementation of the provisions of the Wildlife (Protection) Act, 1972 and related issues emanating from the protection of Protected Areas.

²²⁰ See order dated 03.08.2007

²²¹ See order dated 14.09.2007

²²² See order dated 7.12.2007 in 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 and 1700-1703 and I.A. No. 1785 in W.P. (C) 4677 of 1985 and I.A.No.1967 IN I.A. No.1785 in I.A. No.2152 in I.A. No. 1785 in W.P.(C) No.4677/1985, I.A. No. 2143 In I.A. No. 1785 in W.P. (C) No. 4677/1985 and I.A. No. 2186 IN I.A. No. 1785 IN W.P.(C) No. 4677/1985, I.A. No. 2198 @ CP No.125/2006

²²³ See order dated 29.02.2008 in 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 in W.P. (C) No. 202/1995 with SLP(C) No. 3353/2003, C.A. No. 7363/2000 C.A. No. 7364/2000, C.A. No. 7365/2000

²²⁴ I.A. No. 972 in 757 with I.A. Nos. 789-790, 962, 986, 1038-1041

²²⁵ I.A. No. 757

²²⁶ In I.A. No. 757 Counsel for the Union of India stated that this application will be placed before the Expert Committee for its consideration. In the meantime, the Court ordered that no further building plans or construction shall be sanctioned by any authority.

a) *Grazing and carrying capacity of a Sanctuary*

The SC ordered filing of report on the carrying capacity of Kumbalgarh Sanctuary in Rajasthan for grant of grazing rights²²⁷. An application²²⁸ filed by right holders and concessionists 'Raika' for grant of grazing permits in the Kumbalgarh Sanctuary which had been stopped by the State Government. SC noticed that as per the provisions of Wildlife (Protection) Act, 1972²²⁹ the Chief Wildlife Warden has to assess the carrying capacity of the wildlife Sanctuary, i.e. the number and type of domestic animal which can safely be allowed to graze in the Sanctuary area without adversely affecting the requirement of the herbivores in area. Another exercise that needs to be conducted is as regards to immunization of livestock²³⁰ along with the mechanism put in place to ensure that over grazing does not take place. SC ordered the Chief Wildlife Warden to submit a report on the details of immunization measures undertaken and the mechanism to prevent over grazing in the Sanctuary before any grazing permit could be granted.

b) *Tiger Conservation in Sariska: Special Investigation Team given responsibilities*

In fact the SC ordered investigation into poaching of tigers and related issues in Sariska Tiger Reserve by Special Investigation Team (SIT). It had entrusted the investigation aspect of poaching and other related matters in Sariska Wildlife Sanctuary to Special Investigation Team (SIT) constituted for this purpose. It had been proposed by AC that issue of poaching in Ranthambore and Panna Tiger Reserve also be investigated by the SIT²³¹.

c) *Release of water in Keoladeo National Park*

The SC directed²³² the State of Rajasthan to file a fresh affidavit on the status of releasing water from Panchana Dam to the Keoladeo National Park

d) *Construction of road permitted in Desert National Park*²³³

The SC granted permission to the State of Rajasthan for construction of Harsani Girab Myajlar road of twenty six kilometer length to Sandho ki Basti in Barmer district through the Desert National Park. CEC after examination has imposed the following conditions:

- i) Only gravel road would be constructed;
- ii) No night camping is allowed during the construction of road by labour and construction activity is to be permitted only during day time ;
- iii) Speed breakers will be constructed at an interval of 500 mtrs, in Sanctuary area by user agency;
- iv) Barrier should be constructed at entry and exit of each village, where movement of vehicles during/ or after sunset will be recorded;
- v) No cutting of trees will be allowed;
- vi) The construction material for road will be brought from the area outside the Desert National Park;
- i) The user agency will not create borrow pit in Desert National Park area, for the construction of road;
- vii) User agency will clear all the debris left after construction activity;
- viii) The user agency will put maintain sign board at every two kilometers distance on both sides of the road mentioning that the road is passing through Desert National Park and drivers should be watchful about wildlife and drive cautiously;
- ix) In order to avoid crushing of reptiles, suitably designed under passes shall be constructed;
- x) The NPV shall be paid as suggested by CEC.

²²⁷ See order dated 04.08.2006

²²⁸ I.A. No. 1535 in I.A. No. 548

²²⁹ Section 33, Wild Life (Protection) Act, 1972

²³⁰ Section 33, Wild Life (Protection) Act, 1972

²³¹ See order dated 16.12.2005 in I.A. No. 1323

²³² See order dated 30.11.2007 in I.A. No. 1297

²³³ See order dated 24.10.2008 in I.A. No. 2346

e) ***Supreme Court grants permission for the construction Mamer Minor Irrigation project²³⁴***

The State of Rajasthan sought permission for the construction Mamer Minor Irrigation project falling within Phulwari Ki Naal, Wildlife Sanctuary in Tehsil Kotra, district Udaipur. The CEC has examined and recommended for approval of the project, subject to the following conditions:

- i) For use of forest land, approval under the FCA will be obtained;
- ii) The user agency will deposit NPV as per the rate applicable for use of land falling within the Wildlife Sanctuary;
- iii) The conditions imposed by the National Board of Wildlife will be strictly complied with;
- iv) The NPV shall be paid as suggested by CEC.

4.6. Definition of forest

An Application was filed by the State of Rajasthan seeking the permission of Supreme Court for declaration of compact and contiguous tracts of land measuring 5 ha. and above and having two hundred or more trees per hectare as "deemed forest area" and norms to be applied for making such a declaration²³⁵. As per direction of the Court, CEC has filed its report on the issue. On the other hand the State had also appointed a committee known as the 'Kapur Committee' to examine the issue of deemed forest areas and the norms for declaration of such areas. SC directed the State Government to examine CEC Report and the report of Kapur Committee and suggest the course of action it wants to adopt in the matter.

4.7. Permission for implementation of a project for supplying drinking water to Karauli and Sawai Madhopur districts

The Public Health and Engineering Department of State of Rajasthan sought permission for implementation of a project for supplying drinking water to Karauli and Sawai Madhopur districts by drawing water from river Chambal by laying a pipeline of about one hundred sixty kilometer. The project is estimated at about rupees four hundred seventy eight crores ninety one lakhs and is likely to benefit the citizens of nine hundred twenty six villages in the districts of Karauli and Sawai Madhopur. The project was examined by CEC and certain conditions are imposed and on their fulfillment. The SC has cleared²³⁶ the project subject to the following conditions:

- (i) Approval under FCA.
- (ii) Five percent of the estimated project cost of rupees four hundred seventy eight crores ninety one lakhs i.e. rupees twenty three crores ninety five lakhs will be deposited by the project authorities for conservation and protection of National Parks and Sanctuaries in the State.
- (iii) For utilization of the funds collected, a society is to be constituted under the Chairmanship of the Chief Secretary, Rajasthan with the Principal Secretary (Forests), the Principal Chief Conservator of Forests, the Chief Wildlife Warden as its Members and one officer now below the rank of Chief Conservator of Forests as its Member Secretary. This amount along with the amount payable towards the NPV is to be deposited in a separate interest bearing bank account of a nationalized bank maintained by the Society and income received by way of interest should be used in perpetuity for the conservation and protection of National Parks and Sanctuaries in the State. The procedure and guidelines for the utilization of the funds may be decided by the State Government of Rajasthan; and
- (iv) A Monitoring Committee consisting of the representative of Chief Wildlife Warden, Rajasthan and Secretary, Public Health Engineering Department will be set up to monitor and ensure that the prescribed minimum flow of water downstream of the tapping point of Chambal river is maintained.

²³⁴ See order dated 24.10.2008 in I.A.No. 2347

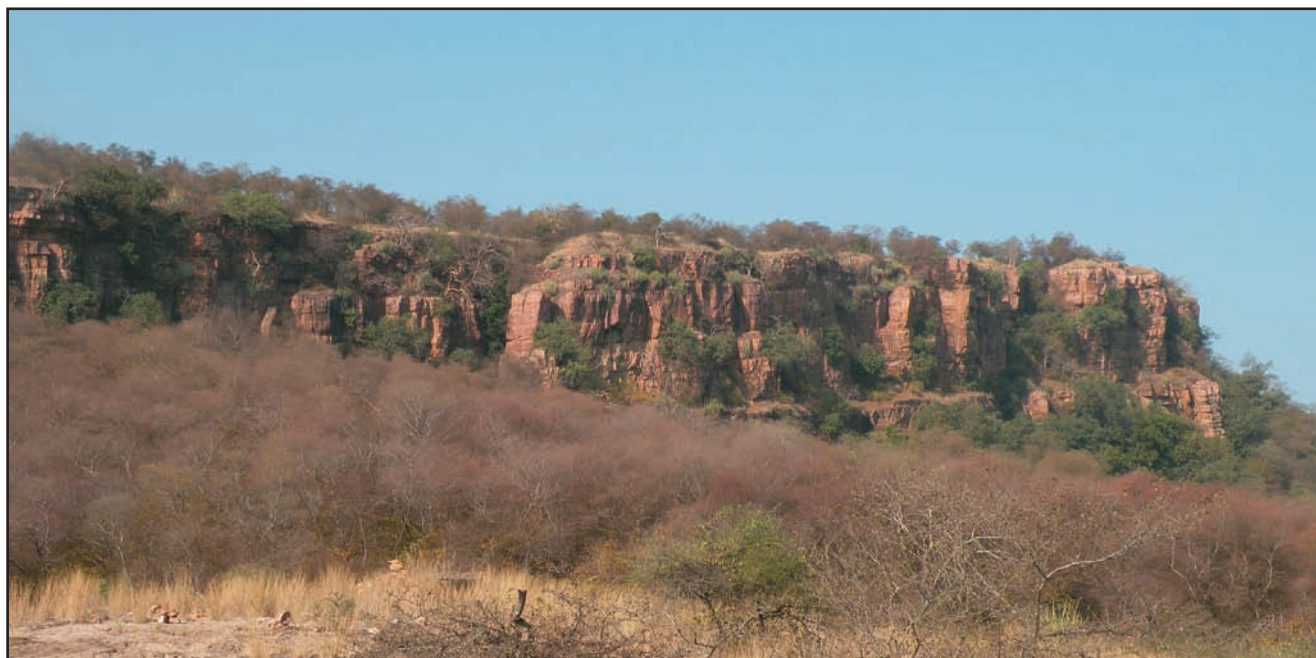
²³⁵ See order dated 30.11.2007 in I.A. No. 1336 in 1254

²³⁶ See order dated 17.10.2008 in I.A. No. 1698

It can be seen from the set of conditions imposed above that instead of depositing the amount that would be collected from NPV in CAF, it is to be deposited in a fund created by a society which would be set for this purpose and managed by the State Government. This is a departure of sorts where a corpus has been created under CAF. The funds collected under this project are to be used for the conservation and protection of all Protected Areas in the State.

4.8. Construction of a dam in Tehsil Kumbalgarh

SC has granted clearance to State of Rajasthan for construction of a Dam in Tehsil Kumbalgarh²³⁷ district Rajsamand to facilitate drinking water in certain villages in Rajasthan. CEC has recommended the project subject to fulfillment of certain conditions.



²³⁷ See order dated 10.11.2008 in I.A.No. 2335

5. *The State of Goa*

5.1. *Stay on temporary working permissions for mining in Goa*

In a significant order the SC stayed the grant of eighteen TWP (Temporary Working Permissions) by Ministry of Environment and Forests (MoEF) in the State of Goa between 01.09.2007 to 30.11.2007²³⁸. In this case, the AC brought to the notice of the Court, grant of eighteen TWP for mining in the forest area of Goa by MoEF between periods of 01.09.2007 to 30.11.2007. It was submitted by the AC that no permission was sought before grant of these mining leases. It was submitted by the ministry that the TWP have been granted as per the directions of this Court contained in order dated 04.08.2006 by which various conditions have been laid down for grant of TWPs. The Court directed the lease holders to approach CEC by 17.12.2007 for examination of the issue. It further ordered that if the TWPs granted come within the ambit of Court's order then CEC was at liberty to permit the working of these mines. Subsequently, CEC examined the viability of the functioning of these eighteen temporary licences and concurred that sixteen licencees are working properly. Further CEC imposed some conditions and on fulfillment of those conditions, these sixteen licences were allowed to continue mining²³⁹. Besides the usual conditions regarding payment of NPV and compensatory afforestation, CEC also imposed penal compensatory afforestation charges payable for carrying out mining during the period between 1987 and till the date on which the approvals under the FCA were accorded.



²³⁸ See order dated 07.12.2007 and 14.12.2007 in I.A. Nos. 1413, 1414, 1426 and other related I.As regarding proposals examined by the FAC

²³⁹ See order dated 04.01.2008 in I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 and 2133 in 1413

6. *The State of Delhi*

6.1. *Development of forest*

The Court made a very significant order on 09.05.2002 where it directed the Bhure Lal Committee²⁴⁰ to examine the possibility of development of forest and large tracts of land which have been acquired by the Delhi Administration and the Delhi Development Authority (DDA) and which are still lying undeveloped. The DDA and the Delhi Administration were given two weeks to file an affidavit with Bhure Lal Committee indicating the land details or the land acquired and which have not been constructed upon or utilized till today²⁴¹.

6.2. *Conservation of Delhi ridge forest²⁴²: Violation of environmental norms*

An application was moved before the CEC with reference to the preservation of environment and biodiversity in the land extending from south–west of Mehrauli to Masudpur and north of Vasant Vihar. The averments were regarding clearing of forests by the Army authorities and construction of shopping malls by the Delhi Development Authority (DDA). SC granted an interim stay of the construction of malls on the ridge area. The Delhi Development Authority (DDA) proposed the development of International Hotel Complex on the land situated in Vasant Kunj, which was later, identified in the Master Plan for Delhi 2001 for urban use. This area is topographically part of South Ridge and also a natural extension of Sanjay Van which is a notified reserve forest. The Court thus directed the Central Government to constitute an Authority under EPA and confer on the said authority all the powers necessary to deal with the environmental protection issue arising out of the project in hand and for any other future projects²⁴³. This authority shall have the jurisdiction over the National Capital Region²⁴⁴. This matter was then directed to Committee²⁴⁵ for its recommendations. It was found by this expert committee that the environmental clearances were not procured by DDA and thus there was clear negligence of complying with the environmental safeguards. In order to clarify whether the land was part of the ridge, a report was given by the Environmental Pollution (Prevention and Control) Authority, which stated that environmental factors were not in favour of urban development of land and the entire land should be developed as green area²⁴⁶. It also stated there was clear violation of the norms fixed by the amended notification²⁴⁷, which stated that for new construction projects that were undertaken requisite clearances were required. The Court at present directed MoEF to give its decision for considering the land as constraint area. However, even if the land is held to be constraint area, requisite clearances are required before the construction is undertaken.

6.3. *Use of forest land for Express Metro Link to the airport through the central ridge²⁴⁸*

The CEC had recommended the approval of use of 0.683 ha of forest land on permanent basis and 2.15 ha. of forest land on temporary basis for the construction of Express Metro Link to the Airport through the Central

²⁴⁰ A statutory committee under the Environment Protection Act for the National Capital Region

²⁴¹ I.A. No. 756, order dated 09.05.2002

²⁴² See order dated 17.10.2006 in I.A. No. 1156 with 1192, 756, 1463, 1501 and 1532

²⁴³ See order dated 13.09.1996

²⁴⁴ As per the definition given in National Capital Region Planning Act, 1985

²⁴⁵ See order dated 08.03.2004

²⁴⁶ See order dated 19.08.1997

²⁴⁷ Vide notification dated 07.07.2004

²⁴⁸ See order dated 07.12.2007 in I.A. No. 2090 in application nos. 1020 and 2113

Ridge in Delhi subject to the fulfillment of the following conditions:

- (i) Approval under FC Act to be obtained.
- (ii) Clearance from the Ridge Management Board to be obtained for use of both forest land and non forest land in Ridge Area.
- (iii) NPV to be deposited in Compensatory Afforestation Fund.
- (iv) Five percent of the project cost i.e. rupees eighteen crores eighty lakhs will be deposited with the Ridge Management Board.
- (v) Area falling within the Ridge should not be used for commercial purpose.
- (vi) As far as feasible, compensatory afforestation should be carried out near the impact area itself.
- (vii) Instead of felling of trees, the translocation of trees should be carried out by the Delhi Forest Department.

6.4. Renovation and upgradation of swimming pool complex, Talkatora in the central ridge²⁴⁹

CEC examined and recommended the project for renovation and upgradation of Dr. Shyama Prasad Mukherjee Swimming Pool Complex on the following conditions which are acceptable to the applicant (Commonwealth Games Division-VI):

- a) Approval under the FCA;
- b) Five percent of the project cost i.e. rupees seven crores twenty five lakhs to 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 to be strictly adhered to.

6.5. Commonwealth games: Siri Fort complex

The residents of the area filed an application challenging the construction of buildings in the Siri Fort Complex and the proposed remodeling of the area involving cutting of dense trees. SC issued notices²⁵⁰ to the Central Government and ordered status quo to be maintained in respect of golf driving range and children corner areas.

²⁴⁹ See order dated 01.02.2008 in I.A. No. 2162 in I.A. No. 1065

²⁵⁰ See order dated 04.04.2008 in I.A. No. 2212

7. *The State of Haryana*

7.1. *Forest deficient Haryana refuses the Supreme Court to contribute to forest rich States*

About twelve States including Haryana which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court of contributing to forest rich States by way of compensation to maintain their forests²⁵¹.

7.2. *Compliance by Chief Secretary sought on ban on mining in Aravalli hills*²⁵²

By order dated 29.10.2002, the Chief Secretaries of State of Haryana as well as Rajasthan were directed to ensure that no mining activity in the Aravalli hills is carried out especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act. The said order prohibited and banned all mining activities in the entire Aravalli hills. It was observed that the Chief Secretaries have not filed the compliance report and they should do so by the next date of hearing i.e. on 16.12.2002. The CEC was also asked to respond to the application.

The Court considered the entire issue of mining in Haryana in another case²⁵³ where the main question to be examined is whether the mining activity in areas up to five kilometer from Delhi Haryana border on the Haryana side of the ridge and also in the Aravalli hills causes environment degradation and what directions are required to be issued. The application pertaining to mining which were pending in the other writ petition are now being heard in T N Godavarman case to avoid multiplicity of proceedings concerning the same issue.

7.3. *Taking cognizance of impacts of mining on water resources and effect on ground water in Aravalli hills*

The SC directed MoEF to file a comprehensive report on the factors to be considered for granting mining leases especially water shortage, effect and impact on ground water level in case mining licences/leases are granted in Aravalli hills²⁵⁴. The Ministry had to file its comprehensive report taking into account CEC reports dated 12.09.2007 and 05.12. 2007.

MoEF filed an affidavit but the necessary information was not there in line with earlier directions and the Ministry was directed²⁵⁵ to clarify succinctly regarding the water shortage that may happen in case the mining activities are

²⁵¹ SC order dated 08.01.2001

²⁵² I.A. No. 833

²⁵³ SC order dated 18.03.2004 in M C Mehta Vs Union of India [2004(3) SCALE 396]

²⁵⁴ See order dated 07.12.2007 in 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 and 1700-1703 and I.A. No. 1785 in W.P.(C) 4677 of 1985 and I.A. No. 1967 in I.A. No. 1785 in I.A. No. 2152 in I.A. No. 1785 in W.P.(C) No. 4677/1985, I.A. No. 2143 in I.A. No. 1785 in W.P.(C) No. 4677/1985 and I.A. No. 2186 in I.A. No. 1785 in W.P.(C) No. 4677/1985, I.A. No. 2198 @ CP No. 125/2006

²⁵⁵ See order dated 15.02.2008 in I.A. No. 1785 in W.P.(C) No. 4677 of 1985 I.A. No. 1967 in I.A. No. 1785 in W.P.(C) No. 4677 of 1985 I.A. No. 2152 in I.A. No. 1785 in W.P. (C) No. 4677 of 1985 I.A. No. 2143 in I.A. No. 1785 in W.P.(C) No. 4677 of 1985 I.A. No. 2198 @ CONMT.PET. No. 125/2006 vide Court's order dated 25.10.2007 in W.P.(C) No. 4677/1985 and 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 and 2138-2139 in 891-892, 1700-1703 in W.P.(C) No. 202/1995

carried out. Ministry was also directed to ascertain the number of mining licences that can be sustained in this area keeping in mind factors regarding scarcity of ground water in this area and other connected issues.

7.4. Macro plans for Gurgaon and Faridabad districts for environmentally sustainable land use of Aravallis

CEC was asked to submit a report on the Aravallis²⁵⁶ regarding the different land use that should be permitted or regulated and pursuant to that CEC filed a report dated 28.08.2008. After perusal of the report SC felt that there is necessity for preparation of land use and macro plans for the Aravallis²⁵⁷. An interim report dated 13.11.2008 was prepared by CEC outlining the procedure being followed for preparation of village wise land use maps for districts of Gurgaon and Faridabad. CEC prepared a report on the mining activities for the districts of Gurgaon and Faridabad. CEC, with the help of the State of Haryana and other agencies, prepared a large scale map of villages in Gurgaon and Faridabad districts falling within Aravalli hills by fixing of about twenty ground control points (GCP) in each village through intensive field work using village map, GPS and satellite imagery of the corresponding village and it was drawn by super imposition of each village map on satellite imagery and overlaying of areas. The lease holders were permitted to peruse these maps before hearing on this matter²⁵⁸.

7.5. Formulation of rules for grant of licences to wood based industries²⁵⁹

The State has framed rules for giving/granting licences to wood based industries in keeping with the recommendations of the CEC.



²⁵⁶ I.A. No. 1468

²⁵⁷ See order dated 01.09.2008 in I.A. No. 1785 in W.P.(C) No. 4677 of 1985 and I.A. Nos. 828, 839

²⁵⁸ See order dated 21.11.2008 in I.A. No. 1785 in W.P.(C) No. 4677 of 1985 and I.A. Nos. 828, 839

²⁵⁹ See order dated 02.05.2008 in I.A. No. 1381

8. North Eastern States

The North Eastern States of India were perhaps the biggest trigger for the ongoing activism of the Supreme Court. The 12.12.1996 order had far reaching consequences in the region. The seven North Eastern States were brought under the purview of the ban on movement of timber. The Court's future strategies on dealing with the forest case in a comprehensive manner started with the directions on the North East. Constitution of committees, information on wood based industries, reporting, compliance monitoring were all part of a thought out strategy. The order stated that:

- a. All States were required to constitute an expert committee;
- b. All State Governments were required to file a report regarding saw mills, veneer mills and plywood mills;
- c. All States would constitute an expert committee; and
- d. Submit the report of the expert committee for ensuring compliance to the orders of the Apex Court.

8.1. Regulating timber

Regulating timber has been the biggest challenge for the Court around the country. The case of North East is perhaps the most complicated which the Court has tried to resolve. Movement of timber, felling, transportation, disposal, inventory and pricing are some of the issues that the Court has been grappling with.

a) *Ban on movement of timber and cut trees*

The seven North Eastern States were brought under the purview of the ban on movement of timber in 1996²⁶⁰. The only exception was the passage for certified wood for defence and movement of timber from plantation as per law. The Court observed **"a complete ban on the movement of cut trees and timber from any of the seven North Eastern States to any other State of the country either by rail, road or water ways"**. However, passage to certified timber for defence and any other Government use would be allowed and the timber from private plantation as per the law applicable shall also be left out of the purview of the above mentioned ban. There was also a ban on movement of cut trees from North East to other parts of the Country²⁶¹. In fact, the ban on movement of cut trees, timber or veneer from any of the seven North Eastern States to any other State in the country in any manner applies to the grown and /or felled timber from any private plantation.

b) *Felling and transportation of timber: Banned*

Another order stated **"ban on felling and transportation of timber to continue"**²⁶².

c) *Fresh felling banned*

Fresh felling of timber was completely banned in the North Eastern States till the disposal of legal and illegal timber. It was ordered that there shall be no fresh felling in the forests belonging to the Government, district and regional councils till the disposal of their existing stocks of legal and illegal timber²⁶³.

²⁶⁰ See order dated 12.12.1996

²⁶¹ See order dated 08.05.1997

²⁶² See order dated 08.05.1997

²⁶³ See order dated 13.01.1998

d) *Transportation of auctioned timber from the North East only through railways*

The Court also ordered that the transportation of auctioned timber (as well as legal timber) including sawn timber outside the North Eastern Region shall only be done through railways under the strict supervision of the forest department. The Railway Board shall give priority for providing racks/wagons for such transportation. The modalities for transportation of timber/timber products and alternative modes in case of difficulties in transportation by Railways, will be worked out by the State Government in concurrence of the Ministry of Environment and Forests²⁶⁴.

8.2. *Disposal of felled timber in the North East States regulated*

In view of the report of the High Powered Committee²⁶⁵ and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North Eastern States, the Court made several orders on different aspects of disposal of felled timber including inventory, forest depots, proprietary regime, disposal of timber from plantations and pricing of timber among others²⁶⁶.

a) *High Powered Committee directions to be followed in stacking the felled timber*

These also include micro management issues such as stacking of felled timber. As directed by the High Powered Committee, the Court said, the State Government shall take all measures necessary to bring the felled timber lying in the forest to the depots or storage points and have it stacked²⁶⁷.

b) *Usage of felled timber and transit passes*

The Court also ordered that after the inventory of the felled timber gathered at the depots or storage points is complete, the HPC may permit sale of such rounded timber for utilisation within the State to the extent it is from a lawful source. Further, the movement of rounded timber within the State as well as the movement of finished products within and outside the State shall be under transit passes – the issuance and disposal of which will be under the overall supervision of the HPC²⁶⁸. The Court further ordered **"after the process of inventorisation is over, the HPC may permit saw mills and other wood based industries to utilize their own legitimate stocks of timber for conversion into finished produce. Such finished produce may then be disposed of by these mills under supervision of the HPC and the State Forest Department. The permission granted by the HPC to these mills shall be on suitable terms to ensure that no malpractice occurs in the future and the mills shall be required to file an undertaking to comply with such terms, any breach thereof having the same consequence as a breach of the order of this Court"**.

c) *Disposal of timber only after inventorisation of all felled timber*

The Court reiterated in another order²⁶⁹ that disposal of timber shall commence only after the concerned Principal Chief Conservator of Forests irrevocably certifies that inventorisation of all felled timber in the State has been completed. As a first measure all inventorised timber including seized timber lying in the forest should be immediately transported to specified forest depots.

d) *Timber as per inventory cleared by HPC may be allowed to be used in a prescribed manner*

More detailed prescriptions were issued in another order²⁷⁰ where it was stated that timber as per inventory cleared by HPC may be allowed to be converted or utilized, if the unit is located within the notified

²⁶⁴ See order dated 13.01.1998

²⁶⁵ The Constitution function and rationale of High Powered Committee has been explained later in Court strategies

²⁶⁶ See order dated 13.01.1998

²⁶⁷ See order dated 08.05.1997

²⁶⁸ See order dated 08.05.1997

²⁶⁹ See order dated 13.01.1998

²⁷⁰ See order dated 13.01.1998

industrial estate. As the relocation in proposed industrial estates may take some time, existing units with only legal stocks may convert this timber, as one time exception, till such stocks last subject to the maximum period as per the norms prescribed by the HPC²⁷¹, or six months whichever is less. Any stock remaining thereafter shall vest in the State Government. However, fresh trees or timber will be allotted to these units only when they start functioning within the designated industrial estates. The territorial Deputy Conservator of Forests or Divisional Forest Officer shall be responsible for ensuring that such units process the legal stocks only and will closely monitor the various transit permits (inward and outward) and maintenance of the prescribed records. All such records shall be countersigned (with date) by an officer not less than the rank of an Assistant Conservator of Forests.

Such timber may also be allowed to be sold to other units, which are located in these industrial estates subject to the condition that such transactions are routed through an authority notified or constituted by the Principal Chief Conservator of Forests. Further, the State Government shall ensure disposal of illegal timber before permitting the conversion or disposal of legal or authorized timber available with the wood based industries.

e) *Illegal or illicit timber to be disposed of as Government timber*

The Court ruled that all illegal or illicit timber found in possession of an offender or abandoned in the forest shall be confiscated to the State Government and shall be disposed of in accordance with the procedure to be adopted for disposal of Government timber²⁷².

f) *Seized timber to be converted into finished product of veneer and plywood*

Out of the seized timber, logs found suitable for manufacture of veneer and plywood shall be processed by the State Government within their own factories and by hiring such facilities. The finished product can be marketed freely²⁷³.

g) *Timber belonging to Government to be first offered for sale for bonafide official use*

The Court also significantly ruled that the remaining timber belonging to Government and district councils shall be first offered for sale to Government Departments for their bonafide official use and the rest shall be sold in public action or through sealed tenders later fixing floor price by an expert committee with a representative from the MoEF.

h) *Disposal of private timber stocks cleared by HPC*

Private timber owners whose stocks have been cleared by HPC shall have the option of selling the timber either in the auctions organized by the State Forest Department or Forest Development Corporation or direct as the case may be²⁷⁴. In an important order, the Court also clarified that clearances given by the HPC to the inventory of the timber other than the timber owned by the Government or Government owned forest corporations, which has not so far been transported to the notified industrial estates, would stand confiscated to the State Government free from all liabilities²⁷⁵.

8.3. *Disposal of Timber from Plantation and Community holding*

The Court also made some generic orders regarding disposal of timber from plantations and community holdings. It stated that existing inventorised stock of timber originating from plantations in private and community holdings

²⁷¹ Vide the HPC third Report

²⁷² See order dated 13.01.1998

²⁷³ See order dated 13.01.1998

²⁷⁴ See order dated 13.01.1998

²⁷⁵ See order dated 12.05.2001

in the States of Meghalaya, Mizoram, Tripura, Manipur and Nagaland may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months²⁷⁶. *It would be interesting to study the implications of this order in the plantations and community lands which sometimes forms the majority of lands in the north east in many States. Further, what are the new rules that have been made in this regard would be an interesting insight into the minds of the States regarding timber.*

8.4. Pricing of timber: To be decided by a committee

The Court directed that the State Governments shall ensure that timber or forest produce is supplied to industries, including Government undertakings, at full market rate. The existing royalty shall be reviewed and revised upwardly by a committee constituted under the chairmanship of Principal Chief Conservator of Forests with representatives from the concerned Departments and shall also include the concerned Departments and a representative of Ministry of Environment and Forests. The price of timber for which royalty has not been realized in full shall also be reviewed by this committee and the concerned industry shall be required to pay the revised price or the royalty (including surcharge, fee etc.) whichever is higher after deducting the part royalty already paid²⁷⁷.

8.5. Sawn and unsawn veneer or timber

The Court came down heavily on all concerned including railways, errant officials as well as saw mills when on 12.03.2001, the Special Investigation Team – Action Taken Report was filed which pertained to seizure of 200 wagons of timber in Delhi. According to the particulars given, the loading stations were in the North Eastern States including Assam. According to the report, a large quantity of timber did not have proper hammer marks and some of the transit passes were also invalid. The Railway Board was directed to file within ten days the details with regard to movement of wagons from this North East loading stations indicated in the analysis attached to the affidavit of the Union of India to places outside the said States in the last three years. The Amicus Curiae also apprehended laxity on the part of the authorities. The Court observed that it has been their experience that illegal felling and transportation of timber is firstly caused by the existence of licenced and unlicenced saw mills and the transportation of the timber by road and rail. In a hard hitting move the Court directed **“Till we receive information of the State of affairs from the respective Chief Secretaries, we hereby prohibit movement of all timber (sawn and unsawn) and veneer from any of the North Eastern States to any other part of the country either by road or by rail or by waterways or in any other manner whatsoever. We further direct the States to take immediate action to suspend immediately the working of all the errant saw mills which are shown as the consignors in column ten of the analysis of the detained wagons because it is from these saw mills that the illegal timber has found its way to Delhi”**.

The Court also directed that cutting of trees with or without permit shall be banned in NE States till further orders²⁷⁸.

8.6. Specific process stipulated for movement of sawn and unsawn timber from the North Eastern States

The SC modified its order dated 23.04.2001 regarding movement of sawn and unsawn timber from the NE States to the rest of the country²⁷⁹. It stated that the movement of sawn and unsawn timber from the NE States

²⁷⁶ See order dated 13.01.1998

²⁷⁷ Ibid.

²⁷⁸ See order dated 23.04.2001

²⁷⁹ See order dated 12.05.2001

shall be permitted on the indent of the District Forest Officer or any other authorised Forest Officer on an application made by the registered timber transporter. In case any illegal timber is found to be transported, it will be open to take action against the concerned forest official under whose supervision and control the seal has been affixed on the railway wagon. In the event the seals are tampered with the railways can also be proceeded against. The responsibility of the above two is in addition to the primary responsibility of the registered timber transporter on whose application the indent was made.

The Supreme Court further stipulated that such movement of sawn and unsawn timber shall be permitted only if processed in HPC cleared wood based units situated inside approved industrial estates except in respect of Mizoram where no industrial estates exist. Round and hand sawn timber save in cases where specific approval is accorded by the HPC/MoEF shall not be allowed to be transported outside North East except in the case of Mizoram.

8.7. Regulation of wood based industries

Apart from timber, the Court specifically also laid down several parameters to regulate wood based industries which include licensing, supervision, institutional structures and location among others.

a) *Wood based industry to be only regulated in terms of capacity and location: Bonafide local needs recognised*

The Court held²⁸⁰ that though the proliferation of wood based industries has been the main cause of degradation of forests in the North Eastern States, considering the extent of forests (sixty four percent of the geographical area) and the dependence of the local people on the forest resources in the region, it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries in the north east. *However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones.* Moreover, the industrial requirements have to be subordinated in the maintenance of environment and ecology as well as bonafide local needs.

b) *Notification of industrial estate for wood based industries*

The State Government shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests. The Court also suggested that wood based industries should be localized with inputs from the MoEF²⁸¹. Further, wood based industries which have been cleared by the HPC without any penalty shall have the option to shift to industrial estates which shall be identified by the States within forty five days and developed within six months thereafter²⁸². This should also be examined in the north east context. The Court further made it clear that units who do not want to shift to the designated industrial estates shall be allowed to wind up as per law²⁸³.

c) *Number of wood based industry to be regulated as per sustainability*

Number of wood based industries shall be determined strictly within the quantity of timber, which can be felled manually on sustainable basis as determined by the approved working plans from time to time. If it is found that units after relocation in industrial estate have excess capacity then their capacities shall be reduced pro-rata to remain within the sustainable levels²⁸⁴.

²⁸⁰ See order dated 13.01.1998

²⁸¹ See order dated 13.01.1998

²⁸² See order dated 13.01.1998

²⁸³ See order dated 13.01.1998

²⁸⁴ See order dated 13.01.1998

8.8. *Licensing of wood based industries: Suspension, renewal and moratorium*

The Supreme Court also tightened the noose on the wood based industries by first suspending all licences to wood based industries²⁸⁵.

a) *Renewal of licence made dependent upon lack of irregularity*

The Court categorically stated that licences of units shall be renewed annually only in those cases where no irregularity is detected²⁸⁶.

b) *Moratorium on issue of new licences for next five years*

Further, there shall be a complete moratorium on the issue of new licences by the State Governments or any other authority for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed²⁸⁷ with the concurrence of Ministry of Environment and Forest. This needs to be freshly reviewed.

c) *Renewal of licence through High Powered Committee: Scrutiny and not against public interest*

The Court has often resorted to innovative measures for wood based units giving them enough opportunity to prove their credentials and bonafide. In the order dated 13.01.1998 it stated that the wood based units which have been penalized because they were found to exceed normal recovery norms, but were within fifteen percent of the said norms, will have a right to approach the HPC on or before 09.02.1998. The HPC shall examine all relevant material in particular the income tax and excise records for the preceding three years. The HPC shall dispose of all such applications within forty five days thereafter and such mills may be granted licence if the HPC finds that it is not against public interest so to do²⁸⁸. *Ironically, what constitutes public interest in the case of wood based industries was not explained or elaborated further by the Court.*

d) *Stocks of erring units to be confiscated: Conditions on relicensing*

The Court came down heavily against units which have not furnished details or information to the HPC so far or which have not been cleared by the HPC. It directed that such units shall not be granted any licence and the stocks in their custody if any, shall be confiscated to the State Governments. In case of leased mills belonging to corporations or trusts or cooperative societies owned or controlled or managed by the State Government and where the lessees have been penalized by the HPC, the leases shall stand revoked. Such mills shall, however be eligible for re-licensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government²⁸⁹.

8.9. *HPC to dispose of assets of defaulting wood based industries in the North Eastern States*²⁹⁰

Another important observation made in the significant order dated 30.10.2002, the HPC was allowed to dispose of the assets on such defaulting units, including plants, machinery, land, shed, timber and timber products who

²⁸⁵ See order dated 13.01.1998

²⁸⁶ Ibid.

²⁸⁷ The ban imposed on opening new saw mills/wood based industries and/or issuance of new licences in Nagaland State extended for another five year by order dated 30.10.2002

²⁸⁸ See order dated 13.01.1998

²⁸⁹ See order dated 13.01.1998

²⁹⁰ See order dated 30.10.2002

have not paid the penalty imposed by the HPC of the wood based units of North Eastern States. This was however made subject to such orders, which may be passed by the CEC. The role of CEC with regard to disposal of assets of defaulting wood based industries in the north east was further strengthened.

8.10. Forest protection, conservation and regulation in the North East

There is enough evidence of the numerous initiatives of the Supreme Court to specifically deal with the issues of forest protection and conservation in the north east. Several specific measures including restrictions on entry, institutional structures, creation of ecologically vulnerable areas, patrolling and planning have been mandated by the Supreme Court.

a) **Regulation of entry in reserve forest: Principal Chief Conservator of Forests permission required**
In an order as early as 08.05.1997, the Supreme Court directed that entry in to reserved forest should be regulated, and entry should not be without the written permission of the PCCF²⁹¹. It ordered **"No person other than a local inhabitant, a Forest Officer or Police Officer or any other personal on official duty shall be permitted to enter the reserved forests except in accordance with permission in writing issued by the PCCF"**.

b) **Foolproof institutions required for forest protection under the supervision of North East Council**

The Court observed in a significant order²⁹² that in view of the multi dimensional issues impinging upon forest protection, foolproof institutional arrangements need to be put in place, and made functional under the direct supervision of the North East Council (NEC). Technical backstopping in the forestry matter will be provided by MoEF by opening a separate cell in the Ministry under an officer of the rank of CCF and starting a satellite office of the Forest Survey of India at Shillong. *It would be worthwhile to examine the nature of institutions created or whether any such technical backstopping cell has been created in the MoEF.*

c) **Forest conservation initiatives by Court in the North East: Vulnerable areas, ecologically sensitive areas and maximum permissible yield**

In this very order²⁹³ the Supreme Court has given some specific directions regarding forest protection and scientific management of the forests.

On forest protection: The Court devised several measures which include the following:

- i. Action plan for patrolling of vulnerable areas: An action plan shall be prepared by the Principal Chief Conservator of Forest/Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable areas and quarterly report shall be submitted to the Central Government for approval. The approved plan together with the modifications if any shall be acted upon.
- ii. Powers of forest officers to be enhanced to enable them to ensure protection of forest wealth: To ensure protection of the forest wealth, the forest officers in the North Eastern States may be empowered with authority to investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other States in the country.

²⁹¹ See order dated 08.05.1997

²⁹² See order dated 13.01.1998

²⁹³ See order 13.01.1998

- iii. Security and forest protection shall be the responsibility of the State Government: The State Governments shall be responsible for providing all facilities including security and police force to strictly ensure forest protection measures to stop illicit felling, removal and utilization of such timber. The Chief Secretary shall review the various matters concerning forest protection and development in his State at least once every six months with senior forest officers up to the rank of Conservator of Forests. Regional Chief Conservator of Forests or MoEF shall be invited to all such meetings.

On scientific management of forest

- i. Working plan for each forest division to be made: Working plans for all forest divisions shall be prepared by the State Governments and get approved by the Government of India. Forest working shall be carried out strictly in accordance with the approved prescriptions of the working plans. The working plans should be prepared within a period of two years. During the interregnum the forests shall be worked according to an annual felling program approved by the MoEF which shall be incorporated in the concerned working plan. In case of working plan is not prepared within this time frame, future felling will remain suspended till the regular working plan is prepared and got approved. The status of these working plans needs to be ascertained as it is the logical next step.
- ii. Working schemes for the district, regional and village forest: The forests under the district, regional and village counsel shall be worked in accordance with working schemes which shall specify both the program for regeneration and harvesting and whose period shall not be less than five years.
- iii. Maximum permissible yield shall not exceed annual harvestable yield determined by MoEF: The maximum permissible annual yield in the interim measures suggested above, shall not exceed the annual harvestable yield determined by MoEF. The plantation schemes raised on private and community holdings shall be excluded from these requirements but shall be regulated under respective State rules and regulations.

8.11. States to identify ecologically sensitive areas: Ten percent of total forest area

It is perhaps for the first that a definitive percentage of setting aside areas as ecologically sensitive areas was mandated in the north east. The order stated that the States shall identify ecologically sensitive areas in consultation with leading institutions like the Indian Council of Forestry Research and Education, Wildlife Institute of India, North Eastern Hill University, North Eastern Regional Institute of Science and Technology, leading NGO, etc. and ensure that such areas are totally excluded from any kind of exploitation. The minimum extent of such areas shall be ten percent of the total forest area in the State.

8.12. Court strategies: Regulating bodies such as High Powered Committee formed

A High Powered Committee (HPC) was constituted for overseeing the implementation of the orders of the SC in the north eastern States²⁹⁴. Constitution and functions of this HPC were also spelled out in the order.

²⁹⁴ See order dated 04.03.1997

a) *Constitution of High Powered Committee*

A Committee comprising of Shri T V Rajeshwar, Chairman; Shri R N Kaul, Retired. I G of Forests – member; and one representative nominated by the Ministry of Environment and Forest (MoEF) – Member Secretary was constituted.

b) *Functions of the High Powered Committee*

- i. Inventory: The HPC was directed to oversee preparation of inventory of all timber in all forms including timber products lying in the forest or in transit depots and lying in mill premises. The inventory should, wherever possible, indicate the origin and source of the timber. The Committee may for this purpose select suitable person who would be made available by the concerned State Government at its request. As far as possible, such inventory was to be prepared within a period of eight weeks.
- ii. Regulating sale of timber or timber products: The Committee may, if it considers appropriate, permit the use or sale of any part of the timber or timber products. Any sale shall be effected through the Forest Corporation of the State under overall supervision of the Committee. The net sale proceeds after deduction of the transaction related costs and payment of wages to the labor and staff shall be deposited by the Forest Corporation or through forest department in a designated account. The modalities will be worked out by the Committee.

c) *Enabling and Strengthening of High Powered Committee: Court back directions, office, travel expenses*

The Court not only created but also enabled and strengthened the HPC through various measures. The HPC, for example, through the Amicus Curiae, ask for such directions from time to time from the Court as it considers appropriate. Further, the MoEF was required to make available as far as possible within a week, office space and provide secretarial and all other related facilities (including local transport and telecommunication) befitting the stature of the committee. The MoEF was also required to make arrangements for and meet expenses of travel of the Committee. All arrangements for stay etc. of the committee (outside Delhi) as may be necessary, would be the responsibility of the State Government concerned. The Assam Government will make similar office and other facilities available in Guwahati. It is for the sake of convenience at this stage that the Central Government and the State Governments are being directed to make certain payments and meet all the expenses. However, the question of liability for payment of these amounts would be considered at the final hearing and suitable directions for the purpose given at the stage indicating the principal for determining the liability for making the payment.

d) *Other North Eastern States allowed to respond to High Powered Committee and approach the Court for any direction with regard to timber*²⁹⁵

The other North Eastern States which want any order to be passed in respect of the timber in their State may respond to the comments of the HPC made in relation to it and also approach the HPC with their request to enable HPC to give its comments thereon. The request so made by concerned North Eastern States together with the comments of the HPC could then be considered for issuing the appropriate directions, if any. The State desirous of seeking any directions in this behalf should approach the HPC within a week. The HPC is requested to give its comments till 05.01.1998. The above demonstrates the short term measures that the Supreme Court employed to take into control the enormity of issues of the north east.

²⁹⁵ See order dated 16.12.1997

e) *Working of High Powered Committee sought to be clarified*²⁹⁶

An Intervention Application was filed by the Amicus Curiae regarding the working of the HPC and it sought to strengthen the HPC further. Among others it sought to increase the penal powers of the HPC where it requested that the orders passed by the HPC imposing a penalty based on actual adjudication at the behest of the unit, even if it results in the imposition of penalty larger than the penalty originally imposed are valid and permissible. Further, it also sought to clarify that no unit in respect of whom an order had not been made by HPC on or before 15.01.1998 would be permitted to shift to the industrial estate or to revive and / or restore its licence. The Court held that²⁹⁷ the HPC was and would be entitled to impose penalty larger than the penalty originally imposed, as long as this penalty is based on the records so produced. The Court also clarified regarding the date of 15.01.1998. It said **"A question has arisen with regard to cases where orders had not been made by the HPC on or before 15.01.1998. This Court's order dated December 1998 had contemplated documents being filed and orders being passed by 15.01.1998. It is possible that due to volume of work, the HPC may not have been able to pass orders by 15.01.1998 even though papers and other relevant material had been submitted to the HPC by that date. It is therefore made clear that the HPC would be entitled to look into the records and pass orders in every case where documents and material had been placed before the HPC by 15.01.1998"**.

The Court further made it clear that wherever any penalty and/or additional penalty has been imposed by the HPC, the unit concerned will have a right to approach the HPC to examine the matter afresh. The Court also set up an appellate mechanism with the HPC where it permitted²⁹⁸ any unit in respect of which penalty and/or additional penalty has been levied by the HPC to approach the HPC for reconsideration on the basis of the material which it may choose to produce provided such a request is made by the unit within one month of the passing of the order by the HPC or, in those cases where orders have already been passed, within one month from today i.e. 01.05.2000. The Court also laid down that in as much as the HPC would in effect be discharging quasi-judicial functions, it will be appropriate that the HPC may briefly indicate the reasons in support of the order passed by it. The Court further clarified that wherever the HPC had given clearance to a unit after 09.02.1998, the unit will be entitled to relocation. It, however, made it clear that no unit which had not furnished the record and particulars before 15.01.1998 will be entitled to the benefit of this order.

f) *High Powered Committee reconstituted and given some additional responsibilities*²⁹⁹

The HPC was reconstituted by an order dated 17.04.2000 with Shri S C Sharma, Additional IG (Forests) as the Chairman of the Committee and with Shri G K Pillai, Joint Secretary, NE in the Ministry of Home Affairs as the other member. They were also ordered to look into several new issues that emerged in the north east including supervising the transportation of all the illegal timber since none of it has been sold despite orders made by the Supreme Court from time to time. Other responsibilities include overseeing investigation into specific cases of illegal felling and certain other matters referred to in the confidential report given by the HPC to the Supreme Court and reexamining the matter of licensing of the units in the light of events which had occurred in the interregnum, particularly the seizure of a very large quantity of timber originating from North Eastern States – Nangloi, Rajpura and Tinsukia.

²⁹⁶ See order dated 01.05.2000

²⁹⁷ Ref I.A. No. 565 and SC order dated 17.04.2000

²⁹⁸ In modification of paragraph 14 of the order of December, 1996

²⁹⁹ See order dated 17.04.2000

g) *High Powered Committee and Special Investigation Team: Empowered including confiscation powers*

In a significant order³⁰⁰ the Court directed that **“all concerned State Government and railways shall strictly follow the guidelines issued by the Special Investigation Team. The HPC, SIT or any other authority constituted under the directions of this Court are empowered to issue orders for confiscation of any vehicle including trucks used for movement of any timber or timber products which has been or was being used for transportation of timber/timber products in violation of the order of this Court”**. It further asked the State Government and other concerned authorities to provide all necessary assistance sought for this purpose. The Court also observed that the HPC, SIT and / or any other authority constituted under its order shall be at liberty to issue directions for detention, verification, secure, confiscation, and disposal etc. of timber or timber products including that in transit. Such directions issued to the registered timber transporters, consignors, owner of the consignee, transporter of State Government, railways or any other authority shall be binding on them.

h) *SIT to regulate railway wagons for transportation of timber*

The Court also directed that the SIT shall from time to time prescribe the maximum number of railway wagons for and of the approved loading stations, which may be allowed for each quarter for transportation of timber including sawn timber. The railway shall ensure that in no way the limits are exceeded³⁰¹.

i) *Demurrage, disposal and wharfage: SIT Empowered*

The Court made it clear that the question of demurrage or shortage claimed by railways in respect of goods detained shall be decided in such manner it may order. Pending such decision, the SIT will be at liberty to dispose of the confiscated goods and keep the proceeds in a separate bank account after payment of direct expenses and will abide by the orders of the Court for its utilisation. It further directed the railways not to object in the goods being lifted without payment of demurrage or wharfage in view of this arrangement³⁰².

j) *HPC order can be appealed against only in the Supreme Court, Guwahati High Court restrained from entertaining any such appeal*³⁰³

When the Amicus brought to the notice of the Supreme Court that there are cases which have been or are pending in the Guwahati High Court in variance with the order of the Supreme Court, the Court ordered: **“we restrain the Guwahati High Court, including any of its Benches, from entertaining any writ petition in connection with any order passed by the HPC if any person has a grievance against the order passed by the HPC, the only course open is to approach this Court. The Registrar of the Guwahati High Court is directed not to register any writ petition so filed”**.

k) *Action against officials*

Another effective strategy adopted by the Court was the threat of punishment to erring officials. The Court ordered that the State Government shall identify within 45 days all those forest divisions where significant illegal felling have taken place and initiate disciplinary criminal proceedings against those found responsible. The first action taken report (ATR) in this regard would be submitted to the Central Government within three months, which shall be followed by quarterly reports till the culmination of the matter.

³⁰⁰ See order dated 12.05.2001

³⁰¹ See order dated 12.05.2001

³⁰² See order dated 12.05.2001

³⁰³ I.A. No. 685, order dated 18.02.2002

I) *Onus on highest officials such as Chief Secretaries to act within a given time line*

The Court employed effective strategies by putting the onus of implementing its orders to the highest ranking officials in the State Governments namely the Chief Secretaries. These include responsibilities for reviewing the action taken against officials and others found responsible for significant illegal felling; those involved in movement of illegal timber seized/confiscated by the SIT; departmental proceeding or criminal proceedings as may be necessary and the like to assure this Court that the States are serious in creating an environment of deterrence against illegal felling of trees.

The Court also directed for an action taken report by the concerned Chief Secretaries within sixty days, which inter alia should include their concern about adequacy of the action taken against the concerned officials. Further it required that the proceedings for confiscation of trucks and other vehicles used for movement of illegal timber especially where such movement has taken place using fake/tampered/expired transit passes, may also be reviewed. Such review shall also be done by the Chief Secretaries while taking half yearly review measures as per order dated 15.01.1998³⁰⁴. The railways were also asked to review the action taken and take corrective measures.



³⁰⁴ Especially para 28 of the order dated 15.01.1998

9. *The State of Assam*

9.1. *Saw mills, veneer and plywood mills closed: Interstate coordination directed*

After the closure of all saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of one hundred kilometer from its border, in Assam, the State of Assam was also directed for interstate coordination to implement the said order.

9.2. *Wood based industries: Regulation and relocation*

On 03.03.1998, the learned Amicus Curiae had submitted that the Government of Assam has issued an order on 12.02.1998 whereby wood based units, which have been cleared by the HPC have been permitted to "procure further stocks" from any other units so cleared by the HPC and convert these procured stocks and dispose of finished stocks. He contended that under the cover of the implementation of the order of the Supreme Court dated 15.01.1998, fresh activity appears to have been permitted to the units, which runs counter to the spirit of the said order of 15.01.1998. The Court thus directed the Amicus Curiae to file an application in this regard³⁰⁵.

9.3. *Relocation of wood based industries in Assam by declaration of industrial estate*³⁰⁶

In December 1998, the State Government of Assam declared certain areas as industrial estate by issuing a notification in this regard to comply with the Supreme Court order³⁰⁷ of relocating the wood based industries to a specific area so that the monitoring becomes easier and large scale destruction of forest and pilferage of timber by the wood based industries are reduced.

9.4. *Setting up of private saw mill: Permission declined*

One Mr. Komor Uddin Ahmed, wanted to set up a saw mill on his private property on the ground that he has 7 acres of land in Dhubri district 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. This matter was examined by CEC. On the basis of their recommendation SC declined permission for setting up private saw mill on the ground 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. 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-mill³⁰⁸.

³⁰⁵ See order dated 03.03.1998

³⁰⁶ See order dated 10.12.1998

³⁰⁷ See order dated 15.01.1998.

³⁰⁸ See order dated 11/01/2008 in I.A. Nos. 1358 in I.A. No. 992

9.5. *Encroachment*

The Chief Secretary of Assam, among many other States are directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.³⁰⁹.

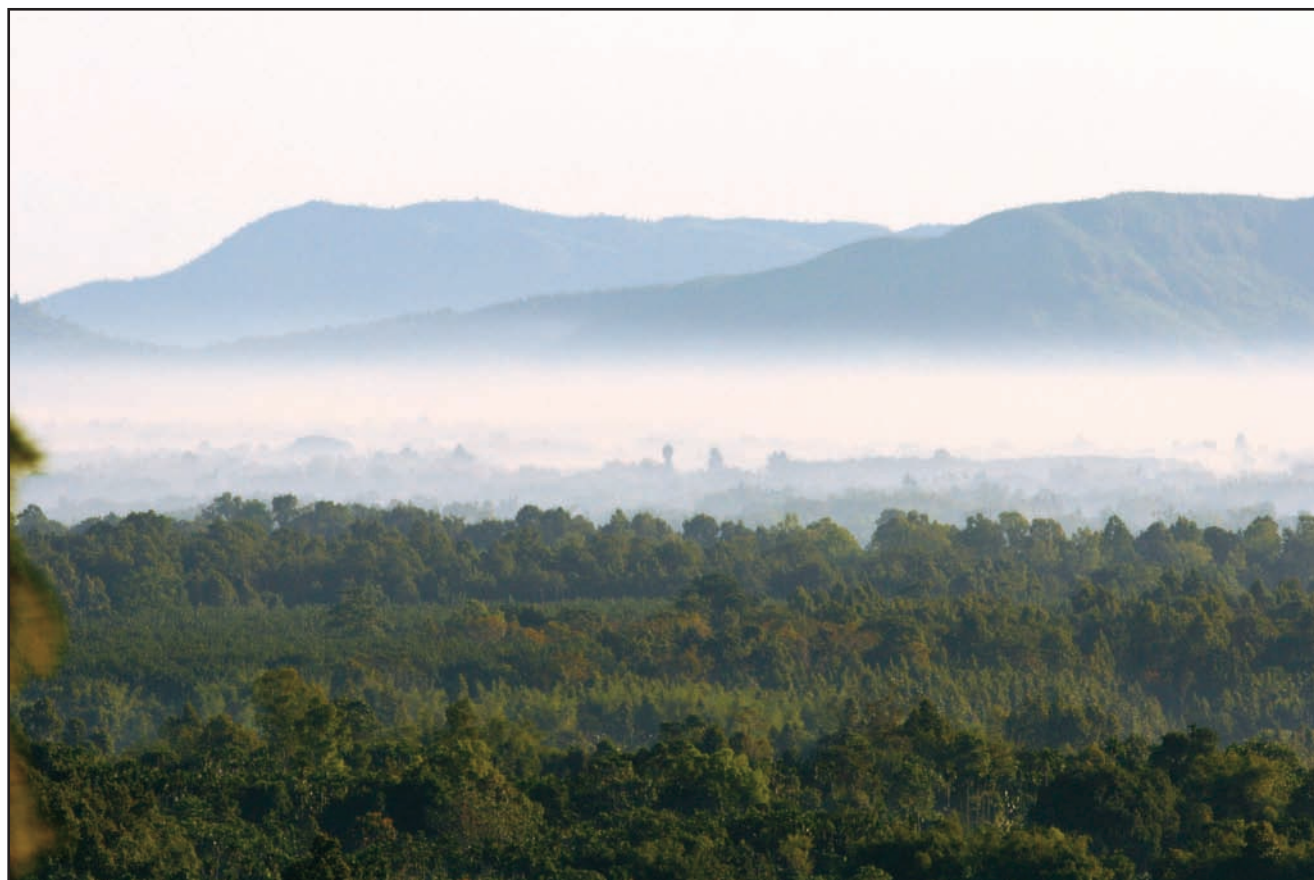


³⁰⁹ I.A. No. 703, 502, order dated 18.02.2002

10. The State of Mizoram

10.1. Movement of sawn and unsawn timber allowed as no industrial estate exist

The Supreme Court stipulated³¹⁰ that movement of sawn and unsawn timber shall be permitted only if processed in HPC cleared wood based units situated inside approved industrial estates except in respect of Mizoram where no industrial estates exist. Round and hand sawn timber save in cases where specific approval is accorded by the HPC/MoEF shall not be allowed to be transported outside North East except in the case of Mizoram. It was further stated that movement of timber and timber products for Mizoram shall be regulated as per guidelines prescribed by the Special Investigating Team. *The status of these guidelines must be ascertained to get a clearer picture about movement of timber in Mizoram.*



³¹⁰ See order dated 12.05.2001

11. The State of Nagaland

11.1. Industrial Estates

Every State including Nagaland earmarked areas as industrial estate for the operation of the wood based industries. Thus when the State of Nagaland issued a notification dated 15.06.1998, without consulting the MoEF, the Court observed that it ran in the teeth of the directions issued by the Supreme Court. Thereafter the State Government issued a draft notification complying with the Supreme Court order indicating the location of the industrial estates and minor industrial estate and the same was approved by MoEF. The said notification regarding the industrial estates in Nagaland was allowed³¹¹ and the SC directed the State to publish this notification and act strictly as per this notification in future³¹².

11.2. No new saw mills in Nagaland for another period of five years³¹³

As per the first Monitoring Report of the CEC, one of the three suggestions put forward and accepted by the Union of India and consequently directed by the Court was that the ban imposed with regard to the opening of the new saw mills and other wood based industries by the Court's order dated 15.01.1998 in the State of Nagaland would be extended by a further period of five years i.e. from 30.10.2002 to 29.10.2007. *This order needs a fresh look due to the fact that it expired technically on 29.10.2007.*



³¹¹ Reference I.A. No. 397

³¹² See order dated 16.04.1999

³¹³ See order dated 30.10.2002

12. The State of Tripura

12.1. Disposal of timber

The Court made some generic orders regarding disposal of timber from plantations and community holdings. It stated that existing inventorised stock of timber originating from plantations in private and community holdings in the States of Tripura among other States may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months³¹⁴. *The State in Tripura needs to be ascertained in this regard. Note that externally aided projects such as the one being currently carried out with the help of the Japan Bank need to take into design such legal and policy measures as suggested by the SC. It would be a logical next step to ascertain whether such measures are being taken or not.*

12.2. Regulating wood based industries in approved industrial estates

As per the recommendations of CEC, the Court directed that within eight weeks the MoEF in consultation with the State of Tripura, will review number of HPC cleared wood based industries vis-à-vis total area available in the approved industrial estates to decide if additional industrial estates are needed at Agartala, Tripura³¹⁵.



³¹⁴ See order dated 13.1.1998

³¹⁵ I.A. No. 798, 947, 433, 515 and 594 order dated 01.08.2003

13. The State of Meghalaya

The State of Meghalaya was directed to file an affidavit containing detailed particulars of wood requirement of the tribal population, wood based industries and minerals being mined from the forest³¹⁶. This was in response to the State of Meghalaya's assertion that a significant quantity of timber is required for use in the State itself by the rural tribal population. The State had also asserted that there is a loss of revenue to the State Government on account of restrictions placed by the order of 12.12.1996 and a large number of people of the State have been deprived of the employment. It is in this light that the State Government was asked to furnish full and complete particulars of:

- a. The quantity of timber which comes from its forest for use by the rural tribal population, the extent to which it is made available to the rural tribal population including the terms on which it is so made available.
- b. The revenue derived by the State by way of royalty from the minerals, mines and forest area, purchase tax on export of timber, sale value of timber drawn from the Government forests and the extent and quantity of such sale and the manner of sales;
- c. The number of wood based industries within the State and the number of persons employed in such industry.

The Court has almost uniformly applied the above set of parameters to all the States and Meghalaya is no exception.

13.1. Permission for natural forests and artificial forests on private holdings sought

State of Meghalaya wanted that the natural forests including artificially generated pine plantations on private holdings in Meghalaya may be allowed to be harvested in accordance with the time honoured customary and traditional rights subject to the rules and regulations framed by the concerned autonomous district councils under the provisions of their management and Indian Forest Act, thus read with the provisions of the Meghalaya Forest (Removal of Timber) Regulation Act, 1981 and preserved norms as per duly approved working schemes. MoEF will give its response to this request at the next date of hearing.

13.2. Mining by a huge corporate without forest clearance: Inter country implications

The applicant has a lime stone quarry in the State of Meghalaya. It is covering an extent of 100 ha. and is on the border of India and Bangladesh. AC has brought to the notice of the Court that the lime stone quarry is in the forest area and the mining operation has been commenced without obtaining prior permission of the Court. It has been submitted that the mining area is not in a forest and the mining operation itself is as a result of agreement between India and Bangladesh. A report has been called for in this matter³¹⁷.

³¹⁶ See order dated 04.03.1997

³¹⁷ See orders dated 28.09.2007 in I.A. No. 1868

14. The State of Arunachal Pradesh

The 12.12.1996 order of the Supreme Court also came down heavily on Arunachal Pradesh.

14.1. Ban on felling of evergreen forests in Tirap and Changlang

Firstly, there was a complete ban on felling of any kind of trees in the tropical wet evergreen forests of *Tirap* and *Changlang* in the State of Arunachal Pradesh on the pretext of maintaining ecological balance and that such forests are needed to preserve biodiversity. Apart from the site specific order there were several other implications of the above order.

14.2. Saw mills, veneer and plywood mills closed: Interstate coordination directed

All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of one hundred kilometer from its border, in Assam, was asked to be closed immediately. The State of Assam was also directed for interstate coordination.

14.3. Permit system in Arunachal Pradesh abolished

In States like Arunachal Pradesh where permit system was prevalent felling is permitted only as per the terms and conditions of the permit³¹⁸. However, the permit system in Arunachal Pradesh was abolished³¹⁹. It was ordered that the State Government may provide financial assistance in cash or kind in the form of timber only for the bonafide use of the local tribals alone. Such concessional timber shall not be bartered or sold. Felling of trees for such purpose shall be carried out only by a Government agency.

14.4. Utilisation and disposal of illegally felled timber³²⁰

a) Ownership of illegally felled timber to be of the State Government

The Court observed that the ownership of all illegally felled timber within the forest area including that in the depots is of the State of Arunachal Pradesh and, therefore, the proceeds thereof must go to the State.

b) Supervision of auction of all illegally felled timber by High Powered Committee

In order to fetch a proper price for the same, it is necessary to make suitable directions for the disposal/ utilisation of all such timber in a manner so that the proceeds thereof are available to the State Government. Therefore, it was directed that all the illegally felled timber within the forest area including the depots would be sold by public auction at Delhi under the supervision of the HPC after permitting inspection of the same at the site to the intending bidders. The modalities for the performance of this exercise would be laid down by the HPC and the entire exercise of permitting inspection of the timber and its auction

³¹⁸ See order dated 12.12.1996

³¹⁹ See order dated 13.01.1998

³²⁰ See order dated 16.12.1997 related to I.A. No. 260/97

after due advertising, would be under the supervision of the HPC. It was also directed that the State of Arunachal Pradesh and Union of India would render full assistance to the HPC in the performance of this exercise including the facilities for the removal of the purchased timber by the buyers thereof.

The Court also observed that the prohibition on movement of timber outside of NE States shall not apply to the movement of such auctioned timber. The prohibition against movement of timber outside the North East region, enforced by the earlier orders, would thus stand modified to this extent.

c) *Sale proceeds to go to the State Government*

The total sale proceeds of the said timber would go to the State of Arunachal Pradesh which will utilize one half of that amount for raising plantation by local tribal population within the State so that this part of the amount would be utilized only for the purpose of forestry and assistance to the local tribal population. The remaining one half of the total sale proceeds, after deduction of the expenses therefrom, would go to the State coffers for other developmental activities in the State.

14.5. Court strategies

Forest Protection Authorities: Details prescribed: Usurping executive functions?

The Arunachal Pradesh Forest Protection Authority was created by the Central Government under EPA³²¹, and the Supreme Court seized the opportunity to transfer all related matters to this authority which has to decide them as per the mandate of the SC orders³²². The Court also ordered that it shall also be open to any party, whose application is not pending before it and who wishes to seek some directions in the matter, to approach the authority directly. It further laid out the procedure by directing that the Authority shall consider the applications, both, referred by this Court and filed directly before it, and give appropriate directions, subject, however, to the condition that no direction, which is inconsistent with any of the orders or directions made by this Court. Should the authority, however, find it necessary to seek any modification or variation of any of the orders or directions issued by the Supreme Court, so as to be able to give effective relief to the concerned parties, the Authority shall be at liberty to approach it for such modification/variation. A time line was also mandated and the Court observed that **"we expect that the Authority shall dispose of the applications concerning Arunachal Pradesh within a period of eight weeks from the date of applications are received by it from this Court and also within the same time from of eight weeks, from the date when an application is filed directly before the Authority by any of the parties"**. A mechanism for reporting was also set up and the Authority was required to submit a report regarding disposal of the applications, together with the orders made thereon to this Court every three months. A three months review suggested that the Arunachal Pradesh Forest Protection Authority was doing well and the SC directed that the Central Government should explore the possibility of replicating this example in other States as well³²³.

14.6. Permission to army for construction of road through an alternative route

The Army wanted to construct a road in the forest area. As per existing process the proposal was examined by the CEC and CEC was of the view that initially the proposal was not feasible as it would cause more damage to the forest and ecological balance. Then MoEF suggested an alternative proposal and it was accepted by the Army. SC accepted the proposal and the permission were granted to Army for construction of this road³²⁴.

³²¹ Environment Protection Act 1986, section 3; The notification has been issued on 17.09.1998 detailing the powers and jurisdiction of the Authority

³²² See order dated 17.09.1998

³²³ SC order dated 10.12.1998

³²⁴ See order dated 11.01.2008 in I.A. No. 1354 in 1154

15. *The State of Jammu and Kashmir*

The State of Jammu and Kashmir is unique in many ways. The special constitutional status under Article 370 of J&K is well known. However, in the Godavarman case the Supreme Court has not treated J&K specially. There are equally prohibitive directions on felling on trees, regulation of standards, utilization and ecologically sensitive areas.

15.1. *Felling of trees*

After the issue of indiscriminate felling of trees was brought before the notice of the Supreme Court, the State Government of J&K made a case for cutting trees and removal of dead wood to take the necessary rehabilitation measures for implementation of the power projects and removal of dead wood for sericulture. The Court allowed this application while observing that particulars would also be given of the area from which the trees are proposed to be cut and the impact thereof³²⁵.

Finally, on 12.12.1996 the Supreme Court issued specific directions for the State.

15.2. *Felling of trees banned in all forests irrespective of ownership: Private plantations exempted*

It categorically stated that there will be no felling of trees permitted in any 'forest', public or private. However, this ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu and Kashmir and in such plantations, felling will be strictly in accordance with law. *One can assume that the phrase "in accordance with law" would logically mean that felling would be done in accordance with the working plan. Although, it would be prudent to find out whether there any other special laws in J&K related to felling in public and private forests? This would be important as there is a distinction between a private plantation on Government land or private land and social forestry by the forest department and felling of trees in such forest.*

15.3. *Removal of fallen trees regulated in forests: Protected Areas not within this purview*

The Court further directed that in 'forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber. Such felling of trees must be regulated strictly as per the provisions of J&K FCA, 1990. However specifically Protected Areas under the Jammu and Kashmir Wildlife Protection Act, 1978 and also such areas that may be specifically banned from felling or removal of trees were not covered under this direction.

³²⁵ See order dated 02.09.1996 ref W.P.(C) 171/96

15.4. Expert committee to form regulation standards for the removal of fallen trees

For the removal of fallen trees, the Court also directed the State Government to constitute an expert committee comprising of a representative being an IFS Officer posted in the State of Jammu and Kashmir, a representative of the State Government and two private experts of eminence and the Managing Director of the State Forest Corporation (as member secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms. *It would be useful to revisit these norms and ascertain whether this has been done in the first place.*

15.5. Felling of trees regulated and be strictly as per the provisions of J&K FCA, 1990

The Court emphasized the uniqueness of the applicability of the forest conservation laws in J&K and stated that any felling of trees in forest or otherwise or any clearance of land for execution of projects shall be in strict compliance with the Jammu and Kashmir Forest Conservation Act, 1990 and any other laws applicable in the State. However, any trees so felled and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect.

15.6. All timber to be utilized within the State

Significantly, the Court also ordered that all timber obtained, as aforesaid or otherwise, shall be utilized within the State, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions. *There is thus a clear focus on the National Forest Policy where the first charge on the forest produce is on the local people.*

15.7. Ban on the movement of timber

Realizing that regulation of movement of timber is crucial to conservation of forests, the Court also ordered that the movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of Directorate General of Supplies and Disposals (DGS and D), railways and defence after due certification in this regard. *This order perhaps introduced the well known international concepts of forest certification prior to exploitation of forests. While it is unclear from the orders whether this was by design or default it would be important to assess what kind of certification is currently done? Who does it and whether it is related to forest certification in the State.*

15.8. State to file information regarding quantity of timber held by private persons for transportation outside of the State

The strategy of the Court seems apparent when on one hand it sought to ban a destructive activity and on the other seek information on the quantity of forest produce that can be sustainably used. In this light, it ordered the State of Jammu and Kashmir to file, preferably within one month, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Department for transport outside the State (other than for consumption by the DGS and D, railways and defence). *It would be important to know from*

the State whether this order has been followed and what was the mechanism that was followed in arriving at the quantity of timber. Whether this has been done? If yes than what was the content?

15.9. Wood based industries: Prohibited within certain zones

Like in many other States, the Supreme Court first sought to ban the operation of sawmill, veneer and plywood mill. It stated that no such mills would be permitted to operate in this State at a distance of less than eight kilometer from the boundary of any demarcated forest areas. Note that the demarcated forest under the Forest Act of Jammu and Kashmir is similar to reserved forest under the Indian Forest Act. It also stated that any existing mills falling in this belt should be relocated forthwith³²⁶.

15.10. Focus on certain species of trees: Differing regulations on different trees

The Courts have treated different species in different ways in the State. Thus, for example, on one hand the stocks of kail, chir and fir in the depots of the Forest Corporation were permitted to be disposed of by the Forest Corporation in any manner, which would include movement and disposal of the same even outside the State³²⁷, on the other, the Court categorically stated that felling and removal of felled khair trees would be banned in J&K³²⁸. Repeated failure of not following orders had also initiated contempt proceedings against the erring J&K officials which was however stayed and J&K Government assured the SC of no further felling of khair trees³²⁹. *Clearly, the economics of trees has played an important role in the minds of the judges while distinguishing the species.*

15.11. Understanding timber management

The Supreme Court as stated earlier devised several ways to come to a fair decision on timber management. One of such ways is to get the basic data on board. Thus, for example, the State of J&K was asked to furnish information on several inventory related data³³⁰ in replying to the queries of the Amicus Curiae³³¹. These include:

- a. Steps taken by the State to ensure that no timber, other than that certified in accordance with the order of this Court dated 12.12.1996 is permitted to move out of the State;
- b. Steps taken by the State for creation of agencies to ensure that there is no movement of timber outside the State;
- c. Its response to the allegations that there has been rampant felling of trees within the State by various agencies, which timber has been moved outside the State, even after the order was made by the Court on 12.12.1996.
- d. Details of the total number of trees felled along with the total number of trees utilized in pursuance of the implementation of the Environment Plan of the State Government

The State was also required to file an affidavit within a month explaining their perception of the expression 'Private Plantations' along with a list of private plantations recognized by it where felling is being permitted at

³²⁶ See order dated 12.12.1996

³²⁷ See order dated 04.03.1997

³²⁸ See order dated 29.01.1998. It was directed that there shall be no felling of the Khair trees nor any of the khair trees, if already felled, shall be removed from the forests. Notice shall issue to the Contractor Shri Vijay Singh, S/o Shri Rasal Singh and M/s B.K. Katha (P) Ltd. to show cause why the orders/agreements for extraction of khair trees issued in their favour be not cancelled. In a further order dated 04.05.1998 the State government was asked to name the officials who ordered the felling of khair trees despite the SC order in this regard dated 10.05.1996, 12.12.1996 and order dated 04.03.1997.

³²⁹ See order dated 29.07.1998

³³⁰ See order dated 10.09.1998

³³¹ Please refer to I.A. No. 18

present. *The above order clearly throws an important issue of inventory of forest based products within a State context. Lack of systematic data and updation of records are clearly the reasons for ineffective management of forests in general and timber in particular.* The Court has also shown that if satisfied on reasonableness of such data any activity within the purview of the law would be allowed. A case in point is the permission granted to transport the finished products of timber outside J&K³³².

15.12. Movement of duly certified timber held by private parties

The Court observed that a total of 5322.97 cubic meters of timber presently held by the private parties in their stock purchased from the J&K State Forest Corporation³³³ is permitted to be moved. However, any such movement is to be effected only after due certification, consignment wise, made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources³³⁴. The above directions are to be read along with those contained in the order dated 12.12.1996.

15.13. Permission granted to transport the finished products of timber

The order dated 12.12.1996 was clarified to the extent that it would be open to the State of Jammu and Kashmir to export and transport the finished products of timber outside the State³³⁵ except those finished products of timber which have not be permitted by the MoEF³³⁶. The Court also ruled that in case any further finished products are to be included, the State shall seek its permission.

15.14. Patni Top as an ecologically important area

The Court has also sought to protect ecologically important areas in the State by almost stretching its mandate. Thus, for example, it ordered that no further construction and conversion would be allowed in Patnitop in J&K³³⁷ till after the ecological balance has been restored and a Status Report be filed within a period of four months³³⁸. *This is a clear case of regulation where the Court has attempted to force the State Government to take effective steps in restoring ecological balance especially in ecologically important areas.*

15.15. Construction of road allowed

The Supreme Court granted permission for construction of Mughal road between Bafliaz (Poonch) to Shopian (Phulwama) in Jammu and Kashmir³³⁹. The road passes through Hirapora Sanctuary.

The permission is subject to the following conditions:

- (i) Complete ban on the movement through the Sanctuaries and conservation areas by graziers and their livestock.
- (ii) Sanctuary/conservation areas which are in the neighborhood areas of human settlement should be fenced to prevent poaching and other illegal activities.
- (iii) The areas of the three continuous PAs (Lachipora Wildlife Sanctuary, Limbar Wildlife Sanctuary and Naganari Conservation Areas) falling in the Kaj-i-nag Range should be upgraded as a National Park. The management

³³² I.A. No. 786, order dated 23.02.2004

³³³ As per Annexure D to the affidavit dated 18.02.1997, filed on behalf of the Government of J&K

³³⁴ (As per para 6 (a) at page 11 of the earlier order dated 12.12.1996).

³³⁵ SC order dated 23.02.2004 and I.A. No. 786

³³⁶ Specifically, those mentioned at Sl. Nos. 12 and 14 in the letter dated 25.10.1997 enclosed with the I.A.

³³⁷ I.A. No. 401

³³⁸ See order dated 23.04.2001

³³⁹ See order dated 27.07.2007 in I.A. No. 1977 in I.A. Nos. 718 and 1015

- of the entire area should be transferred from the forest department to the Wildlife Protection Department.
- (iv) An additional area of 149 sq. km. located on the eastern side of the Sanctuary and under the possession of the Peer Panjal Forest Division should be included in the Hirpora Wildlife Sanctuary.
 - (v) Requisite environment clearance to be obtained as per the prevalent rules/guidelines.
 - (vi) Five percent of the project cost to be deposited in CAMPA.
 - (vii) Monitoring Committee to be set up the Chairmanship of the Chief Secretary with PCCF and Chief Wildlife Warden as members. The Committee has been entrusted with the task for strict compliance of the stipulated conditions.

The conditions stipulate formation of monitoring committee for ensuring compliance of the imposed conditions which in some sense is an innovation as far as the conditions for diversion are concerned.

15.16. Court strategies: Contempt proceedings

The Court has used various strategies to ensure compliance of its orders, one of the most effective ones is of course the contempt proceedings. In the felling of khair trees case, to take the matter to the logical end, the contempt proceedings against the erring officers were stayed after an unconditional apology was tendered by them. The State Government of J&K also assured that there shall not be any more felling of khair trees in the State.



16. The State of Himachal Pradesh

A pattern has emerged in the manner in which the Supreme Court seems to be approaching the forest concerns of the hill States. The orders for the State of Himachal Pradesh and other hill States clarify this further. The instinctive reaction of the Court has been to prohibit first, regulate with little reliance on private agencies and in the meanwhile seek enough information on the State of forests within the State to subsequently modify or sustain its orders. Significantly, there is also recognition of the rights of the local communities and their bonafide requirements in many cases.

16.1. Complete ban on felling of trees in forest: Private plantations and permits to right holders excluded

In the State of Himachal Pradesh, for example, the Court ordered that there will be no felling of trees permitted in any forest, public or private. However, this ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest' and which has not been converted from an earlier 'forest'. Further, this ban will not apply to permits granted to the right holders for their bonafide personal use in Himachal Pradesh. The well known timber distribution rights (TD rights) were thus excluded.

16.2. Regulation on felling: No private agency

In the execution of any project for felling and disposal of trees, FCA is to be strictly followed and no private agency is to be involved in either the felling or the removal of the same³⁴⁰. The Court was clear that in a 'forest' the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under section 10 or section 35 of the Wildlife Protection Act, 1972 or any other Act banning such felling or removal of trees.

16.3. Court Strategies: Expert committee to form regulation standards for the removal of fallen trees

The Court has also evolved innovative methods to regulate and set standards for forest produce exploitation. Thus, for example, for the regulation of removal of fallen trees, it ordered an expert committee to form regulation standards for the removal of fallen trees³⁴¹. The State Government was required to constitute an expert committee comprising a representative from MoEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as member secretary). This expert committee will fix the qualitative and quantitative norms for the felling of fallen trees and deceased and dry standing timber and further the State shall ensure that the trees so felled and removed are in accordance with these norms.

16.4. Preventing vandalism: Advertisements at the cost of ecology prohibited

In an interesting development it was brought to the notice of the Court that on the highways of Himachal Pradesh, advertisements by commercial entities including multi nationals were painted on rocks. The Court directed the

³⁴⁰ Ibid

³⁴¹ Ibid

Central Empowered Committee to report to the Court regarding advertisements painted on the rocks in Himachal Pradesh³⁴². The Court further held that it will have to be ensured that the removal of the advertisements does not cause violation or adversely affect the ecology of the area. For this purpose, it is better that the entities to whom such notices have been issued first inform the State Governments and this Court as to the mode and manner in which it proposes to remove the advertisements and it is only after the same is approved by an appropriate authority that the action of removal would be permitted to be undertaken.

16.5. The State of Himachal Pradesh fined rupees one crore for painting rocks³⁴³

In a historic pecuniary deterrent, the Court observed in the advertisement through painting rocks in Himachal **“It is unfortunate that such large scale vandalism has taken place with the State Government taking no action so as to check the same. In the realm of public trust, it was the duty of the State Government to protect the environment and for the dereliction of its duty rupees one crore will be deposited by the State of Himachal Pradesh in the Registry which will go towards meeting the expenses necessary for restoration of ecology”**.

16.6. Use of forest land permitted in Nargu Wildlife Sanctuary for hydro power project

Permission was sought by M/s Milestone Power Generation Ltd. for the use of forest land falling in Nargu Wildlife Sanctuary in Mandi for construction of 1.5 MW hydro power project. CEC has examined and subject to the following conditions SC has approved³⁴⁴ the project after acceptance of the conditions by the project proponent:

- a) Approval under the FC Act for use of the forest land to be obtained.
- b) Five percent of the project cost will be deposited in the CAF for undertaking conservation and protection measures in the Nargu Wildlife Sanctuary;
- c) The NPV at the present rate is to be deposited in the Compensatory Afforestation Fund along with an undertaking to pay additional NPV as per the decision by this Honorable Court;
- d) The conditions imposed by the Chief Wildlife Warden for the implementation of the project is to be strictly followed; and
- e) Adequate arrangements for meeting the energy needs of the labourers working on the project are required to be made. No labour camp will be established inside the forest area or within the Sanctuary.

16.7. Permission granted for laying transmission line

The applicant M/s Jaypee Power Grid Ltd., sought permission for diversion of 322.6538 ha of forest land for laying transmission line through Kinnaur, Rampur, Theog, Rajgarh and Nahan Forest Divisions. After examination CEC has made certain observations. These suggestions/observations are acceptable to the applicant. SC directed³⁴⁵ MoEF to review the project in the light of the observations made by CEC in this regard.

³⁴² I.A. No. 780, order dated 02.09.2002

³⁴³ I.A. No. 780, order dated 23.09.2002

³⁴⁴ See order dated 04.04.2008 in I.A. No. 2171 in I.A. No. 940

³⁴⁵ See order dated 03.10.2008 in I.A. No. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

17. The State of Uttarakhand

(The name Uttaranchal has been replaced by Uttarakhand in some of the orders since the name of the State has been changed from Uttaranchal to Uttarakhand)

17.1. Special benefits to residences of upper reaches (1000 m and above)

Among other things, the hill context and its difficulties were well recognized by the Supreme Court. It categorically stated that people residing above 1000 m sea level in Uttarakhand will get some benefits regarding forest produce³⁴⁶. The order dated 12.12.1996 and subsequent orders, was modified to the extent they are applicable to local residents of Uttarakhand. Local residents of Uttarakhand (some districts) were permitted to avail the rights and concessions in respect of forest produce meant for the bona fide personal use of local population in the regions which are located one thousand meters or more above the sea level. It was, however, added that care shall be taken to ensure that grant of rights to local populace of the hill areas does not adversely effect forest conservation in Uttarakhand area of the then State of Uttar Pradesh.

17.2. Operation of power grid regulated: Felling in a National Park subject to compensatory afforestation and monitoring by Central Empowered Committee³⁴⁷

The Power Grid Corporation filed applications for permission to erect transmission lines which are to pass through the Rajaji National Park. It also stated that through the proposed corridor where the transmission lines will be erected, fourteen thousand seven hundred thirty nine trees will have to be cut. Permission for erecting the lines through the Rajaji National Park and cutting these trees had been accorded by the Union of India as well as the State of Uttaranchal. Permission was not made operative because of the earlier orders of the Supreme Court. Taking all circumstances into consideration, the Court allowed the applications and permission was granted to the Power Grid Corporation to erect the transmission lines through the Rajaji National Park. The Court also laid down a procedure of the manner of felling and its disposal and transaction relating to compensatory afforestation. It said: **"The trees will be cut by the forest department of the State of Uttarakhand under the supervision of the CEC. Trees so cut shall be sold by the forest department under the supervision of CEC by public auction. The amount so realized as well as the sums payable by Power Grid Corporation for afforestation etc. will be kept by the CEC in a fixed deposit initially for a period of three months and with the constitution of the body for the management of the CAF, the principal amount so realized by the CEC shall be transferred to the said body. This permission, which is granted, will be operational on rupees fifty crores being deposited with the CEC who shall deposit the same in fixed deposit and after twelve weeks transfer the same to the body constituted for the purpose of managing the CAF"**.

17.3. Exchange of forest land: Alternative to Army³⁴⁸

The Ghatiabaragh-Lipulkeh road leads to China and is required for mobilization of troops and to carry out day to day operational maintenance of the troops deployed on the border running along the China and Nepal border. The CEC has recommended use of 106.505 ha of forest land within Askote for construction of road on payment

³⁴⁶ See order dated 23.01.1998 and I.A. No. 278/1998 in W.P.(C) 202/95

³⁴⁷ I.A. No. 634-635, 697 and 698, order dated 30.10.2002

³⁴⁸ I.A. No. 1003

of NPV, five percent of project cost and the cost towards Compensatory Afforestation³⁴⁹. In addition, an alternative recommendation involving handing over of 155 acre of forest land presently being used by the Army as an ammunition dump in Raiwala Cantt around Rajaji National Park was also stated³⁵⁰. It was recommended that in lieu of the surrender of the above land, the use of forest land falling within Askote Wildlife Sanctuary may be permitted for the construction of the road by the Army without any payment towards the NPV, five percent of the project cost or the Compensatory Afforestation charges which adds up to about twenty five crores. The CEC suggested before making final recommendation that it would be proper and appropriate that officers of the Ministry of Defence who are competent to take decision shall discuss this matter with senior officers of the State of Uttaranchal and the Ministry of Environment and Forest so that the resolution could be found for the restoration of Elephant Corridor³⁵¹. The Chief Wildlife Warden and Chief Conservator of Forest shall also be associated with the discussion. The meeting shall consider the feasibility of accepting the recommendations of CEC³⁵². After several rounds of discussions it was mutually agreed by the Army and the State Government that the ammunition dump will be relocated at a suitable site and thereafter an area of 155 acre will be handed over to the Forest Department. For relocation of the ammunition dump, an area of 100 acre of forest land has been identified in Lalpani - Bibliwal Reserved Forest Block. The CEC finally recommended that the Court may consider permitting the use of the forest land falling within Askote Wildlife Sanctuary for the construction of the Ghatiabagarh-Lipulekh road by the Army subject to the following conditions:

- i) approval under FC Act will be obtained;
- ii) for use of the forest no payment towards the NPV, five percent of the project cost or cost of the Compensatory Afforestation will be made by the Army. Instead, 155 acre of forest land at Raiwala Cantt, which is presently being used as ammunition dump will be handed over by it to the Forest Department.
- iii) simultaneously, after obtaining approval under the FC Act, 100 acre of the forest land for shifting of the ammunition dump will be transferred by the Uttarakhand Forest Department to the Army on payment of the NPV. However, for the above, no other charges will be payable.
- iv) one km. area of land all around the new site of the ammunition dump will be declared as "No Construction Zone" wherein construction of any type will be prohibited
- v) in case because of some reason the mutually agreed exchange of forest land does not take place, the permission for the use of the forest land within the Askote Wildlife Sanctuary will involve payment towards the NPV, five percent of the project cost and cost of Compensatory Afforestation; and
- vi) the land restored by the Forest Department should be regenerated at the earliest. The Committee consisting of the PCCF, Chief Wildlife Warden and Director, Project Elephant, MoEF which has been entrusted with the responsibility of overseeing the use of the funds released by this Hon'ble Court by order dated 15.10.2004 in I.A. No. 827 should be responsible for supervising the said work. The money released for the Rajaji National Park may also be used for this purpose.

17.4. Widening of road in Musk deer Sanctuary

Dereservation of 0.84 ha. of forest land was granted³⁵³ by the Supreme Court for widening of route falling within Kedarnath Musk Deer Wildlife Sanctuary situated between Gouri Kund and Ram Bada in Uttarakhand. The State Government agreed to abide by condition number one to six contained in CEC report dated 05.07.2006. The State Government was to expedite preparation of integrated infrastructure development plan, as recommended in condition number seven of CEC report. The integrated infrastructure development plan is to be filed before CEC, MoEF and Supreme Court.

³⁴⁹ See para 9(i) and 9(ii) of the CEC report as I.A. No. 1003

³⁵⁰ See para 10,11,12 of CEC report

³⁵¹ See order dated 17.09.2004

³⁵² Given in para 12 of the CEC report

³⁵³ See order dated 21.07.2006 in I.A. No. 1469-1470

(It seems that this application was not referred to the NBWL for examination of the issue of dereservation in Sanctuary contrary to WLPa amendment and SC orders in similar cases where such matters have been referred to NBWL) (This overlaps with the CEL work as dereservation is an issue being dealt in that case (order dated 13.11.2000)).

17.5. Widening and improvement of the road through Askot Wildlife Sanctuary: Permission to Ministry of Defence³⁵⁴

SC has accorded permission to Ministry of Defence, for widening and improvement of the Jauljibi-Tawaghat section of the Pithoragarh-Tawaghat Road on the acceptance of the conditions imposed by CEC.

1. Approval under FCA for use of forestland;
2. NPV at the present rate is to be deposited in the CAF along with an undertaking to pay additional amount as per directions of this Honorable Court;
3. Five percent of the project cost is to be deposited in the CAF for undertaking conservation and protection works in the Askote Wildlife Sanctuary;
4. Labour camps to be established only in the locations approved by the Chief Wildlife Warden. Further, the conditions imposed by the Chief Wildlife Warden for undertaking the works is to be strictly adhered to;
5. No dumping of the debris inside the Sanctuary. The dumping to be done outside the Sanctuary at the places approved by the Chief Wildlife Warden.

17.6. Repair of road passing through Rajaji National Park: Permission granted³⁵⁵

The State of Uttarakhand sought permission for repair work on damaged part of two hundred meters road on hill bypass road falling within the Rajaji National Park. The CEC has examined and made certain conditions for approval of the project, subject to the following conditions. These conditions are acceptable to the State Government and SC has accordingly permitted this work to be undertaken on the fulfillment of the various conditions imposed by CEC and CWLW:

- i) The hill bypass road will be used only on special occasions such as Kumbh Mela/Ardh Kumbh Mela and on the occasion of 'Somvati Amavasya' and that too strictly between sunrise and sunset. For this purpose, gates will be erected at appropriate places at both ends of the road falling within the Rajaji National Park so as not to hinder the movement of wildlife. These gates will be erected by the forest department at the cost of the PWD. These two gates should be opened only on special occasions and that too under strict supervision and written directions of the Director, Rajaji National Park;
- ii) The conditions imposed by the Chief Wildlife Warden for repair of the road will be strictly complied with;
- iii) No labour camp will be established within the Rajaji National Park;
- iv) The earth and other material required for the repair of the road will be brought from outside the Rajaji National Park and no material will be extracted or used from the Rajaji National Park; and
- v) Adequate number of speed breakers will be installed on the road at regular intervals to regulate the speed of the vehicles.

³⁵⁴ See order dated 07.03.2008 in I.A. No. 1789

³⁵⁵ See order dated 24.10.2008 in I.A. No. 2281-82

17.7. Categorization undertaken for saw mills and plywood/veneer units³⁵⁶

In the State of Uttarakhand there are twenty seven saw mills and twenty seven plywood units. CEC has suggested that these twenty seven plywood units have to pay penalty as given in para 5 of the supplementary report³⁵⁷ submitted. The owners of the plywood units accept the CEC Report and they are allowed to start units subject to fulfilling the conditions. These units are given six weeks time to pay penalty. These units can function only after depositing of these penalties. As regard twenty seven saw mills, four are relocated in Jaspur and two in Rishikesh. There are problem regarding relocation of these six mills which would be decided later on. Except these six saw mills rest of twenty one saw mills have agreed to pay penalty as indicated in para 9 of the supplementary report. On payment of these penalties these units are allowed to function³⁵⁸.



³⁵⁶ See order dated 29.02.2008 in I.A. No. 208-209, 241-242, 245, 268-269, 1704-1706 and I.A. No. 1710-1712, 2024-2026, 2027-2029, 2030-2032, 2033-2035, 2036-2038, 2039-2041, 2042-2044, 2045-2047, 2048-2050, 2051-2053, 2055-2056 in I.A. 208-209 with I.A. No. 1692 in I.A. No. 385 I.A. No. 1950-1951, I.A. No. 1989-1990, I.A. No. 1652-1654

³⁵⁷ As per supplementary report dated 26.02.2008

³⁵⁸ See order dated 02.05.2008 in I.A. No. 208-209

18. The State of Uttar Pradesh

18.1. Prohibition on unlicensed wood based industries: Compliance and monitoring

The Court came down heavily on the then State of Uttar Pradesh with regard to unlicensed saw mills, veneer mills and plywood mills. It specifically directed the closure of such unlicensed wood based units and categorically directed the State Government to not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry. It further emphasized that no further permission to be granted without the permission of the Central Government. The Court almost without exception also put in place compliance, monitoring and reporting system in every such ban. In this particular case, the Chief Secretary of the State was required to ensure strict compliance of this direction and file a compliance report within two weeks³⁵⁹. By implication this order should also apply to the current State of Uttarakhand.

As stated earlier, in line with the Court's strategy, the complete prohibitions follow a strictly monitored regulations and this was also evident in the case of saw mills and other such wood based industries of Uttar Pradesh.

18.2. Regulation of saw mill

a) Relocation outside ten kilometer from forests

The Court, for example, granted permission through the office of the PCCF³⁶⁰ on a case to case basis, to existing licensed saw mills to relocate it, provided that the relocated site is not within ten kilometer of any existing forest.

When State of U.P. sought some more clarifications regarding the relocation of the saw mills³⁶¹, the Court clarified³⁶² that the direction dated 08.05.1997 not to relocate the saw mill within ten kilometer of any existing forest, excludes the trees on either side of the roads and the railways outside the existing forests and the ten kilometer ban be considered in that light. The State Government was also allowed to amend the relevant rules in accordance with the law keeping in view various orders and directions issued by this Court from time to time on the subject. The Court further clarified that the permission hereby granted is not in dilution of any order passed by this Court on this subject. It is interesting to note that an amendment to U.P. Establishment and Regulation of Saw Mills Rules was also brought about by the State Government. However, in this order, the Court clarified that by the grant of this permission, **"we should not be taken to have pronounced as the validity or otherwise of the Rules nor expressed any opinion on the correctness or otherwise on the proposed amendments"**.

b) Special permit granted for sawing only imported timber in U.P.³⁶³

The Court after hearing and keeping in view the undertaking furnished by the applicant to the effect that it will manufacture cooling towers only from imported wood, permitted the State of U.P. to give a

³⁵⁹ See order dated 04.03.1997

³⁶⁰ See order dated 08.05.1997

³⁶¹ I.A. No. 385

³⁶² SC order dated 05.05.1998

³⁶³ I.A. No. 471

special permit to the applicant subject to the condition that the applicant will always abide by the said undertaking and will use the saw mill only for the purpose of sawing imported timber and that the applicant will not use any indigenous or domestic timber in the manufacture of the cooling towers. Such special licence will be given on such terms and conditions as may be stipulated by the State of U.P. in accordance with Rules³⁶⁴.

c) *Amendment to U.P. Establishment and Regulation of Saw Mills Rules, 1978, set aside*

Saw Mills Rules were amended by the State of U.P. on 26.06.1998 permitting saw mills having engine power of three HP not to have a licence. This amendment was made after this Court's order dated 04.03.1997 directing closure of all unlicensed saw mills in the State of U.P. and Maharashtra. The Court observed that the said amendment was effected to circumvent the Court's order dated 04.03.1997 regarding saw mills licence. That this was done with a view to help certain saw mills in Uttar Pradesh. The Court accordingly set aside the amendment of the U.P. Establishment and Regulation of Saw Mills Rules, 1978, which was effected on 26.06.1998, in so far as it exempted saw mills using mechanical devices with the use of power up to three HP from obtaining a licence.

It further clarified that each and every saw mill running in the State of U.P. would require a licence, whether the saw mill is running with the aid of power or otherwise. The rule³⁶⁵ which provides for deemed licences in the event of the application for the grant of licence not being dealt with contained in the Saw Mills Rules, is also held to be contrary to the letter and spirit of the Indian Forest Act and the orders of this Court and is accordingly set aside³⁶⁶.

d) *Unlicensed saw mills closed in Uttar Pradesh*³⁶⁷

On applications filed by the owners of saw mills which was considered by the CEC on the ground that they were owners of the saw mills and hence entitled to licence. The Supreme Court examined their claim on the basis of the fact whether they had a valid licence on 04.03.1997 or not as the Court had ordered the closure of all licences of saw mills, veneer mills and plywood mills in the State on that day. As per the CEC report none of these mills had a valid licence as on 04.03.1997 therefore the Court ordered closure of all these mills. It further ordered that the Principle Chief Conservator of Forests give details within one month whether the said saw mills and others have been closed down or not and if they are not then the reasons as to why the same has not been done.

e) *Information on saw mills sought district wise*

On the recommendations of CEC the Court directed that the PCCF, U.P. furnish district wise and saw mill wise details of closed saw mills along with date of closure, date of electricity disconnection, date of dismantling of the machinery and the officer(s) who carried out/supervised the above exercise, and the saw mills which were not closed along with the reasons thereof³⁶⁸.

f) *Domestic carpenters as saw mills rejected*

After the Courts direction on closure of all unlicensed saw mills in the State of U.P. and setting aside of amendment in U.P. Establishment and Regulation of Saw Mills Rules 1978, the saw mill owners presented another argument on the premise that they are engaged in domestic carpentry and they are covered by Rule 12 and, therefore, they should be held to be not covered by order dated 29.04.2002. The applicants in all these matters were heard by CEC which recommended that the said I.As should be rejected, inter

³⁶⁴ SC order dated 11.05.2000

³⁶⁵ Rule 7 of the U.P. Establishment and Regulation of Saw Mills Rules, 1978

³⁶⁶ See order dated 29.04.2002 and I.A. No. 664

³⁶⁷ I.A. No. 301-382 and order dated 22.10.2002

³⁶⁸ I.A. No. 946, 301,382, order dated 01.08.2003

alia, on the ground that the exemption provided under Rule 12 does not entitle the applicants to use powered saws, which are nothing but saw mills, for sawing of timber irrespective of their claim that this to be used only for carpentry purposes and not for commercial purpose. Consequently, all claims of saw mill licencees in U.P. regarding them being domestic carpenters was rejected as per CEC recommendations³⁶⁹.

g) SC grants permission for establishment of the furniture making unit³⁷⁰

The applicant, M/s Airtech Pvt. Ltd. sought permission for establishment of the furniture making unit at plot numbers 50A and 50B, Sahibabad industrial area, Ghaziabad. CEC examined the matter in consultation with the Principal Secretary, (Forests) and the Principal Chief Conservator of Forests, U.P. Forest Department and has contented it can be permitted if unit will not be having any facility for conversion of round timber into saw timber and on giving an undertaking before SC within two days and that activities done in a saw mill shall not be undertaken. These conditions are acceptable to the applicant and hence permission is accorded for setting up this unit.

18.3. Saw mills, plywood and veneer industries: Criteria and categorisation for approval

The operation of saw mills, plywood and veneer based industries in the State of Uttar Pradesh has had a checkered history on account of the illegal operation of these units in collusion with the officials of the State Government. This is demonstrated in the report of CEC³⁷¹, which had recommended that the defaulting units numbering one thousand six hundred seven in the State to be shut down as the licences were renewed after 04.03.1997 in blatant violation of the SC order prohibiting setting up of such units. One of the biggest challenges faced by the Court relates to implementation aspects of orders. The Court has focused on closing down illegal units before evolving any new strategy in terms of which licences can be granted keeping in mind the carrying capacity of the forests existent in that particular forests. The SC for example suspended the functioning of 1607 units operating in violation of order dated 04.03.1997³⁷². The CEC has succinctly highlighted in its report how one thousand six hundred seven saw mills have been reopened in the garb of renewal of the old licences. Another method which had been evolved and approved by the State Government for granting of licences to wood based units is by following the steps enumerated below:

- a) Preparation of a seniority list of plywood/veneer units operating in the State of U.P. and Uttarakhand (part of undivided U.P.) on the strength of 'No Objection Certificate' issued by the forest department prior to 04.03.1997 after verification of the 'No Objection Certificate';
- b) Assessing of timber availability *qua* capacity of existing saw mills. Depending upon the availability of timber the existing plywood/veneer units may be granted licence on the principle of 'first come last go'. The units found not eligible for grant of licence may be closed;
- c) The electricity connection of all unlicensed units shall be disconnected, their machinery's shall be dismantled and the various registrations etc. issued to such units shall be cancelled by the respective authorities.
- d) Another recommendation which has to be considered by the State Government is to the effect that as far as feasible, the plywood/veneer units should be permitted to operate only in the industrial estates identified for this purpose. This is of particular significance to State of Uttarakhand where practically all areas are within an aerial distance of ten kilometer from the nearest forest.

³⁶⁹ See order dated 25.08.2003

³⁷⁰ See order dated 21.11.2008 in I.A. Nos. 2186-2187

³⁷¹ Report dated 01.09.2005 contained in order dated 01.09.2006

³⁷² See order dated 01.09.2006 in I.A. No. 1399 and I.A. No. 1569 with I.A. No. 946 in I.A. Nos. 301-382 and I.A. Nos. 1327-1328 and 1526

The SC approved the CEC categorization for grant of licences to wood based industries³⁷³. This is in relation to saw mills, plywood and veneer units³⁷⁴ in the State of Uttar Pradesh. CEC conducted the wood balance study for the State to assess the availability of timber for various units. CEC has categorized the units into four categories for grant of licences and this categorization stands approved by SC. The actual work of granting licences would be conducted by the State Level Committees. In an event of any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration. It has been contented by some units that they were functioning from 1983-85 and some are functioning from 1985 to 1997 and which are included in category IV of the CEC should be granted fresh licences subject to availability of wood. Any objection on the wrong categorization of the units would be decided by CEC³⁷⁵.

18.4. Transferees of saw mills to be considered depending on availability of wood³⁷⁶

The transferees of saw mills which were either not given licences or these saw mills were not being operated approached SC. CEC has filed a report and has suggested that along with other applications received for renewal, subject to availability of timber in the State of U.P. and after meeting the requirement of licence of wood based industries in the units covered by CEC report dated 06.05.2008 in I.A. No. 2185 in 728 of the wood based industries and in terms of the orders passed by this Court on 18.05.2007 and 27.07.2007, these applications will also be considered.

18.5. Regulating forest produce

To alleviate the unintended hardship which may be caused to the ordinary populace in the hill areas, which need forest produce for their survival, it is clarified as under:

Nothing contained in the orders passed by this Court would prevent the U.P. Forest Corporation from directly undertaking the exercise of collecting forest produce including fallen wood (but not any felling or cutting of trees or timber) to the extent strictly necessary, and distributing the same ex-depot to the people living in the hill areas.

The forest corporation may, with the prior permission of the PCCF, remove dead or dry trees for supply in the same manner ex-depot to people residing in those areas. The Forest Corporation shall, (i) undertake such activity itself without engaging any outside agencies, and (ii) keep an account of the dead and dry trees felled and removed by them, and shall by way of an affidavit file the same in this Court.

18.6. Illegal mining in Uttar Pradesh: Role of committee, contempt and Amicus³⁷⁷

a) Regulating Mining: Committee Appointed to ascertain facts

Concerned by large scale illicit mining and reckless quarrying of forests in certain villages of district Mirzapur

³⁷³ See order dated 18.05.2007

³⁷⁴ I.A. No. 1399 in 946 in W.P.(C) No. 301-382 and 1569 and 1642-1643, 1644-45, 1646-1648, 1649-1651, 1694-95, 1714, 1725-1727, 1728-1730, 1731-1733, 1734-1736, 1737-39, 1740-1742, 1743-1744, 1745-1746, 1747-1748, 1749-1750, 1751-1752, 1753-1754, 1755-1756, 1759-1761, 1763-1764 and 1765-1767, 1769, 1770-1772, 1773-1775, 1776 and 1777, 1803, 1805-1807, 1808-1810, 1813-1854 and 1855-1857 in I.A. No. 1399

³⁷⁵ See order dated 27.07.2007

³⁷⁶ See order dated 21.11.2008 in I.A. Nos. 2160-2161 in 1399, 2185 in I.A. Nos. 728, 2248-2249 in 1694, 2254, 2280, 2284-2286, 2314-2315, 2316-2317, 2323-2324, 2325-2327, 2376-2377, 2383-2385, 2393-2394 with W.P.(C) No. 23/2008 W.P.(C) No. 24/2008 W.P.(C) No. 33/2008 W.P.(C) No.1 31/2008 W.P.(C) No. 522/207 W.P.(C) No.116/2007

³⁷⁷ See orders dated 07.01.1998, 13.01.1998 and 20.01.1999

in Uttar Pradesh, the Supreme Court had issued orders from time to time placing a complete ban on the illicit mining activities. However Amicus Curiae informed the Court that illicit mining was continuing, a fact corroborated by the Secretary, Ministry of Environment and Forests. The Court, accordingly, appointed a Committee consisting of Shri A M Khanwilkar and Shri Gopal Singh, Supreme Court Advocates along with an Officer of the Ministry of Environment, to be nominated by the Secretary to the Ministry. The Committee was requested to visit the named villages in Mirzapur district as well as in Doon Valley and submit a report. The Committee visited the concerned villages and submitted its report dated 12.01.1998. The committee confirmed the alleged illegal mining after its site inspection conducted on 10.01.1998³⁷⁸.

b) Contempt proceedings initiated against mining officer³⁷⁹

The committee among other things categorically mentioned in its report the following :

- 1) Copies of the correspondence given by the Forest Officials shows that the local administration has been appraised of the problem from time to time, but to no avail.
- 2) Specific grievance was made by them against the Mining Officer. According to them, he has been issuing permits/licences/transit passes for quarrying in Forest Areas despite the ban placed by this Court.
- 3) Perusal of the files showed that the Mining Officer was, time and again, informed about the order of this Court.
- 4) Further, the Mining Officer was not only uncooperative but was downright insulting.
- 5) No information/explanation were forthcoming from him except to State that he had done no wrong.
- 6) On a specific query, in the residential office of the District Magistrate and in her presence, he even challenged the authority of the committee to ask him questions and then went on to add that 'the committee was free to report what it wanted and further that what is the maximum that can happen – hanging? Fine then hang me'.
- 7) All the high officials present there were mute spectators to this offensive out burst. None chose to restrain him, leave alone reprimand him. This prompted the Court to issue a notice for contempt proceedings against the mining officer.

c) Illegally mined minerals together with instruments and vehicles used for commission of these illegal activities seized

Apart from initiating action against the concerned officials and authorities, the Court also directed the large quantities of illegally mined minerals admittedly lying in the area, to be seized forthwith together with instruments and vehicles used for commission of these illegal activities including vehicles used for transportation of the minerals by the District Magistrate, Mirzapur, U.P.. The District Magistrate (DM) was asked to function as a Commissioner of the Supreme Court. The DM Mirzapur submitted a report regarding the seizure which finds mention in the order of the Court dated 23.01.1998, in the areas of illegal mining. The Government of U.P. was directed to report on affidavit of an officer of the rank not lower than Secretary to the Government the factual position as well as the action, if any, taken by the Government of U.P. so far. This was ordered to be done by 12.01.1998³⁸⁰.

d) Updated Information on mining and quarrying leases sought from the Government

The Supreme Court also asked the U.P. Government to furnish updated information regarding all the mining leases or quarry licences issued by the Government through out the State with all the details of the parties.

³⁷⁸ Finds mention in the order of SC dated 13.01.1998

³⁷⁹ SC order dated 20.01.1999

³⁸⁰ See order dated 07.01.1998

18.7. Dispute on area of mining lease: CEC to ascertain the boundary of reserve forest

A mining lease was granted in 1997 to leaseholders. It is contented by State of U.P. that the mining area is inside Choursil Reserve Forest, Lalitpur, though leaseholders submit that it is outside the reserve forest. As per notification dated 29.12.1970 the area is near the forest boundary pillar numbers 123 to 133 showing the boundary lines of the Choursil Reserve Forest. It was contented by AC that there are serious disputes on the boundary issue. In such a situation SC directed³⁸¹ a reexamination by the CEC for marking the boundary of reserve forest area. The forest officers were directed to cooperate with the CEC to find out the real boundary of the Choursil Reserve Forest at this area. A report was to be filed by CEC on this issue.

18.8. Felling of diseased trees: Closely monitored

The State of Uttar Pradesh was allowed to fell two hundred and three sal trees afflicted with borer under the supervision of Forest Research Institute, Dehradun and the order further required the State to submit a report after the task was done³⁸². An I.A. was filed by the State of U.P. to seek permission for the felling and extraction of two hundred and three sal trees from the Rajaji National Park, Dehradun. The Supreme Court granted permission and held that the State of U.P. may take appropriate steps for felling and extracting two hundred and three sal trees from the Rajaji National Park which are stated to have been attacked by sal borer. This exercise will be undertaken by the State under the supervision of the scientists of Entomology Division of the Forest Research Institute, Dehradun. The exercise be completed within a period of four months and the report be then submitted by the State as well as the Forest Research Institute.

18.9. Diversion of forest land: Railways

The CEC in its report dated 24.08.2005, has recommended that the Ministry of Railways may be permitted to use 12.764 ha of forest land falling within the National Chambal Wildlife Sanctuary for construction of broad gauge line between Guna and Etawah subject to various conditions stipulated in the report³⁸³. The Ministry of Railways accepted all the conditions. The Court therefore granted the permission subject to the applicant complying with the conditions stipulated in the recommendations of the CEC and further undertaking to pay or deposit such amount of Net Present Value which the applicant may be directed. An amount of rupees seven crores fifty seven lakhs, after deducting the amount already paid, was committed to be deposited within a period of four weeks. The Court observed that the permission to divert the land would come into operation after the deposit is made.

18.10. Construction of bridges in Sanctuaries allowed: Subject to conditions

The diversion of forest land in Sanctuary was allowed³⁸⁴ by SC in the National Chambal Wildlife Sanctuary, Tortoise Wildlife Sanctuary and Sohagi Barwa Wildlife Sanctuary in Uttar Pradesh. The permission granted to State of Uttar Pradesh for use of the land falling within the National Chambal Wildlife Sanctuary, the Tortoise Wildlife Sanctuary and the Sohagi Barwa Sanctuary was on the conditions, as stipulated in CEC report dated 24.07.2005;

- i) In each of the four projects, five percent of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking the conservation and protection measures of the Sanctuary;

³⁸¹ See order dated 15.02.2008 in I.A. Nos. 991, 1004, 1185, 1273, 1280, 1294, 1443, 1611, 2018 and 2073, 2175 in W.P.(C) No. 202/1995 with I.A. No. 979 in I.A. No. 443, 1204, 1245, 1357 and 2110, 2141 in W.P.(C) No.202/1995

³⁸² See order dated 24.04.2000

³⁸³ See order dated 16.12.2005 and I.A. No. 1011

³⁸⁴ See order dated 25.08.2006 in I.A. No. 1615

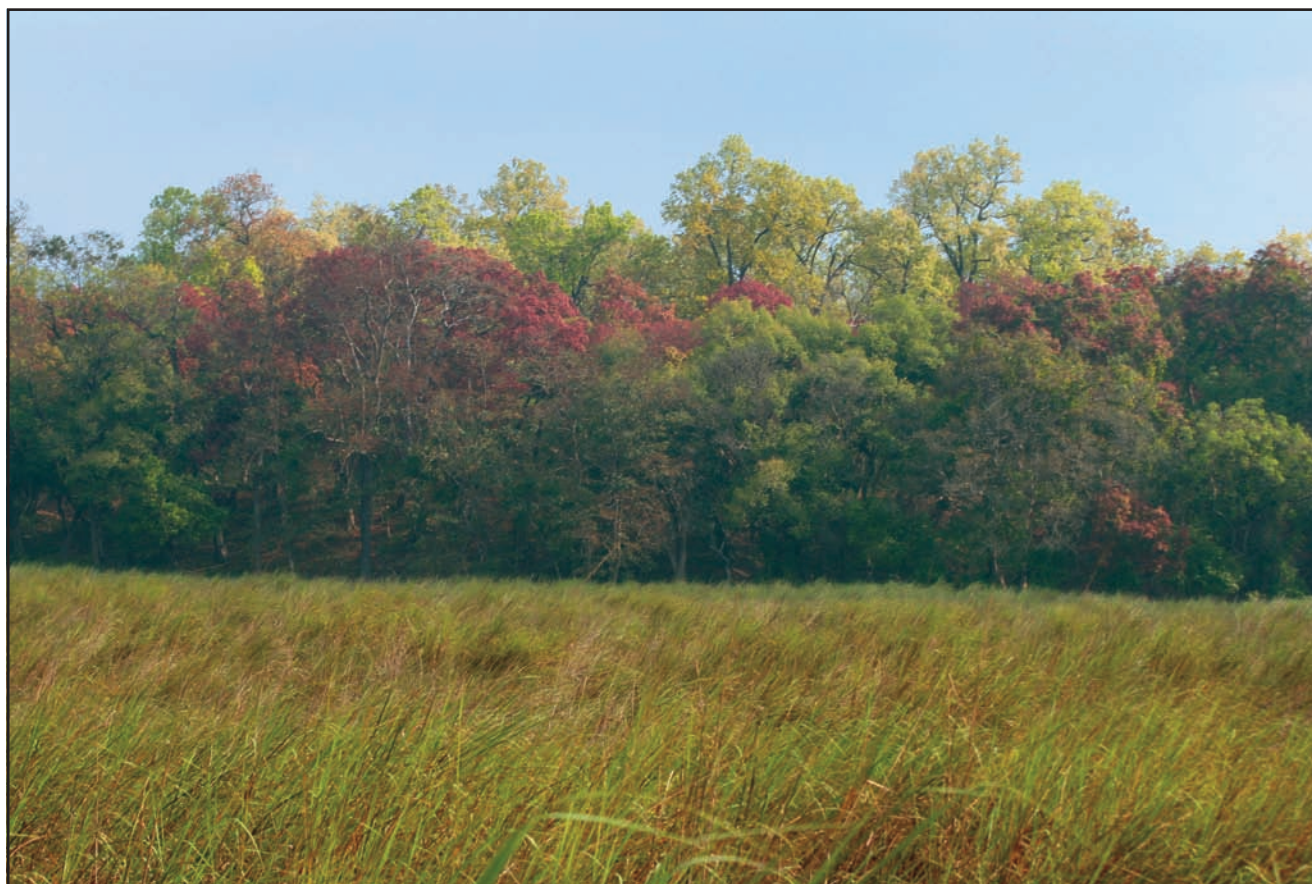
- ii) The State Government in each of the four cases will take all the mitigative measures suggested by the Chief Wildlife Warden. In addition, appropriate measures for the safety of the wildlife will be taken by the State of U.P. in consultation with the Wildlife Institute of India, Dehradun;
- iii) The requisite approval under the FCA for the use of the forest land for the construction of a bridge over river Rohini will be obtained before undertaking the construction work.
- iv) NPV as per the applicable rate will be deposited. In the other three projects no forest land is involved and therefore payment of the NPV or obtaining approval under the FCA is not required.

SC did not accept the recommendation of CEC' for initiating action against the officer for allowing construction in violation of Court's order.

It can be seen from above that SC has not initiated any action against the erring officers for violation of FCA. This is also highlighted in the reliance telecom case described earlier. There have been very few instances where SC has taken action against officials for violation of FCA.

18.11. Identification of "forest like areas"

The State Government has evolved guidelines to identify "forest like areas" in the State. The State Government submitted that steps would be taken for identifying such areas and the same would be handed over to Forest department. This exercise would take four months³⁸⁵.



³⁸⁵ See order dated 11.01.2008 in I.A. No. 979 in I.A. Nos. 443, 1204, 1245, 1357 and 2110

19. *The State of Maharashtra*

19.1. *Prohibition on unlicensed wood based industries: Compliance and monitoring*

Among other things the Supreme Court like in many other State directed that unlicensed saw mills, veneer mills and plywood mills to be closed in Maharashtra forthwith and the State Government would not remove or relax the condition for grant of permission or licence for the opening of any such saw mill, veneer and plywood industry and no further permission to be granted without the permission of the Central Government. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks³⁸⁶.

19.2. *Pune District Leprosy Committee allowed to run their band saw mill*

The Court permitted the Government of Maharashtra to consider grant of permission or licence to the Pune District Leprosy Committee to run their band saw mill. It said, **"The State Government would consider the representations made to it and decide them expeditiously in accordance with and in conformity with the orders made by this Court"**. The earlier orders made by this Court would stand modified or clarified in the aforesaid manner³⁸⁷.

19.3. *Saw mills, veneer and plywood industries: Even Minister and Secretary not spared*

The SC in dealing with matters related to the wood based industries in the State of Maharashtra faced challenges in the shape of collusion of State officials including politicians with the defaulting units operating in violation of the Court orders dated 04.03.1997 and 30.10.2002. In a significant order that sent a very strong message to the country, the SC held the Forest Minister and Principal Secretary guilty of contempt³⁸⁸ for violation of orders dated 04.03.1997 and 30.10.2002. Proceedings were initiated against two contemnors. Shri Ashok Khot, Principal Secretary, Department of Forest, Government of Maharashtra and Shri Swarup Singh Naik, Forest Minister, for permitting six veneer and plywood mills to operate from the reserve forest area in the State. This was in violation of order dated 04.03.1997 and 30.10.2002., ordering the closure of such mills operating from the forest area. SC by its order dated 04.03.1997 directed the closure of all unlicensed saw mills, veneer and plywood industries, and further by its order of 30.10.2002, directed that no State Government would permit the opening of any saw mills, veneer and plywood industries, without the prior permission of the CEC. The SC found them guilty of contempt and sentenced them to custodial sentence of one month for willful disobedience of the orders of the Court and for overreaching the ends of justice.

³⁸⁶ See order dated 04.03.1997

³⁸⁷ See order dated 08.05.1997

³⁸⁸ See order dated 10.05.2006 in contempt petition no. 83 of 2005

19.4. Matheran as ecosensitive zone: From survey, non renewable of lease, ban on felling to eventually an ecosensitive zone

The declaration of Matheran as an ecosensitive zone followed an interesting pattern through the Court orders. It started with an application³⁸⁹ filed by the Amicus Curiae for direction on the alleged destruction of forest of Matheran in the State of Maharashtra³⁹⁰. Another application was filed by the Amicus Curiae stating that tempos and tractors are allowed to have free access to all roads in Matheran which will result in destabilizing the ecosystem and also will result in illegal felling of timber. The Court in response issued notice to the State and directed that **“in the meantime, the State of Maharashtra shall conduct a survey and report on the forest / tree cover in the forest and non forest land of Matheran irrespective of the ownership of the land and any renewal of lease of any property in Matheran will be subject to the outcome of these applications”**. The State of Maharashtra was further directed to ensure that there is no felling of trees in Matheran and they restrained the State and/or any other civil authority from permitting any change in the user of the roads in Matheran and in particular prohibited the access to the said roads to tempos, tractors and other vehicles which till now were not permitted to ply³⁹¹. As stated earlier, the Court ordered on a later date³⁹² that there will be no movement of felled timber or sale from Matheran till further orders. Further vehicular movement in Matheran was also banned with the exception of fire engine and ambulance. The Government of Maharashtra³⁹³ was almost made to agree in principal to declare Matheran an eco sensitive zone³⁹⁴. As a consequence the Supreme Court directed that **it should be considered one for all practical purposes from today i.e. from 12.07.2001**.

19.5. Encroachment

The Chief Secretary of the State of Maharashtra, among many other States were directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.³⁹⁵.

19.6. Water supply project in Sanjay Gandhi National Park allowed

The Court allowed use of forestland in Sanjay Gandhi National Park to BMC for the III A Mumbai Water Supply Project³⁹⁶. It accepted the recommendation of CEC regarding use of forestland in Sanjay Gandhi National Park for laying underground tunnel for III A Mumbai Water Supply Project. The underground tunnel is for augmenting the water supply to Mumbai. The CEC taking a holistic view in the matter where the work has already been completed recommended for grant of permission for use of forestland falling inside Sanjay Gandhi National Park. The Court directed the project proponent i.e. BMC to deposit rupees one crore for utilization as recommended in the report. CEC in its report recommended for use of this money by the Maharashtra Forest Department for undertaking mitigating measures to resolve man animal conflict, which had aggravated in the National Park. Court further directed MoEF not to grant any approval under FCA or WLPA for use of forestland falling in PA without obtaining prior permission of the Court³⁹⁷.

Note that this is another case where post facto approval of the Court has been given in view of the fact that work

³⁸⁹ I.A. No. 659/2001

³⁹⁰ SC order dated 23.04.2001

³⁹¹ SC order dated 10.05.2001

³⁹² SC order dated 12.07.2001

³⁹³ The State Government had communicated to the Government of India its principal approval to declare Matheran as an ecosensitive zone by letter dated 21.11.2000.

³⁹⁴ I.A. Nos. 669 and 659

³⁹⁵ I.A. Nos. 703, 502, order dated 18.02.2002

³⁹⁶ See order dated 01.04.2005 in I.A. No. 1308 with I.A. No. 1323

³⁹⁷ CEC report dated 16.07.2004 “For implementing a project inside a National Park or Sanctuary, whether tree felling is involved or not, permission from this Honorable Court in relaxation of the order dated 14.02.2000 is necessary.”

had almost completed. There has been dereliction of duty on part of the officials of MoEF and project proponent the officials of National Park in not obtaining prior permission of the Court and continuing the work inside the National Park in violation of the order of the Court. CEC, notably has not recommended any punitive action against any of the officials or levied penal charges on the project proponent, which could act as a deterrent in future. Such selective justice is certainly open to question.

19.7. Laying of the underground gas pipeline permitted through the Great Indian Bustard Sanctuary³⁹⁸

The project for laying the underground gas pipeline through the Great Indian Bustard Sanctuary in Maharashtra by M/s Reliance Gas Transportation Infrastructure Ltd was examined by CEC. Clearance has been accorded by SC after acceptance of the following conditions by the project proponent.

1. Five percent of the estimated project cost of rupees five hundred twenty crores for laying of the pipeline in the Sanctuary area i.e. rupees twenty six crores to be deposited by M/s Reliance Gas Transportation Infrastructure Ltd in the CAF for undertaking conservation and protection works in the National Parks/ Sanctuaries in Maharashtra.
2. A small portion of the money collected above 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;
3. The conditions imposed by the Chief Wildlife Warden for laying the pipeline through the Sanctuary area to be strictly complied with; and
4. No forest land falling in the Sanctuary area will be used.

It is important to see that CEC has imposed a site specific condition of setting up of an interpretation centre as the same is not in existence in the Sanctuary. Conditionalities being imposed for the projects are in keeping with the specific requirement of the Protected Area.

19.8. Relocation of villagers of Kosla, Botezari and Palasgaon from Andhari Wildlife Sanctuary: Approved³⁹⁹

CEC has filed a report regarding the permission for change in the legal status of the forest land approved under the FCA by the MoEF for the rehabilitation of villagers of the three villages namely Kosla, Botezari and Palasgaon (Single) in Andhari Wildlife Sanctuary in district Chandrapur. Relocation of these villages is required because the boundary of the National Park is to be extended and therefore, modification in the order passed by this Court on 13.11.2000 in Writ Petition (C) No.337/1995 is sought for. SC granted permission for change in the legal status of the forest land approved under the FCA for relocation of these villages for the purpose of extending the boundary and for rehabilitation of the tribal people residing irrespective of the order dated 13.11.2000.

19.9. Permission granted for construction of a Human River Project⁴⁰⁰

This pertains to the construction of a Human River Project in Chandrapur district. The MoEF through the Assistant Inspector General of Forests (Forest Conservation Division) stated that the entire amount of NPV and compensatory afforestation is to be deposited by the user agency in CAMPA fund and the user agency/project proponent has agreed to all the conditions prescribed by Wildlife Institute of India. In this view the project is permitted by SC.

³⁹⁸ See order dated 14.02.2008 in I.A. Nos. 2116-2117

³⁹⁹ See order dated 21.11.2008 in I.A. No. 1658

⁴⁰⁰ See order dated 21.11.2008 in I.A. Nos. 2293-2294, 2298 in 2167

20. *The State of Madhya Pradesh*

20.1. *Lokayukta report: A trigger*

The State of Madhya Pradesh attracted attention of the Supreme Court with the site specific violation of illegal felling in Bastar area as was evident from the report of the Lokayukta brought to the notice of the Court by the Amicus Curiae⁴⁰¹. The Court directed the State of Madhya Pradesh to look into the illegal felling of trees in the Bastar area. It was alleged that illegal felling of trees from tribal land and from Government owned forest land in Bastar was being carried out by influential persons with alleged connivance of the revenue and forest officials. In fact, the Court also ordered that to uphold the rule of law, the investigation into the entire matter covered by the report of the Lokayukta of Madhya Pradesh be made by the Central Bureau of Investigation (CBI) and that the necessary follow up action including prosecution of the persons found involved should be made by the CBI.

20.2. *Tribal land transfer*

Another significant point raised by the said report of Lokayukta was regarding the illegal transfer of tribal land in the Bastar area. It was brought to the notice of the Supreme Court that the Board of Revenue of Madhya Pradesh is aware of the matter in which the validity of the transactions of the transfers by tribals is under consideration so that the question of restoration of the land to the original owner i.e. tribal on annulment of those transactions would depend upon the outcome of those matters. The Government of Madhya Pradesh was directed to report to the Court the outcome of these matters as soon as they are rendered by the board of revenue⁴⁰².

20.3. *Regulation of sal borer attack*

Another ecological phenomenon brought Madhya Pradesh into lime light, the sal borer attack. It was also brought before the Court that the Government of India, MoEF had constituted a Task Force⁴⁰³ on sal borer attack in Madhya Pradesh. The Task Force submitted an interim report to the Government of India on 02.02.1998. Seven categories of infested trees were identified by the Task Force, the extent of infestation being maximum in category I of the trees.

20.4. *Sal trees felling banned completely*

The immediate response of the Court was to stop felling of the sal trees completely⁴⁰⁴. This was in light of the submission of the learned Amicus Curiae who had drawn the attention of the Court to some of the photographs taken by the members of the Task Force (Wildlife Sub Group) during the site inspection in January, 1998 and in December, 1997. It was also submitted that in buffer zone of Kanha National Park and in adjoining corridors in East Mandla Forests, the photographs depict that under the garb of removing infected sal trees, the trees which do not have any disease have also been cut and thereby orders of this Court have been frustrated and violated. In light of the above the Court restrained the State Government of Madhya Pradesh and its functionaries to cut any

⁴⁰¹ See order dated 16.12.1997

⁴⁰² SC order dated 07.01.1998)

⁴⁰³ Vide notification dated 16.01.1998

⁴⁰⁴ See order dated 23.02.1998

trees hereafter, even if in the opinion of the State Government, the particular trees are considered to be deceased trees, till further orders.

Two days later the Supreme Court reiterated the ban on felling of sal trees of any category in bore infested forest of Madhya Pradesh⁴⁰⁵. It is directed that the State of Madhya Pradesh should stop felling of the 'infested trees' of any category. These directions, however, shall not come in the way of the State Government to remove the debris of the previously cut trees lying scattered on the forest floor and as a matter of fact we expect the State Government to take prompt and adequate steps to remove the debris.

20.5. Committee constituted to oversee the cutting or felling of infested sal trees⁴⁰⁶

With a view to ensure that only infested trees are cut and such trees which, even if infested, are still capable of surviving or rejuvenation are not cut, a Committee was constituted to oversee the marking of the infested trees in the affected areas of the forest to be identified by the State of Madhya Pradesh. The marking was to be done compartment wise. The Committee was also asked to supervise the categorization of the trees on being identified by the State Forest Department at the time of marking. It is also clear from a subsequent order dated 21.07.1998 that the Supreme Court very closely monitored the sal borer epidemic treatment in the sal forests of M.P. and directed and allowed the State to cut category IV trees to deal with the epidemic and use trap tree operation. The Committee was also directed to file a detailed report regarding this to the Court. As affidavit was filed by Mr. V R Khare, the then Additional Principal Chief Conservator of Forest, Government of M.P., Bhopal, stating that the State of M.P. has cut and used category IV trees and has also used unsound or injured and wind fallen trees for trap trees operation and that it has not utilized more than one tree per two hectares⁴⁰⁷.

20.6. Truck to be impounded as well in case of seizure of illegal timber

The Court in a significant order⁴⁰⁸ directed that any truck seized with illegal timber shall also be impounded⁴⁰⁹. The Court categorically directed that **if there is any truck containing seized illegal timber, neither the timber nor the truck should be released.**

20.7. Prohibition on movement of timber

In fact, the Supreme Court banned the movement of timber in Madhya Pradesh irrespective of ownership of the timber in August, 1999⁴¹⁰. It expressed surprise that in a State which was full of teak forests and which is now fast dwindling how could the State of M.P. in reply to an application⁴¹¹ justify its action of allowing trucks laden with cut wood to be taken away on the plea that wood belonged to Bhoomiswamis especially in the face of the Court's order dated 12.12.1996. Furthermore, the Court stated that no details have been given as to who the Bhoomiswamis are, to whom the land belonged and what is the extent of the trees which have been taken out. In this light, the Court directed the State of M.P. not to allow any movement of cut trees whether belonging to any Bhoomiswamis or anybody else.

⁴⁰⁵ See order dated 26.02.1998

⁴⁰⁶ See order dated 03.03.1998

⁴⁰⁷ Reference in order dated 06.08.1998

⁴⁰⁸ See order dated 07.05.1999

⁴⁰⁹ I.A. No. missing

⁴¹⁰ See order dated 02.08.1999

⁴¹¹ I.A. No. 424

20.8. Complete ban on felling of any trees and movement of timber from one district to another⁴¹²

The above case, as it became clear in the order dated 17.12.1999 was triggered due to influential politician's alleged illegality relating to felling of trees on a land in village Singrampur in district Damoh. The Court directed that there shall be no felling of any tree in the State of M.P. and there will be no movement of any timber, without further orders of this Court, from one district to another⁴¹³.

20.9. Court strategies: Inquiry, transfer, suspension, penalizing counsels

In the above case, the Court not only used the usual prohibitory measures but also instructed the State on the conduct of the counsel in the High Court. It went on to say that **"if the counsel acted without instructions then no further cases relating to forests should be entrusted to him"**. The Court also appointed an impartial and independent one person committee to investigate the matter and also issued directions to transfer or relieve certain erring officials from their duties or charge in the forest department⁴¹⁴.

20.10. Trucks carrying timber in transit in Madhya Pradesh allowed after Collector's certification⁴¹⁵

The Court has been quick to redress the impact of its orders which it may not have realized during the initial prohibitive strategies. Thus, for example, its order dated 17.12.1999 where transit was prohibited, the Court allowed the interstate movement of timber through the State of M.P. i.e. the timber moving from one State to another State. This order however, did not allow timber to be exported from the State of M.P. itself. Further, the Court directed that such movement shall be allowed only on the basis of permits being granted by the Collector certifying that the timber in question is moving from one State to another in the course of interstate sale/movement. The State Government was also asked to immediately notify the points of entry into the State and it would be the responsibility of the Collector of that district in which such point of entry falls to issue the necessary permits⁴¹⁶.

20.11. Imported timber allowed for consumption

The Court allowed imported timber for consumption in the State vide the same order of 13.01.2000.

20.12. Movement of rubber wood also exempted after certification

Similarly, movement of rubber wood, duly certified by the Collector⁴¹⁷ to the State of M.P. was also permitted⁴¹⁸.

⁴¹² See order dated 17.12.1999

⁴¹³ This order was however subject to the orders in I.A. Nos. 419 and 420 which relates to the mining lease of National Mineral Development Corporation.

⁴¹⁴ See order dated 02.08.1999

⁴¹⁵ I.A. No. 513/99

⁴¹⁶ See order dated 13.01.2000

⁴¹⁷ 'Collector' means either Collector or a person duly authorized by the Collector. However the ultimate responsibility will be of the Collector himself. (As per order revised date 03.04.2000)

⁴¹⁸ See order dated 13.01.2000

20.13. Permission of certain wood species in factories: Micro-managing?

Three cable factories were also permitted to use eucalyptus and mango tree wood in their factories. The Court further specified that this wood would be transported to the factories in their own trucks hired by them after getting certificates from the respective Collectors in which the factories are situated to the effect that such wood would be utilized in those factories only for the purpose of making cable drums and for no other purpose⁴¹⁹.

20.14. Regulation of usage of wood: Exemptions to local needs and to small scale industries

In another application⁴²⁰, the Supreme Court gave clear directions regarding regulated usage of wood, timber lying in the Government depots, woods of certain description allowed to be used in specified quantity⁴²¹. In the application, it was averred that there is some timber which is felled and is lying in the Government depots which the Court may consider allowing it to be moved in public interest due to the dependency of the local population on the said timber. The Court was informed that approximately three lakh cubic meters of timber is lying in the Government depots. The Court expressed an opinion that this quantity of timber would represent approximately fifteen lakhs natural grown trees which have been cut. As per the affidavit of the State, the wood lying in the Government depots are wooden poles and fuel stacks, apart from cut teak and sal trees.

As per the Court's record the details of the felled timber lying in the Government depots as well as the inventory has not been carried out. Considering the need of the local population, the Court directed the State to remove fifty percent of the poles having a girth of not more than sixty centimeters each and fifty percent of the fuel stacks which are already stored in the Government depots. However, no permission was granted for the removal of any other type of timber from the Government depots till further orders. Another exception given was that the State Government could supply ten thousand cubic meters of sal and/or teak wood for small scale industries, workshops, furniture makers, etc. out of its said stock. *It is clear from the above order that the need of the local population as well as the bonafide needs of the small scale industries and similarly placed entrepreneurial units was specifically on the mind of the Court and the regulation of usage of wood took into account these well known needs.*

20.15. Transit passes for legal timber from notified depots

The Court in another order dated 09.05.2000⁴²² ordered that transit passes for legal timber from notified depots to establishments of the applicants saw mills be issued. As regards to the legality of the timber source, it merely relied on the satisfaction of the Advocate General.

20.16. Encroachment on Government land

In MP, Damoh, an affidavit was filed by the Shri Sheo Narain Misra collector Damoh, which indicates encroachment on government land and felling of trees⁴²³ in addition to the land purchased by Mr Solomon. Time was sought and granted for filing a reply to this affidavit.

⁴¹⁹ See order dated 13.01.2000

⁴²⁰ I.A. No. 513

⁴²¹ Court order dated 14.02.2000

⁴²² I.A. No. 514

⁴²³ See order dated 13.01.2000

20.17. Compensatory afforestation and diversion of forest land

The State of M.P.⁴²⁴ was also directed to inform the Court about the compensatory afforestation in lieu of diversion of forest land for non forest use. The Supreme Court has been keenly following the encroachment on forest land, illegal felling of trees in district Damoh, the Court directed the State to file information regarding compensatory afforestation in lieu of 1.03 lakh ha. of forest land diverted for non forest use⁴²⁵.

20.18. Permission granted for erecting high tension transmission lines across Sone river in Gharial Sanctuary⁴²⁶

On acceptance of the conditions by Madhya Pradesh State Electricity Board, CEC has recommended the project for erecting high tension transmission lines across Sidhi Mauganj DCSS and LILO-Birsinghpur Rewa (across Sone river (notified as Gharial Sanctuary)) SC has accorded permission for the project.

20.19. Supreme Court clearance for diamond mining within Panna National Park⁴²⁷

NMDC Ltd sought clearance to carry out diamond mining falling within Panna National Park. After examination of the project CEC has imposed the following conditions which are acceptable to NMDC Ltd. On acceptance and fulfillment of these conditions, diamond mining has been approved by SC.

- (i) NPV as per the applicable rate to be deposited by NMDC for the 74.018 ha. under its possession and 70.202 ha. of forest land used for earthen dam;
- (ii) Five percent of the capital cost incurred on diamond mining project will be deposited for undertaking conservation and protection works within Panna National Park and Panna (Gangao) Wildlife Sanctuary;
- (iii) A proper mine closure plan, which includes reclamation and rehabilitation measures, to be drawn and implemented at the cost of NMDC;
- (iv) The notification dated 12.04.2006 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 Ms. Belinda Wright, as a non official member 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 five percent of the project cost.

It is important to see that the authorities statutorily empowered under the Mines and Minerals Development and Regulation) Act, 1957 and Mineral Conservation and Development Rules, 1988 have been bypassed in the approval or monitoring of the mine closure plan. The conditions imposed by CEC with regard to mine closure plan are contrary to the legal framework as provided in Mineral Conservation and Development Rules, 1988 which envisages preparation of 'progressive mine closure plan'⁴²⁸ in addition to a mine closure plan which is approved by the Regional Controller of Mines. This forms a component of the mining plan. *From the conditions it is not clear whether a 'progressive mine closure plan' was prepared by the project proponent. This 'progressive mine closure*

⁴²⁴ I.A. No. 513

⁴²⁵ SC order dated 14.02.2000

⁴²⁶ See order dated 07.03.2008 in I.A. Nos. 1866-67 and 2060-61

⁴²⁷ See order dated 13.08.2008 in I.A. No. 1485 and 1507

⁴²⁸ Rule 23B Mineral Conservation and Development Rules, 1988

plan' is required to be reviewed every five years by the project proponent and a report is submitted for approval to the Regional Controller of Mines. In the present case the monitoring committee has been substituted as the 'competent authority' in respect to the mine closure plan. One of the usual conditions of seeking approval under FCA seems to be missing in the set conditions imposed by CEC. Whether this is an oversight needs to be ascertained.

20.20. Permission accorded to the Rowghat Iron Ore Mining Project

M/s Bhilai Steel Plant, sought permission for diversion of 883.22 ha. of forest land for Rowghat Iron Ore Mining Project. CEC examined the matter and filed its report. FAC had also made certain recommendations. SC has accorded⁴²⁹ clearance directing the applicant to fulfill the recommendations made by the FAC and also with an additional condition that the NPV for the forest area will be payable as per the rate applicable for area falling in a Wildlife Sanctuary.

20.21. Concrete proposal sought for regularisation of encroachment

The State of M.P. was asked to file affidavit regarding regularization of encroachment and compensatory afforestation⁴³⁰. The Court also asked about the concrete proposal of the State Government in dealing with the question of encroachment. The nature and type of encroachment should be seen and appropriate and workable plans prepared.

20.22. Regularisation of encroachments: Fulfillment of compensatory afforestation first

In a request by the State of M.P. to the Central Government for regularization of encroachments, when brought before the Court, it observed⁴³¹ that one of the important conditions for regularization of encroachment is the carrying out of compensatory afforestation over the equivalent land. The proposal in M.P. was for regularization for the period 01.01.1977 to 25.10.1980. The Court observed that experience has shown that whenever regularization taken place subject to imposition of conditions such as compensatory afforestation, the regularization becomes effective without the conditions having fulfilled. It, therefore, opined that conditions imposed in relation to regularization should be fulfilled before any regularization is granted and asked the Central Government to consider the proposal. **"The result of this would be that the regularization would be deferred but the fulfillment of the conditions ensuring inter alia compensatory afforestation would be ensured".**

As in other States, the Chief Secretaries of the State of M.P. and Chhattisgarh were also directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.⁴³².

20.23. Farm forestry species exempted for industrial use: Eucalyptus, subabool and casurina

Trees grown under farm forestry like eucalyptus, subabool and casurina were allowed to be cut in M.P.⁴³³. In this I.A. the farmers/tribals had sought permission of the Court to transport and sell the wood like eucalyptus, subabool and casurina grown under the Farm Forestry Program to M/s Orient Paper Mills, Amlai. Details of the

⁴²⁹ See order dated 03.10.2008 in I.A. Nos. 2306-07

⁴³⁰ See order dated 01.05.2000

⁴³¹ See order dated 22.09.2000

⁴³² I.A. Nos. 703, 502, order dated 18.02.2002

⁴³³ I.A. No. 539, order dated 11.05.2000

land owned by the applicants were given. The land referred to therein is situated in Tehsil Sohagpur, district. Shahdol (M.P.). The Court held that on the Collector, Shahdol certifying that the wood grown on the said land described is only eucalyptus, subabool and casurina, the applicants, are permitted to cut, transport and sell eucalyptus, subabool and casurina from the said land and give the produce to M/s Orient Paper Mills.

20.24. Permission to cut plantation wood subject to framing of transit rules are made⁴³⁴

As regards plantation wood, the Court instead of adhering case by case orders preferred that such felling should be done in accordance with new transit rules that may be framed by the State Government. In some applications⁴³⁵ filed before it, the Court directed that the State was in the process of framing transit rules for transportation of timber and that on the transit rules being framed, approved and brought into force, applicants would be at liberty to cut and transport plantation wood in accordance with the said rules. *In some ways, the Court has forced the States to legislate. However, this must be seen in a more positive way than judicial encroachment on legislative spaces of the State.*

20.25. Compensatory afforestation, felling of trees and environment audit

In another case of M/s South Eastern Coalfields Ltd. the Supreme Court while granting permission⁴³⁶ to fell trees on fulfillment of the conditions of compensatory afforestation in M.P.⁴³⁷ opined that the primary responsibility to carry out compensatory afforestation should be that of the applicant and it also recommended environment audit to ensure fulfillment of conditions. On the Government's request for time to consider these proposals the Supreme Court observed that safeguards should be in place to ensure that the project is not abandoned after the trees are cut⁴³⁸.

20.26. Implementation of working plan and regeneration

In another significant order the issue of implementation of working plans and regeneration of forests was considered in some detail by the Court⁴³⁹. The concern of the State of M.P. is that they should be permitted to do the felling as per the working plans while the concern of the Amicus Curiae and the Central Government is that regeneration should take place. The Court observed that **"it is obvious that regeneration should be commensurate with the felling, and to the extent stipulated in the Working Plans. The Working Plans were approved by the Central Government. It is, therefore, for the Central Government primarily to ensure the implementation thereof"**. The Court also devised a process where it was held that the State of M.P. is at liberty to approach the MoEF for permission to carry out any further felling in accordance with the working plans, and any permission which is granted hereafter will be effective and the orders of this Court will not stand in the way of carrying out the felling to the extent so permitted. A report, however, will be filed in Court within three weeks of any such permission being granted so as to enable the Court to oversee whether any orders are called for. The Court also made observations on the issue of sustainability where it said: **"We are sure that the Central Government will deal with any such request made by the State expeditiously and keeping in mind all factors including the principle for sustainable development"**.

⁴³⁴ See order dated 22.09.2000

⁴³⁵ Ref I.A. Nos. 521, 606, 607

⁴³⁶ I.A. No. 574

⁴³⁷ See order dated 08.09.2000

⁴³⁸ See order dated 08.09.2000

⁴³⁹ SC order dated 22.09.2000

20.27. Creation of fund for regeneration

It is perhaps this order of creation of funds for regeneration that gave the idea of Compensatory Afforestation Fund (CAF) and Compensatory Afforestation, Management and Protection Authority (CAMPA) eventually. The Court observed that as far as regeneration of the forest is concerned, it is quite evident that the State of M.P. does not have the funds required for carrying out the task nor there is any likelihood of their being able to raise finance in respect thereof. It gave in to the idea of a joint venture between the State of M.P. and the Central Government whereby the working capital, in whole or substantially the whole, can be provided by the Central Government and the regeneration of degraded forests carried out. The Court felt that such a venture can be on a commercial basis which will be not only be profitable to both the State and the Centre but what is more important, it will hopefully generate lot of employment opportunities for the local population. The Court, therefore, ordered that this aspect should be looked into and a plan finalised and implemented preferably within a period of eight weeks.

20.28. Empowered Committee for Madhya Pradesh and Chhattisgarh: Empowered Committee to decide matters as per the orders of the Supreme Court

The Supreme Court held⁴⁴⁰ that pending the constitution of a statutory agency under section 3 of the Environment Protection Act, an Empowered Committee each for the States of M.P. and Chhattisgarh, containing representatives of the respective States on the one hand and the representatives of the MoEF on the other is to be constituted. These Committees will consider applications which are pending in this Court or return applications which the respective Advocate General think can be regarded as representations to be decided by the respective Empowered Committee (EC). The Court added that the decisions should be in conformity and in accordance with the orders passed by it from time to time. *Notably this gave rise to the idea of creating the Central Empowered Committee at the national level which went on to become perhaps the most influential and controversial Empowered Committee on conservation of forest and wildlife.*

20.29. Definition of forest expanded

In a significant order⁴⁴¹ the Supreme Court held that as per the State Empowered Committee's expressed view, the Bade Jhad Ka Jungle and Chhote Jhad Ka Jungle constitutes forest and such lands are forests within the definition of 'forest'. The Court, however, clarified that it is open to the State of M.P. to approach the Central Government for their exclusion from the purview of the definition of 'forest' under the provision of the Act.

It is pertinent here to understand the controversy surrounding the Bade Jhad ka jungle and Chhote Jhad Ka Jungle in the States of Madhya Pradesh and Chhattisgarh which were first notified as undemarcated protected forest after the abolition of the Zamindari Act. It is very contentious issue which has also resulted in numerous evictions of valid lease holders and in fact, a separate I.A.⁴⁴² has been filed bringing out the confusion over the status of Bade Jhaad Ka Jungle and Chhote Jhaad Ka Jungle which has also resulted in the famous "Orange Area" debate in Madhya Pradesh and Chhattisgarh. The Court has issued notice to the States of Madhya Pradesh and Chhattisgarh in this regard⁴⁴³.

⁴⁴⁰ See order dated 12.05.2002

⁴⁴¹ I.A. Nos. 791,792, order dated 01.08.2003

⁴⁴² I.A. Nos. 2000 and 2000A

⁴⁴³ See order dated 24.08.2007

20.30. Use of forest land in Wildlife Sanctuary: Municipal Corporation, Bhopal granted approval⁴⁴⁴

The Municipal Corporation, Bhopal sought the use of 9.872 ha. of forest land falling inside the Ratapani Wildlife Sanctuary in Raisen and Bhopal districts of M.P. for Kolar Water supply augmentation project⁴⁴⁵. A report by the CEC was called for, which suggested for imposing certain conditions while granting approval for the use of the said forest land. The Corporation was permitted to use the said forest land subject to deposit at present of five percent of estimated cost of the Project, i.e. rupees forty five crores thirty five lakhs, towards the compensatory afforestation fund for protection and conservation of Sanctuary.

Further, the Scheme proposed shall be in the same terms as was proposed for Rajaji National Park by the CEC for use of rupees five crores deposited by the Power Grid Corporation as described below:

“The trees will be cut by the forest department of the State of Uttaranchal under the supervision of the CEC. Trees so cut shall be sold by the forest department under the supervision of CEC by public auction. The amount so realized as well as the sums payable by Power Grid Corporation for afforestation etc. will be kept by the CEC in a fixed deposit initially for a period of three months and with the constitution of the body for the management of the CAF, the principal amount so realized by the CEC shall be transferred to the said body. This permission, which is granted, will be operational on rupees fifty crores being deposited with the CEC who shall deposit the same in fixed deposit and after twelve weeks transfer the same to the body constituted for the purpose of managing the CAF”.

Subject to the above conditions the I.As⁴⁴⁶ were allowed. Further the formal mandatory statutory clearances under the Forest Conservation Act and other relevant statutes were ordered to be obtained.

20.31. Permission to repair Gangao dam in Madhya Pradesh inside Panna Tiger Reserve

The Court has also granted to the U.P. Irrigation Department, the permission to repair Gangao dam in Panna Tiger Reserve, subject to strict adherence of conditions laid down by the Court itself⁴⁴⁷. It informed the State Government that five percent of the project cost which was not imposed in the present case with the rider that, if required, the condition of five percent can be imposed. The other conditions imposed are as follows:

- The labour camp to be located outside the PTR/forest area in village Bhusor or at any other convenient place approved by the FD, PTR. As far as possible only local unskilled labourers will be used from the villages around the PTR. Adequate arrangement for the supply of fuel wood from outside the boundary of the PTR to the labourers in the camp shall be made. Repairs of the existing road as per the specification approved by the Field Director, PTR. No black topping of the road to be undertaken.
- Ban on felling of trees, blasting of any type, digging of soil, or removal of stone from the PTR/adjoining forest area. However, salvaging of stones from the damaged structure and use of silt obtained by de-silting the reservoir may be permitted by the FD, PTR.
- The details of the staff, the number of unskilled/skilled labourers, vehicles, machinery etc. to be used in the repair works along with the time frame for the repair to be approved by FD, PTR.

⁴⁴⁴ I.A. No. 971, order dated 24.11.2003

⁴⁴⁵ I.A. No. 864-865

⁴⁴⁶ I.A. Nos. 864-865

⁴⁴⁷ See order dated 28.04.2006

- The repair works to be carried out only between dawn to dusk. No movement of vehicles during the night.
- For regulating the movement of vehicles, staff, labourers etc. and to control poaching in the impact area of the PTR, the construction of the boundary wall along with the entry gate, a forest post, appropriate anti poaching measures, river patrolling etc. to be undertaken at the cost of the user agency. The funds for this purpose, not exceeding rupees ten lakhs, will be made available by the project authorities to the FD, PTR.

In case of violation of any of the above conditions, the project work will be liable to be suspended by the FD, PTR, with prior approval of the Chief Wildlife Warden, Madhya Pradesh Forest Department.

This is one case where a project in PA was exempted from payment of five percent of project cost for conservation works. It is clear from the above that, the conditions imposed are aimed at micromanaging the entire project, which had to be executed by the irrigation department. Without getting into the merits of the above, it is sufficient to add that aberrations of law can be dealt with in a manner that is not always conducive to executive authorities and thus there are many lessons to be learnt in this regard.

20.32. Construction of canal in Sanctuary allowed

The Supreme Court granted permission to the State of Madhya Pradesh⁴⁴⁸ for completion of work of right bank canal up to Mahuar river, falling within the area of Sanctuary "Karera Abhayaranya".

Permission granted on adherence of the following conditions

- (1) Payment of rupees two crores CAMPA for the protection and conservation of the Sanctuary.
- (2) Safeguards and conditions recommended by Shri S C Sharma will be strictly complied with.

20.33. Land bank and Forest Conservation Act

In a rather unique situation, the Court has sought to clarify the procedure for placement of land in land bank and its subsequent transfer to forest department. The Court has asked State of M.P. to explain the procedure for placing the land in the land bank of the forest department in view of the contention of Amicus Curiae that once any mine is put in the land bank and transferred to the forest department, the same land cannot be pulled out of the land bank without complying with the provisions of the Forest Conservation Act⁴⁴⁹. In Katni district (Madhya Pradesh) 13053.325 ha of forest land was earmarked for afforestation and put in land bank for the purpose of carrying out the project. The State has approved use of 29 ha from this land for mining purposes. CEC and MoEF were asked to submit a report and MoEF was directed submit details as to how much land was put in land bank and how much land was released for deafforestation under FCA Act because of the certificate of Government land, that no forest land is available. The State contented that it is willing to set aside 29 ha. of equivalent other land for the land bank. The Court directed that details of such land should be given to the CEC and CEC would examine the feasibility of using this land for afforestation purpose⁴⁵⁰.

⁴⁴⁸ See order dated 27.07.2007 in I.A. No. 1618

⁴⁴⁹ See order dated 28.04.2006 in I.A. No. 1349 in I.A. Nos. 1246-1247

⁴⁵⁰ See order dated 01.02.2008 in I.A.No. 1349 in 1246-1247, 1378-1380, 1446-1447 and 1502

20.34. Imposition of costs on frivolous cases on whether there is forest land or not

The Supreme Court rejected the application challenging the setting up of M/s Maruti Clean Coal and Power Ltd⁴⁵¹. The question that arose for determination in the present case was whether the land where the coal washery plant was being set up was a forest land. This arose on an application filed by one Deepak Aggarwal claiming to be a public spirited person. The Court on examination of various reports of CEC and other technical reports came to the conclusion that the land was not a forest land and further the applicant was a front for vested interests. In such a situation, SC imposed a cost of rupees one lakh on the applicant for wasting judicial time.

20.35. Supreme Court takes cognizance of illegal mining in Madhya Pradesh

The CEC submitted its report shows that rampant illegal mining had been going on in Shivpuri district prior to the intervention of SC. The conclusion is that the scale of illegal mining indicates that it could not have happened without the connivance of the officials/officers of the concerned department and the interested parties. The Chief Secretary was directed to independently examine the record and transmit his report in a sealed cover giving an opinion as to the persons, responsible for such illegal activity⁴⁵².

20.36. Mining prohibited on the land transferred by forest department to revenue department

The SC as an interim measure has banned any mining on the land transferred by forest department to Revenue Department in the State of Madhya Pradesh⁴⁵³.



⁴⁵¹ See order dated 10.04.2006 in I.A Nos. 989, 1221, 1311 in I.A. Nos. 857-858

⁴⁵² See order dated 08.04.2005 in I.A. No. 1178 in I.A. Nos. 620-621

⁴⁵³ See order dated 16.09.2005 in I.A. No. 1349 in I.A. Nos. 1246-1247 and 1378-1380

21. *The State of Karnataka*

21.1. *Denudation of forests in Chikmagalur*

The 12.12.1996 order was followed more in violation than conformity. Several States reported specific violations despite the order. The State of Karnataka too was not untouched. It was brought out before the Court that forests in the Chikmagalur Division was being denuded and encroached upon. An I.A. was filed in the Court attracting the attention to the fact that the forests have been destroyed and fragmented due to encroachments for growing coffee plantation and agriculture⁴⁵⁴. The Court observed that **“on 12.12.1996, directions were issued by this Court banning the felling of trees all over the country including in the State of Karnataka to save forests and prevent deforestation. The State of Forest Report 1997, however, discloses that the area of forest has come down by 5 sq. km. in 1997. Obviously, trees have been permitted to be felled after the order of this Court dated 12.12.1996 in violation of that order”**. The Court ordered that before they proceed to bring to book the violators, an opportunity is granted to the State of Karnataka to explain its position in the light of the 1997 status report⁴⁵⁵.

21.2. *Encroachment*

The Court in its typically inquisitorial mode ordered⁴⁵⁶ a detailed report from the State of Karnataka on encroachment of forest. It is important to emphasise here that there was no attempt to define what exactly is meant by the word “encroachment”. The State was directed indicate the total extent of encroachment of the forest land at three levels:

- (1) As was existing prior to 27.04.1978 all over the State;
- (2) The position of total encroachment as existing in 1988 and
- (3) The extent of encroachment which has taken place till 1997.

Further, the information was required to be furnished district wise.

The Court further sought information regarding the steps taken by the State to retrieve the said encroachment and preventive measures taken and the details of referred cases to the Government of India for regularizing the encroachment which had occurred after 1978 till date. The Court also directed the State to indicate the non forestry use to which the encroached land had been put by the encroachers and, in particular, where coffee plantation had taken place. The extent of that area, together with the details of the encroachers was required to be furnished.

21.3. *Commission to ascertain felling in Thatkola reserve forest In Karnataka: Encroachment regulated*

The Amicus Curiae also brought to the Court’s notice that in Thatkola Reserve Forest, district Chickmagalur, as stated earlier where there had been large scale deforestation, even after the Court’s order of prohibition, felling

⁴⁵⁴ I.A. No. 276

⁴⁵⁵ See order dated 05.05.1998

⁴⁵⁶ See order dated 29.07.1998

of trees continued. The Court appointed a commission to ascertain this fact. It also ordered that the “encroachers” shall maintain status quo regarding the nature of their encroachment in the meantime and the State was directed to publicize this order widely for the knowledge of the “encroachers”⁴⁵⁷.

21.4. Minister restrained from interfering in Court’s work

In the meanwhile, as it appears, the State Government initiated a process of demarcation of Thatkola forest land. It was brought to the notice of the Supreme Court through a news paper which captioned ‘Demarcation of Tatkola forest land stopped, says Minister’, which appeared in Deccan herald of 12.01.1999. A perusal of the news item showed that ongoing demarcation of the Tatkola forest land, which was being carried out by the Forest and Survey of India, Department has been stopped under orders of a Minister of the State of Karnataka. The Supreme Court issued a notice to the State of Karnataka to file its response to the allegations contained in the news item⁴⁵⁸.

Meanwhile in another order⁴⁵⁹ the Supreme Court ordered that survey be conducted in the Chickmagalur area in respect of which certain orders were passed by the Minister concerned. Further it directed the Survey of India to report any encroachment in Chikmangalur area⁴⁶⁰. The Court further ordered that during the conduct of the survey and till the submission of the report, there shall be no administrative interference in the work. Lastly, **“no regularization of any forest or other land in this area shall be made till further orders of the Court”**⁴⁶¹.

Notwithstanding the Court’s view on administrative interference, two important issues emerge here. One, whether ‘Thatkola Reserve Forest’ and ‘Thatkola forest land area’ are different from each other? If the answer is yes then the Court was dealing with two different legal jurisdictions. Secondly, if there was a survey that was being carried out again in the Tatkola Reserve Forest Area, then the final notification declaring the Reserve Forest itself may have been faulty, in which case the claims of the of the so called “encroachers” should be seen without prejudice.

In another subsequent order⁴⁶², the Chief Secretary of the State Karnataka, among many other States were directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries.

21.5. Determining and resolving encroachment: Survey, resurvey, compensation and monitoring

The above issue of encroachment was discussed in detail in a subsequent order⁴⁶³. After the Survey of India had tabled its report and was taken on record, which described the manner in which the actual survey of the reserved forest was carried out. Along with the report, a map of the area was also filed indicating the boundaries of the forest and also the extent to which encroachment has taken place giving the details of the encroachers. After hearing all the above mentioned I.As, the CEC submitted its report on 05.09.2002. This report of the Survey of India was accepted by the CEC and they recommended that any encroachment as per this Survey of India report, which is a final document ascertaining the boundaries of the reserve forest, within the Tatkola Reserve Forest should be immediately removed especially the ones which are for commercial gains e.g. coffee plantations. Further, compensation for environmental losses should be recovered at a rate of rupees five lakhs per hectare

⁴⁵⁷ See order dated 29.07.1998

⁴⁵⁸ SC order dated 16.04.1999

⁴⁵⁹ See order 07.05.1999

⁴⁶⁰ I.A. No. 276

⁴⁶¹ See order dated 07.05.1999

⁴⁶² I.A. No. 703, 502, order dated 18.02.2002

⁴⁶³ See order dated 29.10.2002

from the encroachers who are to be identified by the Court commissioner. The Chief Secretary of the State was directed to file an action taken report before the CEC every month showing the progress made by the Government in removing the encroachment. All earlier orders made in this matter shall be read modified wherever necessary to this extent. This placed the CEC as the monitoring agency. This is perhaps the first order of the Court where it resorted to delegation of its authority to an empowered entity such as the CEC⁴⁶⁴.

21.6. Removal of encroachment and simultaneous rehabilitation ordered

The SC ordered removal of encroachment in Sargod and Maskali Reserve Forest in State of Karnataka after the State Government had made a roadmap for removal of encroachment from the reserved forests⁴⁶⁵. It involved a simultaneous process of rehabilitation of persons being moved from the reserved forests. The SC directed the State Government to file an affidavit after the exercise is completed.

21.7. Transmission lines in Karnataka

Permission for diversion of forest land granted to the Karnataka Power Corporation Limited (KPCL) for laying 220 KV double circuit transmission line through Banerghatta National Park was granted, subject to the conditions imposed⁴⁶⁶.

- Approval under the Forest (Conservation) Act, 1980 for use of forest land falling within the Banerghatta National Park to be obtained;
- An amount of rupees one crore to be deposited in the Compensatory Afforestation Fund for conservation and protection of Bannerghatta National Park;
- Compliance with the conditions stipulated by the Standing Committee of the NBWL
- Compliance with any conditions imposed by MoEF while granting approval under FCA.
- Filing of undertaking before CEC to pay additional NPV as and when determined by the Court.

21.8. Urban water supply: Diversion allowed in Sanctuary

The Supreme Court granted permission to Karnataka Urban Water Supply and Distribution for diversion of 0.3 ha. of forest land falling within the Cauvery Wildlife Sanctuary for water supply to the Malai Mahadeswara hills⁴⁶⁷.

The permission for diversion is allowed on fulfillment of the following conditions:

- (i) FCA approval
- (ii) Payment of five percent of the project cost in the Compensatory afforestation fund for the conservation and protection of the Cauvery Wildlife Sanctuary. The SC modified this condition on the contention of the Department that the total cost of the project is about rupees twelve crores and five percent of it would be on a higher side. The SC has ordered the department to deposit rupees twenty five lakhs in the CAMPA fund for the conservation and protection of the Cauvery Wildlife Sanctuary having regard to the extent of land involved in the Scheme.
- (iii) Payment of NPV with an undertaking that additional NPV, if determined will be paid.
- (iv) Conditions imposed by the Chief Wildlife Warden will be strictly complied with.
- (v) No labour camps to be established within the forest area.

⁴⁶⁴ I.A. No. 276 with I.A. Nos. 413, 437, 453 and 454

⁴⁶⁵ See order 25.08.2005 in I.A. No. 990 in 860 and 818

⁴⁶⁶ See order dated 16.09.2005

⁴⁶⁷ See order dated 05.04.2007 in I.A. Nos. 1637-1638:

The calculation of project cost for payment of five percent of project cost towards conservation and protection of PA is a contentious issue yet not finally determined by the SC. The main area of contention is whether five percent of project cost would be cost of entire project or whether it should be the cost of the project which is falling within the Protected Area. It has been contented by CEC that the project cost for this purpose is the cost of the entire project irrespective of the distance, area being diverted for non forest purposes. On the other hand it has been contented by the project proponent as can be seen from other such orders that the project cost for this purpose should be proportionate to the forest area in PA being diverted for non forest purposes.

21.9. Closure of Kudremukh mine on account of ecological damage due to mining⁴⁶⁸

The Court in the Kudremukh matter co-opted the expertise of various expert bodies to deal with specific technical issues that arose in the matter. The Court accepted the time period ascertained by the Forest Advisory Committee that mining would be carried out till the end of 2005⁴⁶⁹ so that the weathered secondary ore available in the already broken area is exhausted. However, this was subjected to fulfillment of the recommendations made by the Committee on ecological and other aspects. The State of Karnataka had recommended the transfer of building and other infrastructure to the forest department of the State Government at book value. But the Committee rejected this on the ground that this matter requires consideration. The modalities that are required to be adopted to effectuate the order passed by this Court and the MoEF, State Government and the Company under the supervision and guidance of the Committee has to work out the recommendations of the Committee. The SC perused the reports⁴⁷⁰ dated 10.04.2006 and 18.04.2006 submitted by the Indian Institute of Technology Delhi (IIT Delhi) pursuant to the orders passed by this Court⁴⁷¹. The Kudremukh Iron Ore Company Limited (KIOCL) filed an affidavit raising various issues in regard to the disposal of about seven lakh tonnes of silt which is collected in the Pollution Control Dam No. 1 and the treatment of the North-western slope which, during monsoon, would collapse and slide in to the Bhadra river. In these reports, IIT Delhi has mentioned certain aspects, which have not been covered in the closure plan.

The SC on application by the Kudremukh Iron and Ore Company Ltd. (KIOCL) which was opposed by the AC directed⁴⁷² as follows:

- (i) On the basis of the report dated 10.04.2006 of IIT Delhi through a global competitive bid an agency is to be selected for:
 - (a) Reanalysing the stability of slopes (b) drawing up of mine closure plan and (c) implementation of the above plan.
- (ii) IIT Delhi shall draw up detailed terms for the work to be done, consistent with the basic paradigm of "no or minimal disturbance to unbroken area" and submit to this Court a report.
- (iii) The Ministry of Mines, Government of India, was directed to designate an officer to take over possession of the mines immediately. IIT Delhi was directed to depute a team of experts to go and do a survey of the mines and the surrounding area and submit a report to the Court regarding any immediate step(s) that need to be taken during the interregnum till the appointment of the expert agency
- (iv) The expenditure for the purpose of inviting global competitive bid and evaluation such as on advertisement etc. may initially be met out of rupees nineteen crores deposited by the KIOCL, and which are with the Adhoc-CAMPA.

⁴⁶⁸ I.A. Nos. 670 of 2001 filed by K.M. Chinnappa

⁴⁶⁹ See order dated 30.10.2002

⁴⁷⁰ I.A. No. 1150

⁴⁷¹ See order dated 10.05.2006

⁴⁷² See order dated 15.12.2006

The Court by this order has taken the work of closure of the mine and other related aspects out of KIOCL area of operation. This is another example of the Court co-opting various expert bodies to deal with various technical aspects of the matter.

21.10. Permission granted for iron ore mining in district Bellari

The applicant M/s JSW, sought permission for diversion of 200.73 ha. of forest land for iron ore mining in district Bellari. After examination CEC has made certain observations. These suggestions/observations are acceptable to the applicant. SC directed⁴⁷³ MoEF to review the project in the light of the observations made by CEC in this regard.

21.11. Permission granted for repair of road passing through Rajiv Gandhi National Park (Nagarhole)

The Karnataka State Highway Improvement Project sought permission for repair of a road passing through the Rajiv Gandhi National Park (Nagarhole)⁴⁷⁴ having a length of 28.9 kms. CEC has examined the matter and imposed certain conditions and on its acceptance has recommended the same. These conditions have been accepted by the project proponent and accordingly permission is accorded by the SC to carry out this work.



⁴⁷³ See order dated 03.10.2008 in I.A. Nos. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

⁴⁷⁴ See order dated 10.11.2008 in I.A. Nos. 2278-2279 with 2275

22. The Andaman and Nicobar Islands

22.1. Ban on cutting on trees: Plantation exempted

The Court followed a familiar strategy in Andaman and Nicobar Islands when an I.A. was brought before it by first putting a ban on cutting of naturally grown trees in any going projects or otherwise in Andaman Nicobar Islands while exempting plantation trees and subsequently seeking information, inventory with regard to the wood based industries⁴⁷⁵. On 23.11.2001, the Court directed the Administrator, Andaman and Nicobar Islands to ensure that no naturally grown trees will be cut by any one and no saw mill, veneer or plywood factory shall utilize any naturally grown trees without further orders from this Court and as per the order of the Court dated 10.10.2001. The Court also asked the list of such factories, saw mills and an inventory of the material lying in the Government saw mills.

22.2. Cutting of trees and compensatory afforestation

On an application by the Andaman and Nicobar Administration for permission to cut trees pursuant to the clearances which have been received from the Ministry of Environment, the Court directed the Andaman Nicobar Island administration that permission to cut trees can be granted by the Court only if starts carrying out compensatory afforestation by itself or through any agency⁴⁷⁶. The Court also put in a monitoring mechanism and it ordered that status report with regard to afforestation activity be filed by the next date of hearing.

22.3. Trees allowed to be felled in the Islands pending working plan as per CEC recommendations⁴⁷⁷

From the interim report of CEC, the Court was informed that working plans being prepared by Andaman and Nicobar Islands would take some time and as such the CEC has recommended that as a temporary measure, the Administration be permitted to fell one lakh ten thousand ballies and seventeen thousand posts annually. The feasibility and expedience of adopting such a course was directed to be considered by CEC within four weeks.

22.4. Courts strategies: One man Commissioner appointed

The Court appointed a Commissioner, Mr. Shekhar Singh, to report on the State of the forest and to what extent cutting of trees, if any, can be protected and what is required to be done to improve the ecology and the forest cover of the area⁴⁷⁸. The report was accepted⁴⁷⁹ where it was informed to the Court among other things that in Andaman and Nicobar Islands there is no social forestry. The wood which is being cut is from the natural forest and plantations of teak. Further, natural forests are being cut and the timber sawn instead of resorting to social forestry and thereby providing employment to the people in growing forest. The Court was also informed that the existing saw mills have a subsisting licence valid till 30.03.2003. The Court directed that the saw mills and the

⁴⁷⁵ See order dated 10.10.2001 and 23.11.2001

⁴⁷⁶ See order dated 01.04.2002

⁴⁷⁷ I.A. No. 929, order dated 01.08.2003

⁴⁷⁸ See order dated 23.11.2001

⁴⁷⁹ See order dated 07.05.2002

other wood based industries in the Andaman and Nicobar Islands are not permitted to cut the trees and they would be supplied only by the Government itself or through its Corporation. The Court observed that **“some of these saw mills and industries have logs of wood and sawn timber in their stock. It would therefore be iniquitous to deprive them of an opportunity to utilize the stock for which payment has been made to the Government for the purchase of wood. However, it is to be borne in mind that fresh logging of wood must cease immediately”**.

The Court after taking everything into consideration made several important recommendations on several aspects of forestry management in Andaman and Nicobar Islands as follows⁴⁸⁰:

a) On felling, regeneration, replantation, reforestation

All felling of trees from the forest of little Andaman Islands, the National Park and Sanctuaries, the tribal reserves and all other areas shall stand suspended. For the areas in which there are working plans, the Government through the Chief Secretary shall disclose on an affidavit –the extent of felling and regeneration permitted under these working plans during the last ten years and the compliance with regeneration/replanting/reforestation targets under the working plans and reasons if any for the shortfall.

b) On working plan

Working plan need to be reworked on the basis as was applied to the State of M.P. and others, namely that before any felling of trees, there should first be compulsory afforestation/regeneration. The felling permissions would be based upon the extent of regeneration of forest undertaken and not the other way round. Further the Court ruled that no felling of tree (under the working plan or otherwise) be allowed for meeting any raw material requirement of the plywood, veneer, black board, match stick or any other wood based industry. New working plan to be drawn up with the help of an ecologist conversant with the ecology of the area and working plan to be approved by the Court within a period of twelve weeks. The working plan prepared by the administration was directed to be placed before the MoEF for consideration within six weeks and in the eventuality of its clearance it was to be placed before CEC⁴⁸¹ for consideration within a period of six weeks. Similar order was passed for working plan of Middle Andaman Forest Division⁴⁸² and for working plans for Mayabunder Forest Division, Baratang, Diglipur, Little Andaman and the Nicobar Forest Division⁴⁸³.

This is perhaps for the first time that a working plan has been directed to be approved by the Court- a clear executive function being usurped by the Court. Without getting into the merit of this order it would be useful to see the parameters that the Court may have employed and compared with the executive one to see the difference of these two criteria and method of approval of working plans.

c) On meeting bonafide needs of local inhabitants only: No industrial activity

The trees felled as per the working plan to be used for the needs of local inhabitants. No renewal of licences for saw mills and wood based industries after 31.03.2003. The ecology of the area does not permit any kind of industrial activity for which the wood is likely to be consumed. Therefore, licences of wood based industries shall stand cancelled but they will be permitted to exhaust the existing stock till 31.03.2003.

d) On movement of timber

The movement of timber was banned from Andaman Nicobar islands to the rest of India.

⁴⁸⁰ SC order dated 07.05.2002

⁴⁸¹ See order dated 07.05.2003 in I.A. Nos. 908 and 922

⁴⁸² See order dated 18.02.2005 in I.A. No. 1171

⁴⁸³ See order dated 09.09.2005 in I.A. No. 1347 in I.A. No.1255

22.5. Regulating wood based industry

The Court made it clear that no new licences would be issued for wood based industry. This will not debar the authorities from canceling licences in accordance with law, if there is no breach of the licence committed by the licencees before that date. The Union of India, however, may relocate wood based industry to anywhere in India and only Government saw mills are allowed to meet local requirements as long as it is not within the vicinity of forest area. Henceforth for meeting the local requirements it is only the Government saw mills which shall operate, the Court observed. Further in a subsequent hearing, the stock of veneer and plywood with the plywood industries functioning in the Andaman and Nicobar Islands was permitted to be moved⁴⁸⁴. It was made clear that the stipulation regarding movement in the order dated 07.05.2002 would not apply to the said stock. In another development, the Andaman and Nicobar Islands Small Scale Wood Based Industries Association sought permission for setting up saw mills in the islands. CEC has recommended that this would lead to deforestation. The recommendations of CEC are acceptable to the association and it was directed⁴⁸⁵ that the same should be adhered to.

22.6. Encroachment

The Court came down heavily on regularisation of encroachments on forest land and directed it to be banned in any form including allotment/use of forest land for agricultural or horticultural purposes. *Again here too, there was no attempt to understand or elaborate as to what constitutes encroachment.* It merely stated among others that encroacher families prior to 1978 and who have been allotted rehabilitation sites shall be given one month's notice to vacate their encroachments and shift to the allotted land. Failing this, their allotment shall be cancelled and they shall be forcibly evicted within three months of the deadline being over, without any further claim to land or any other form of rehabilitation.

Similarly, those among the pre-1978 families that have shifted to their allotted sites but have occupied more land than they were entitled to shall also be given one month's notice to vacate the extra land occupied by them. On the expiry of this notice period, the allotments of those who have not complied with this notice shall be cancelled and they should be forcibly evicted within three months, without any further claim to compensation or land. The Court further directed that for the eviction of encroachments, an effective action plan to be made and implemented in the supervision of a high level committee under the Chairmanship of the Lieutenant Governor with Chief Secretary, Principal Chief Conservator of Forests and reputed NGO representatives, its members. The Chief Secretary, Andaman and Nicobar Islands was further directed to file every month an affidavit about progress of eviction of encroachments.

22.7. Identity

Uniquely the Court directed that identity cards to be issued to all residents. The Court also ordered that the process of issue of identity cards to all the residents shall be completed within a period of six months.

22.8. Extraction of sand: To be phased out

Further, the extraction of sand was asked to be phased out. The Court prescribed that the extraction of sand shall be phased out a minimum twenty percent per year on reducing balance basis to bring the sand mining to the level of thirty three percent of the present level of mining within a maximum period of five years.

⁴⁸⁴ See order dated 09.12.2002 and I.A. No. 779

⁴⁸⁵ See order dated 21.11.2008 in I.A. No. 2208

22.9. Revisiting Ministry of Environment and Forests approvals

In another blow to the MoEF it asked that MoEF granted approvals under FCA be reviewed by a Committee consisting of Secretary, Environment and Forests, Director General of Forests and at least one non official member of the Forest Advisory Committee constituted under the Forest (Conservation) Rules to restrict the approvals to the barest minimum needed to serve emergent public purposes. The approvals accorded by MoEF under the Forest (Conservation) Act, 1980 shall be reviewed and felling of trees shall commence only after the process of compensatory afforestation has actually been undertaken on the ground. The Court also directed that in future, the proposals shall be considered for approval only after detailed Environmental Impact Assessment has been carried out through an independent agency identified by MoEF. Clearly a lot of distrust has been demonstrated by the Court to the MoEF – a fact which perhaps led to a total deadlock between MoEF and the Court on several aspects of forestry management which will become clearer later.

The Court accepted the above recommendations contained in the Shekhar Singh Report and reiterated that directions be implemented specifically on those other recommendations which are not specifically dealt with in above orders.

22.10. Rehabilitation of earthquake victims: Tree felling disallowed

The SC dismissed the application⁴⁸⁶ of Andaman and Nicobar Administration after the administration withdrew the application seeking permission to fell trees for the rehabilitation of earthquake victims.

22.11. Permission for diversion of forest land in Mahatma Gandhi Marine National Park

The proposal 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 was examined by CEC which has recommended⁴⁸⁷ the project on the fulfillment of the following conditions which have been accepted by the project proponent:

- i) Approval should be obtained under FCA.
- ii) NPV is to be deposited at the prevailing rate in the Compensatory Afforestation Fund along with an undertaking to deposit the additional amount as per the directions of this Honorable Court.
- iii) Five percent of the Project cost i.e. rupees one crore fifty lakhs to be deposited in CAF for carrying out conservation and protection works in the Mahatma Gandhi Marine National Park.
- iv) Reef Watch, an Institutional Member of the NBWL to be associated with regard to the placement and the safeguards to be implemented.

⁴⁸⁶ See order dated 30.11.2007 in I.A. No. 1240 with 1266, 1299 and 1382

⁴⁸⁷ See order dated 01.02.2008 in I.A. No. 2101

23. The State of Bihar

23.1. Security of personnel and implementation

The Amicus Curiae brought to the notice of the Court that the Divisional Forest Officer of Rohtas, Bihar had been abducted and shot. The report indicates that Shri Singh was taking action against the illegal mining of stones and boulders. The Supreme Court directed the Chief Secretary, State of Bihar to personally see to the investigation of the case and file his own affidavit within eight weeks⁴⁸⁸.

23.2. Cancellation of the mining leases inside Valmiki Wildlife Sanctuary

Mining is one of extractive purposes for which forestland are diverted. The detrimental effects of mining on a habitat and forest land have to be assessed before any clearance can be granted to the project proponent. The deleterious impacts of mining are well documented and in some cases mining had to be stopped as was done in the Kudremukh case. In the same vein, the SC has cancelled existing mining leases in Valmiki Wildlife Sanctuary approved by MoEF and further directed the State of Bihar to ensure immediate closure of all mining activities inside National Parks and Wild Life Sanctuaries including within the safety zone around the boundaries of the National Parks and Sanctuaries⁴⁸⁹. SC also directed MoEF to ensure that no mining lease is granted inside any National Park or Wildlife Sanctuary without FAC approval and the approval of SC.

23.3. Rationalisation of boundary of Valmiki Wildlife Sanctuary

Permission was sought by State of Bihar to reduce the boundary of Valmiki Wildlife Sanctuary, an extent of 880 sq. km. to 840.26 sq. km. as part of the rationalisation of the boundary of the Sanctuary. The matter was referred to CEC which has examined the matter and filed a report stating that this is a part of the north-western flank of the Sanctuary and it contains low hill sal and miscellaneous forests of high density with small grassy moist patches; tiger, Leopard, Wild Boar, Sloth Bear Sambhar and Cheetal are found in the area and the entire area is ecofragile and sensitive and has bearing on critical wildlife habitat. SC has directed⁴⁹⁰ the State to approach the MoEF Committee for rationalisation of the boundary which should also consider CEC report.

23.4. Creation of a society for conservation and protection of Protected Areas in the State⁴⁹¹

The State seeks permission to divert 600.72 ha. of land for the Durgawati Reservoir Project. CEC examined and laid down the following conditions:

1. Approval under the FCA to be obtained for use of the forest land;
2. The conditions on which the project has been recommended for approval by the Standing Committee of

⁴⁸⁸ See order dated 18.02.2002

⁴⁸⁹ See order dated 04.02.2005 in I.A. No. 993, recommendations of CEC in I.A. Nos. 836-895

⁴⁹⁰ See order dated 20.10.2008 in I.A. No. 2070

⁴⁹¹ See order dated 20.10.2008 in I.A. No. 2071

- the NBWL will be strictly complied with; and
3. Five percent of the revised estimate cost of the project will be deposited by the project authorities for conservation, protection and improvement of National Parks and Sanctuaries in the State of Bihar.
 4. For utilisation of the funds, a Society under the Chairmanship of the Chief Secretary, Bihar with the Principal Secretary (Forests), the Principal Chief Conservator of Forests, the Chief Wildlife Warden as its members and one officer not below the rank of Chief Conservator of Forests as its Member Secretary is to be registered. This amount along with the amount payable towards the NPV, Catchment Area Treatment and Compensatory Afforestation should be deposited in an interest bearing account(s) in a nationalised bank(s) maintained by the Society and income received by way of interest should be used in perpetuity for conservation, protection and development of forest and wildlife in the State.

The SC did not accept the recommendation of NBWL of taking action against some officers.

It can be seen from the set of conditions imposed above that instead of depositing the amount that would be collected from NPV in CAF it is to be deposited in a fund created by a society which would be set for this purpose and managed by the State Government. This is a departure of sorts where a corpus has been created under CAF. The funds collected under this project are to be used for the conservation and protection of all Protected Areas in the State.



24. The State of Orissa

24.1. Encroachment

The Chief Secretary of the State of Orissa, among many other States were also directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.⁴⁹².

24.2. Regularisation and removal of encroachments

The MoEF in its circular of 1990 specified the guidelines for regularisation of encroachments on forest land. The Court, in a significant order permitted the State of Orissa regularisation of pre 25.10.1980 encroachments on the conditions specified below⁴⁹³:

- a) Regularisation of encroachments in favour of the eligible encroachments will be done simultaneously with the eviction of ineligible encroachers and taking back of excess land in possession of the eligible encroachers;
- b) No regularization of encroachments which have taken place on forest land after 25.10.1980 will be done;
- c) The MoEF's guidelines dated 18.09.1990 will be strictly adhered to; and
- d) Compensatory afforestation over equivalent non forest land will be carried for which adequate funds will be made available by the State of Orissa.

24.3. Supreme Court permits collection of cashew nuts by villagers adjoining the Balukhanda Konark Sanctuary through their respective Ecodevelopment Committees

SC accepted the recommendation of CEC as contained in report dated 29.08.2005 regarding the collection of cashew nuts by villagers adjoining the Balukhanda Konark Sanctuary through their respective Ecodevelopment Committees under the supervision of Orissa Forest Development Corporation Ltd. (OFDC). This was done in relaxation of the order dated 14.02.2000. The sale proceeds would be utilized in improving and protecting the Sanctuary and also for creating community assets through the Eco Development Committee in their respective villages on pro-rate basis⁴⁹⁴.

24.4. Permission for renewal of mining lease in Keonjhar district

The M/s Orissa Mining Corporation in Keonjhar district sought diversion of 117.9648 ha. of forest land (fresh area 76.7206 ha. and broken up forest land 41.2442 ha.) (216.3617 ha. of proposed forest land) in Gandhamardan Block-A for first renewal of mining lease. The CEC has examined the same and has laid down the following conditions⁴⁹⁵:

⁴⁹² I.A. No. 703, 502, order dated 18.02.2002

⁴⁹³ See order dated 13.04.2006 in I.A. No. 1345 in I.A. No. 1252

⁴⁹⁴ See order dated 30.09.2005 in I.A. Nos. 1394

⁴⁹⁵ See order dated 03.10.2008 in I.A. Nos. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

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- a) The Wildlife Institute of India should prepare a wildlife management plan for the area to be implemented at the project cost. The diversion of forest land for mining should be considered only if adverse impact of mining on wildlife conservation and protection is found to be containable within reasonable limits;
- b) Approval under the FCA is to be restricted to 117.9648 ha. of forest area. The possession of the balance forest area should be taken over by the forest department. Before grant of the formal approval under the FCA, the mining lease granted under the MMRD is to be revised so that the total forest area included in the mining lease and the forest area approved under the FCA are identical;
- c) Compensatory afforestation charges should be payable for the entire forest area after deducting the forest area legally broken up during the validity of the mining lease;
- d) For carrying out the mining operations between 1993 to 1997 in violation of the FCA an amount equal to the NPV payable in the present case should be imposed as a penalty on the user agency; and
- e) The approval under the FCA is to be granted only after environmental clearance for the project is accorded”.



25. *The State of West Bengal*

25.1. *Ban on felling of trees in any forest, public or private*

A ban imposed on felling of trees in any forest, public or private⁴⁹⁶. The ban was not to affect felling in any private plantation comprising of trees planted in any area which is not a 'forest' and which has not been converted from an earlier 'forest'. In a 'forest' the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under section 18 or section 35 of the Wildlife Protection Act, 1972 or any other Act banning such felling or removal of trees. The State Government was directed to constitute an expert Committee comprising a representative from MoEF, a representative of the State Government, two private experts of eminence and the MD of State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and deceased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

25.2. *Methodology for increasing forest cover*

The Court had directed⁴⁹⁷ that the Central Government should evolve a method for making the States deficient in forest cover pay the States abundant in forest wealth as a means for preserving forest wealth. A report of the Committee of Secretaries received on this aspect stated that there was no consensus amongst the States on the point in issue, while some of the States have welcomed the idea. The Committee had discussions with representatives of various State Governments but about twelve States including West Bengal which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court. The Court directed⁴⁹⁸ the Chief Secretary to be represented to present its view on this issue.

25.3. *Encroachment*

The Chief Secretary West Bengal, among other States were directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.⁴⁹⁹.

25.4. *Diversion of forest land permitted to "Darjeeling Water Supply Pumping Scheme"*⁵⁰⁰

The Department of Public Health Engineering, Government of West Bengal sought permission to implement a drinking water supply project namely "Darjeeling Water Supply Pumping Scheme" at an estimated cost of rupees

⁴⁹⁶ See order dated 12.12.1996

⁴⁹⁷ See order dated 20.09.2000 in I.A. No. 424

⁴⁹⁸ See order dated 08.01.2001

⁴⁹⁹ I.A. No. 703, 502, order dated 08.02.2002

⁵⁰⁰ See order dated 21.11.2008 in I.A. No. 2318

forty nine crores seventeen lakhs which requires diversion of 0.99 ha of forest land falling in Senchal Wildlife Sanctuary. The CEC has examined and imposed the following conditions:

1. A sum of rupees two crores forty six lakhs i.e. five percent of the project cost be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection of National Parks and Sanctuaries in the State of West Bengal by the State Government.

25.5. Permission to operate wood based industries and units on imported timber⁵⁰¹

In the State there are two thousand nine hundred twenty seven units seeking permission to start wood based industries. The total timber available from the forest area was assessed to be 14.25 lakh cu.m. as against 25.52 lakh cu.m. assessed by the State Government. The available timber is adequate only to accommodate seven hundred fifty saw mills. It has been suggested by CEC that seven hundred fifty saw mills, can be given licences as per the guidelines and suggestions issued by it. On the issue of units running on imported wood, CEC has suggested that these wood based industries should be located at such places which are away from the forest land and also to ensure that these wood based industries are not using non imported timber. On the acceptance of these conditions licences can be given by the State Government.

25.6. Regulating mechanised boats on Jambudwip islands

On a report of CEC dated 02-04.12.2002 placed before the Court perhaps regarding their role in transportation of timber and adverse environmental implications it was ordered that no trawler or mechanized boat shall enter the water adjoining Jumbudwip Island until further orders⁵⁰².



⁵⁰¹ See order dated 20.10.2008 in I.A. Nos. 1519-1520

⁵⁰² I.A. No. 920, order dated 25.08.2003

26. *The State of Kerala*

26.1. *Encroachment*

The Chief Secretary of Kerala among many other States are directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.⁵⁰³.

26.2. *Government order of no removal of pre October 2005 forest encroachers stayed*

The SC stayed the order of the Government of Kerala based on newspaper report in 'Hindu' which stated that no removal of pre October 2005 forest encroachers will be allowed⁵⁰⁴. The decision of the State Government was contrary to the policy guidelines issued by MoEF.

26.3. *Encroachment in Cardamom Hill Reserve, Kerala*

The SC ordered the State of Kerala to respond to CEC report listing the extent of encroachment in Cardamom Hill Reserve a notified reserve area home to rich biodiversity⁵⁰⁵. The encroachments allegedly are on basis of forged pattas. The report further highlights that the list of encroachers included powerful and influential persons. The encroachments in the Cardamom Hill Reserve raise serious concerns on the state of ecological sensitive areas in the State of Kerala. *Perhaps the SC has to distinguish the encroachments of the kind described above and the 'encroachments' by forest dwelling communities as they stand on different social, economic and cultural parameters.*

26.4. *Forest land for religious tourism in Periyar Tiger Reserve*

On an application made by Travancore Devaswom Board (TDB)⁵⁰⁶ for use of 12.675 ha. of forest land in Periyar Tiger Reserve for development of Sabrimala Temple in Pathanamthitta district of Kerala, the Standing Committee of National Board of Wildlife (NBWL) conveyed its approval for use of forest land as stated in the communication dated 20.05.2005 of MoEF to the Principal Secretary, Forest and Wildlife Department, Government of Kerala. The CEC too filed its comment to which the TDB sought time to respond and the application was ordered to be put up after the response of Board is filed in Court. In the meanwhile the Government of India was permitted to issue orders for diversion of the aforesaid land.

26.5. *Permission to Power Grid Corporation in Peechi Vazani Wildlife Sanctuary*⁵⁰⁷

SC granted permission to Power Grid Corporation of India Ltd. (PGCIL) for use of 0.8694 ha. of forest land falling

⁵⁰³ I.A. No. 703, 502, order dated 08.02.2002

⁵⁰⁴ See order dated 28.04.2006 in I.A. No....of 2006 (Application filed by AC)

⁵⁰⁵ See order dated 07.10.2005 in I.A. No. 1408

⁵⁰⁶ I.A. No. 1373 and order 25.08.2005

⁵⁰⁷ See order dated 09.05.2008 in I.A. No. 2257 in I.A. No. 1093

in the Peechi Vazani Wildlife Sanctuary, Kerala for relocation of one damaged tower of 400 KV double circuit of the Udumalpet-Trichur transmission line. The CEC has examined the proposal and has recommended the same subject to the following conditions which are acceptable to the project proponent:

1. For use of forest land approval under FCA to be obtained;
2. Felling of trees will be kept to the minimum possible;
3. The condition imposed by the Chief Wildlife Warden to be strictly complied; and
4. The NPV at the prescribed rate for the forest land falling within the Sanctuary as well as outside the Sanctuary will be deposited by the user agency.



27. *The State of Andhra Pradesh*

27.1. *Religious tourism: Regulation*⁵⁰⁸

In another petition where the Andhra Pradesh Tourism Development Corporation Ltd. has asked the Court for permitting construction of serial ropeway to transport pilgrims from Tirupati to Tirumala passing through the Sri Venkateswara Wildlife Sanctuary. The Court while granting permission relied on the CEC recommendations and imposed its own conditions as well. It approved the CEC view that the Ropeway is an ecofriendly mode for transportation of visitors in any eco fragile area. That such a rope way will be noiseless, pollution free, efficient, time saving and a novel way or hand transportation by road involves vehicular emissions and pollution and wastage of fuel or energy which also disturbs the habitat and wildlife and also causes accidental death of wild animals. Further, that the Ropeway project is in public interest, the area required is the minimum possible and the pillars will be erected in a rocky degraded area. Besides, it will involve felling of twenty four small trees. No alternative site is possible. The disturbance and the impact upon the habitat and wildlife due to the Ropeway project will be minimal and will also be fully containable. The Committee recommended that the Supreme Court may consider permitting the use of 1.44 ha. of forest land for the construction of seven pillars required for the Ropeway project subject to two conditions and to any other condition(s) that may be stipulated by the MoEF while according approval under the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972.

- a. Before commencing the work, five percent of the project cost of that part of the project which falls within the Sri Venkateswara Wildlife Sanctuary will have to be deposited by the project proponents in the Compensatory Afforestation Fund to be used for the protection and better management of the Sanctuary.
- b. The net present value of the forest land diverted for the project will have to be deposited in the Compensatory Afforestation Fund as per the Court's order dated 30.10.2002 passed in I.A. 566.

The Supreme Court, thus approved the recommendations made by CEC and accorded permission to the applicant for construction of ropeway subject to fulfilling the conditions as pointed out by the CEC in its letter dated 07.04.2004. The amount was asked to be deposited in two equal installments. First installment shall be deposited within one month and the other within six months thereafter. It added that after the first installment is deposited, the permission would be operative.

27.2. *Temporary diversion in Sanctuary allowed for constructing weir in dam*

Permission was granted to State of Andhra Pradesh for temporary diversion of forest land to an extent of 7 ha. situated in the Rajiv Gandhi Wildlife Sanctuary to carry out construction of weir at 14.675 km. downstream of Srisailem Dam⁵⁰⁹. CEC in its report stated that work had already been initiated without the permission of the Court and so penalty of rupees two crores should be imposed for violation of the FCA. The Court has granted permission on the fulfillment of the following conditions:

- a) Directed to deposit rupees fifty lakhs in the CAMPA Fund towards payment of NPV and the five percent project cost

⁵⁰⁸ W.P.(C) 498/2003, order dated 19.04.2004

⁵⁰⁹ See order dated 05.04.2007 in I.A. Nos. 1609-1610

- b) Imposition of penalty of rupees one crore in CAMPA fund for initiating work without prior approval of the Court.

It is a trend in projects relating to diversion of forest land to take post-facto approval. It is in some cases that breach to follow the FCA is viewed seriously warranting imposition of penalty as has been done in the present case. This is a welcome step as it would act as a deterrent to future violators.

27.3. Balancing ecological and livelihood concerns: Kolleru Wildlife Sanctuary⁵¹⁰

Kolleru Lake is one of the largest shallow fresh water lake in Asia located between the delta of Krishna and Godavari rivers in the State of Andhra Pradesh. The activities of the encroachers caused blockage of free flow of water into the lake which in turn led to submergence of the delta in the upstream area. Further, thousand of land stood converted into fish tanks resulting in the blockage of the drain system of Krishna and West Godavari districts which chooses the said lake as a natural route to sea. On 04.10.1999 a notification was issued by the Andhra Government, which aimed at preserving the lake for the benefit of migratory birds and to avoid floods and further provided limited right to carry on fishing with traditional methods. CEC had issued directions for demolition of all fish tanks constructed inside the Kolleru Wildlife Sanctuary in a time bound manner, and prohibited use or transportation of inputs for pisciculture in the said Sanctuary as the fish tanks were obstructing the flow of water.

The contention of the objectors is that acquisition is the basis for issuance of notification/official declaration under section 26A of the 1972 Act. It is submitted that although final notification has been upheld, the terms and conditions of the notification indicate that demolition of bunds can only take place after acquisition by the Government of private lands. Consequently, the Government should first acquire the rights of the objectors before ordering demolition of the fish tanks/bunds.

SC keeping in mind the larger public interest and in view the fact that notification under section 26A had been issued pursuant to the orders of the High Court in the case of Kunapuraju Rangaraju Vs. Government of A.P. reported in 1998 (3) ALT 215, the notification is to be enforced. The recommendations of CEC do not hinder the rights of those fishermen surviving on a traditional method of fishing and they have been duly protected. Only those who had illegally constructed bunds and who were using harmful manures have been prevented from doing so by reason of this notification. In view of sections 26A, 29 all commercial activities, which seek to destroy the ecology, stands prohibited. The SC directed the State Government to implement the directions contained in CEC report 20.03.2006 and ordered that the use or transportation of inputs for pisciculture shall be stopped immediately. The demolition of all fish tanks should take place in a time bound manner.

27.4. Diversion permitted for limestone mining in Krishna district

The applicant-M/s Madras Cements sought permission for diversion of 160 ha. of forest land for lime stone mining in Krishna district. The CEC has studied the project and made certain observations. The suggestions/observations are acceptable to the company and on its acceptance the SC has permitted⁵¹¹ MoEF to review the project.

⁵¹⁰ See order dated 10.04.2006 in I.A. Nos. 1486-87 with 1492, 1508, 1497-98, 1509-1511, 1514, 115, 1523, 1524, 1525, 1531

⁵¹¹ See order date 03.10.2008 in I.A. Nos. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

27.5. Permission granted by Supreme Court for execution of work relating to Pula Subbaiah Veligonda Project

The State of Andhra Pradesh has been granted permission⁵¹² by SC for execution of work relating to tunnels with all their ancillary works of Pula Subbaiah Veligonda Project on the fulfillment of conditions imposed by CEC.

- i) For use of forest land, approval under the FCA to be obtained.
- ii) The fifteen conditions on which the project has been recommended by the Standing Committee of the National Board of Wildlife will be strictly complied with;
- iii) The additional conditions, if any, imposed by the Chief Wildlife Warden, Andhra Pradesh Forest Department will be complied with;
- iv) Five percent of the project cost of rupees nine hundred ninety nine crores sixty lakhs associated with the implementation of the project works within the Sanctuary i.e. rupees fifty crores will be deposited by the project authorities for conservation and protection works in the National Parks and Wildlife Sanctuaries in the State of Andhra Pradesh.
- v) It is recommended that for this purpose a Committee under the Chairmanship of the Chief Committee under the Chairmanship of the Chief Secretary, Andhra Pradesh with the Special Chief Secretary/Principal Secretary Forests, Principal Chief Conservator of Forests, Chief Wildlife Warden, a representative of the DGF and SS, MoEF and one eminent expert (non official) in the field of wildlife may be constituted and registered under the Societies Act. The money payable by the user agency is to be deposited with the Society. The interest received on the principal amount may be used in perpetuity for conservation and protection of the National Parks and Sanctuaries in the State.

27.6. Permission granted construction of Srisailem Left Bank Canal Underground Tunnel Project⁵¹³

The State of Andhra Pradesh has been granted permission⁵¹⁴ by SC for construction of Srisailem Left Bank Canal Underground Tunnel Project on the fulfillment of conditions imposed by CEC.

- i) The conditions imposed by the Chief Wildlife Warden will be strictly complied with;
- ii) Five percent of the project cost (rupees fifty five crores thirty six lakhs) after deducting rupees thirty crores already deposited in the Compensatory Afforestation Fund i.e. rupees twenty five crores thirty six lakhs crores will be deposited by the project authorities for undertaking conservation and protection measures in National Parks and Sanctuaries in the State.
- iii) It is recommended that for this purpose a Committee under the Chairmanship of the Chief Secretary, Andhra Pradesh with the Special Chief Secretary/Principal Secretary Forests, Principal Chief Conservator of Forests, Chief Wildlife Warden, a representative of the DGF and SS, MoEF and one eminent expert (non official) in the field of wildlife may be constituted and registered under the Societies Act. The money payable is the user agency may be deposited with the said Society. The interest received on the principal amount may be used in perpetuity for conservation and protection of the National Parks and Sanctuaries in the State.

⁵¹² See order dated 24.10.2008 in I.A. No. 1865

⁵¹³ See order dated 24.10.2008 in I.A. No. 2059

⁵¹⁴ See order dated 24.10.2008 in I.A. No. 1865

28. *The State of Gujarat*

28.1. *Methodology for increasing forest cover*

The Court had directed⁵¹⁵ that Central Government should evolve a method for making the States deficient in forest cover pays the States abundant in forest wealth as a means for preserving forest wealth. A report of the Committee of Secretaries received on this aspect stated that there was no consensus amongst the States on the point in issue, while some of the States have welcomed the idea. The Committee had discussions with representatives of various State Governments but about twelve States including Gujarat which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court. The Court directed⁵¹⁶ the Chief Secretary to be represented to present its view on this issue.

28.2. *Permission under Forest Conservation Act, 1980*

In the State of Gujarat permission was granted⁵¹⁷ by SC for diversion of forest land in a Sanctuary subject to compliance of the conditions enumerated below:

- i. Obtaining of requisite approval under FCA for use of the forest land;
- ii. Deposit of NPV in the Compensatory Afforestation Fund with an undertaking to pay additional NPV as per the decision of SC;
- iii. five percent of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the Sanctuary.
- iv. As recommended by the Standing Committee of the National Board for Wildlife, a ten year master plan for the revitalization of the Sanctuary with focused attention and concerned efforts on wildlife conservation and management will be immediately prepared and implemented for rehabilitation of the Sanctuary area. Funds for this purpose will be made available by the State Government on priority basis; and
- v. No area presently falling within the Sanctuary will be used for mining purposes in future.

28.3. *Reexamination of the proposal for diversion*

M/s Adani Chemicals Ltd. made an application for reconsideration of diversion of 1850 ha. (approved area of 1840 ha.) of forest land for high purity salt works for development of Mundra Special Economic Zone and also for reconsideration of diversion of one consolidated patch in Survey No. 169/36 admeasuring 168.41 ha. of forest land for the Salt Washery Desalination plant and container depot near Dhruh village in Kutch district. CEC submitted its report rejecting the proposal in the present form and recommended that State Government should submit a fresh proposal for the proposed land use. On the basis of this report SC directed⁵¹⁸ the State Government to submit a fresh proposal to the FAC who would examine it on merits.

⁵¹⁵ See order dated 20.09.2000 in I.A. No. 424

⁵¹⁶ See order dated 08.01.2001

⁵¹⁷ See order dated 04.08.2006 in I.A. No. 1614

⁵¹⁸ See order dated 03.10.2008 in I.A. Nos. 2344-45 and 2351

28.4. Approval for construction of the road in Jambughoda Sanctuary in Vadodara

SC granted permission for use of forest land falling in the Jambughoda Wildlife Sanctuary for the construction of the Bobdakuva - Mota Raska -Lambhiya-Zand Zand hanuman road in Vadodara after State Government accepted the conditions imposed by CEC⁵¹⁹.

28.5. Ex-post facto permission granted to Indian Oil Corporation for laying the pipeline in marine National Park⁵²⁰

In this matter Indian Oil Corporation sought expost facto permission for use of land falling in the marine Sanctuary and the marine National Park for laying the pipeline from the Single Buoy Morning (SBM) to its depot. CEC has given recommendation which have been accepted by IOC and accordingly permission has been accorded.

It is interesting to see that neither the CEC nor SC has imposed any penalty on IOC for seeking ex-post facto permission for the activity which has already been carried out and for violation of FCA.



⁵¹⁹ See order dated 05.12.2008 in I.A.No. 2432

⁵²⁰ See order dated 05.12.2008 in I.A.No.2433

29. *The State of Punjab*

29.1. *Exclusion of land from category of forest*

The order dated 12.12.1996 defining the word 'forest' was definitive in terms of attempting to give a definition to the word 'forest'. However, the SC ordered MoEF to consider proposal of State of Punjab for exclusion of the land for cultivation and habitation from the category of forest⁵²¹. The CEC had submitted its report on the issue of exempting land for cultivation and habitation from the category of forest. The MoEF has been directed to consider the proposal of the Government of Punjab for the said purpose. The lands which could be exempted should be under bona fide agricultural use.



⁵²¹ See order dated 09.09.07 in I.A. No. 976 in I.A. No. 727

30. *The State of Sikkim*

30.1. *Construction of road for defence purpose in Pangolakha Sanctuary*

The SC permitted Ministry of Defence to upgrade/construct a road between track Junction-Bheem Base-Doka La and for an alternate road between Flag hill-Doka La passing through the Pangolakha Wildlife Sanctuary in Sikkim⁵²². The CEC imposed no condition on the Ministry of Defence for the upgradation/construction of road passing through Pangolakha Wildlife Sanctuary as it involves no cutting of trees.



⁵²² See order dated 14.12.2007 in I.A. No. 1029

31. The State of Chhattisgarh

31.1. Violations in use of forest lands for construction of roads

A petition was filed as a public interest litigation that there are serious violations in forest land and the State is constructing several roads by destroying the forests. CEC has examined this and recommended firstly, that for each of the road being constructed under the PMGSY the existing width of the road, the number of trees required to be felled, the source of earth, murrum, metal etc., the legal status of the road and the other relevant details are to be verified by a team consisting of the representative of the Forest Department, the Revenue Department and the Panchayat and Rural Development Department under the direct supervision, and guidance of the Regional CCF, MoEF, Bhopal, Regional Office. After this information is gathered it can be ascertained whether a new road has been constructed or is an existing road. Secondly, the construction of the road passing through the forest area should be undertaken only after obtaining the requisite approvals under the FCA. Thirdly, in respect of the roads passing through the National Parks/Sanctuaries the construction/upgradation work is to be undertaken only after obtaining the permission from SC. It was submitted by the State that these roads had to be surfaced properly to avoid illegal land mines and it is contented that the police and administration are not able to reach remote village areas due to the absence of these village roads. The recommendations suggested by the CEC are acceptable to the State Government. SC disposed of⁵²³ the matter without acceding to the recommendation by CEC for initiating action against the official of the State Government.

31.2. Diversion of forest land permitted for mining of iron ore in Rajgaon district

The applicant company M/s Ispat Godawari Ltd sought for diversion of 110 ha. of forest land for the mining of iron ore in district Rajgaon (sic) Rajnandgaon. CEC after examination has imposed conditions⁵²⁴ which are as follows and the same are acceptable to the company:

- a) The mineral extracted from the mine will be exclusively for captive consumption/sale. No sale of mining will be permissible.
- b) Approval under FCA for use of forest area. The forest area included in the mining lease approved under the MMRD Act will be identical. The NPV will be payable for the entire forest area included in the mining lease approved under the MMRD Act and
- c) The forest land will be handed over and allowed to be used for mining only after the Environmental Clearance is first accorded.

31.3. Diversion of forest land permitted for mining of iron ore in Kanker district

The applicant company M/s Pushp Steel and Mining Pvt. Ltd. sought for diversion of 66 ha. of forest land in Kanker district for iron ore mining lease. CEC has imposed identical conditions as has been done in case of M/s Ispat Godawari Ltd given above.

⁵²³ See order dated 25.04.2008 in I.A. Nos. 1291-92

⁵²⁴ See order dated 03.10.2008 in I.A. Nos. 2304-05

31.4. Bharat Aluminium Company Ltd. violating provisions of FCA⁵²⁵

It has been alleged that BALCO is in illegal possession of forest land/revenue forest land, and the forest land is being used for non forest purpose. SC directed BALCO to state its response to the report of CEC. Meantime, SC banned BALCO from cutting /removing any trees, if any and further directed Forest Department/Revenue Department not to permit removal of trees which are already cut.



⁵²⁵ See order dated 29.02.08

32. *The State of Jharkhand*

32.1. *Permission granted for iron ore mining in Singhbhum (West) district*

The applicant M/s Orissa Manganese Arid Minerals Pvt. Ltd, sought permission for diversion of 141.447 ha. of forest land for iron ore mining in Singhbhum (West). After examination CEC has made certain observations. These suggestions/observations are acceptable to the applicant. SC directed⁵²⁶ MoEF to review the project in the light of the observations made by CEC in this regard.



⁵²⁶ See order dated 03.10.2008 in I.A. Nos. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

Chapter IV

Conclusions, Recommendations and Future Action

The Godavarman case is certainly a historical effort in stream lining forestry in India. Whether micro management by the Apex Court with the help of an externally empowered body suggested by Amicus is the best institutional mechanism is certainly a subject of debate. However, it is clear that it has influenced forestry management like never before.

The task is still unfinished as it is clear from above. A number of unfinished processes such as identification of forests etc. committees jobs, remain which needs constant oversight.

What has clearly emerged is that the Court has attempted to evolve standards and methods for similar processes such as diversion in forests or Protected Areas, although there have been occasions where the Court has shown varied parameters for similar issues in different States. The conditions on diversion of forest land are one case in point. Similarly the stricture on erring officials is another area where the Court has been quite conservative. While the corporates have been punished, officials perpetrating illegalities have been spared. The difficulty is compounded when one reads the orders since most orders are not speaking and references to CEC reports, prayers, are often used to make orders less bulky. In this process however, the reasons for these apparent differences or differential treatment remain unknown.

Another interesting trend that is emerging is that the Amicus assisting the Godavarman case on a number of occasions has transgressed in the domain of other big petitions such as the CEL-WWF-India case on Protected Areas or the Navin Raheja case –specifically on tiger conservation. It often appears like there is a tussle for control on these sensitive issues amongst Amicus and petitioners rather than a non adversarial approach to solving the issue at hand which are still unresolved. In fact the interlinkages between these significant cases are not clearly established although there are clear overlaps.

Another aspect that becomes quite clear is the time spent by the Court and severity of the issue at hand which are sometimes not commensurate with each other. Thus for example on some occasion the time spent on say a contempt petition on one lower functionary such as mining officer in Mirzapur and a huge issue such as orange areas and proposed reserve forest and their lack of settlement impacting potentially fifteen lacs families in Madhya Pradesh and Chhatisgarh and the attention that they have received is unprecedented and in two extremes. Needless to add that it has been quite substantial for the former and very little for the latter.

Perhaps the most significant aspect of these numerous orders is the fact that a huge amount of area has been diverted for non forestry and non Protected Area purposes. While there have been stringent conditions that have been put on paper prior to the clearances, it is now imperative that a systemic response in the form of a strong monitoring and evaluation framework is key to the success of these judicial interventions. The role of the third party, non governments as well as neutral parties of the State or Central Government must quickly be put to use to monitor the diversions. A weak monitoring system will defeat the very purpose of the litigation as well as the huge resources that have been used in arriving at such decisions. It would be in fact useful to have a more

standardized approach to diversion so that monitoring becomes more scientific and useful for future decision making.

What is commendable in this mammoth effort is that the Court has tried innovative strategies in terms of enforcing bans as a shock therapy, then constituting various committees (inquisitorial, quasi judicial, expert and statutory) and this is followed by a strict framework through robust regulations. This has resulted in a number of enforcement legislations such as the Arunachal Forest Protection Authority or the CEC one hand and new financial instruments such as CAMPA. What has also been put in place is the legal sanctity to working of the forests through working plans and working schemes. This is quite significant as managers are now legally accountable due to Court intervention.

Perhaps the biggest intervention in this case is the attempt to define forest itself which has not been defined in the forest laws. It is not known whether the debates around the early nineteenth century between Baden Powell and Deitrich Brandis were relied upon or not, the annexationist or populist theory on forest management was well understood or not, whether the reason d etre of no definition was inquired upon or not, the attempt to define forest in the interim has open the traditional pandora's box. The subjectivity, the lack of correct records, the disputed boundaries of forest and revenue areas has only compounded the problem further. This needs immediate attention. The Court strategies of expert committees, joint surveys and rationalizing forest boundaries have still not yielded the ideal results. The lack of clarity on definition of forest especially with a number of States coming out with their own deemed forest as well as forest that needs to be excluded have only added the complexity of this issue of definition of forest.

Annexures

COURT ORDERS IN GODAVARMAN CASE

I.A. No.:	Order Date: 07.04.1995	
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Issue notice on the writ petition and application for stay.

I.A. No.:	Order Date: 27.11.1995	
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Learned counsel for the petitioner submits on instructions that large-scale illegal felling of timber and denuding of the forests in Gudalur Taluk of Nilgiri is continuing even after the notice of this writ petition has been issued to the State Government. He undertakes to have an affidavit to this effect filed on behalf of the petitioner and annexed some photographs said to have been taken during this period to support this allegation. This be done within a week. Learned counsel for the State of Tamil Nadu is required to ensure the presence of a senior officer of the State to be present in Court on the next date of hearing. The reply of the Government of Tamil Nadu be also filed within a week.

List the matter on 04.12.1995.

I.A. No.:	Order Date: 04.12.1995	
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Mr. Shashi Shekharan, District Collector, Nilgiri and Mr. Vardarajulu, District Forest Officer, Nilgiri are present in person. They want some time to file an affidavit mentioning the correct facts. Learned counsel for the petitioner also undertakes to have an affidavit filed in support of the allegations made in the petition. Both the affidavits will be filed within a week.

List the matter on 11.12.1995.

These officers will remain present personally on the next date of hearing.

I.A. No.:	Order Date: 11.12.1995	
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An additional affidavit on behalf of the petitioner has been filed today. The respondents are, therefore, granted two weeks time to file their further affidavit. We also direct that subject to any order of this Court made in any other matter, the respondents should not permit felling of any trees in the area in the meantime.

The petition be listed on 22.01.1996

I.A. No.:	Order Date: 17.01.1996	
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At the request of learned counsel of both sides, the matter is adjourned from 22.01.1996 shown in advance list No.669/96 as item No.621 and be listed after three weeks.

I.A. No.:	Order Date: 19.02.1996	
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Learned counsel for the State Shri H.N. Salve submits that there are certain Civil Appeals pending in this Court, the decision of which would affect the nature of right that State can exercise in these matters and that a prayer would be made before Hon'ble the Chief Justice of India to direct the listing of those Civil Appeals for hearing at an early date. It does appear to us appropriate that such a prayer be made by the State for the early hearings of those Civil Appeals because the outcome thereof would be relevant for deciding the controversy in this matter. In the meantime, we direct that the interim order made earlier would continue, with the further direction that no timber which had already been felled in that area shall be removed / permitted to be removed by the concerned authorities, (illegible...) until further orders irrespective of any permit or permission granted to that effect by any authority.

I.A. No. 2

The applicants are permitted to intervene.

I.A. No.:	Order Date: 26.03.1996	
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List in the normal course.

I.A. No.:	Order Date: 26.04.1996	
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I.A. Nos. 3, 4 & 6

In our opinion, the interest of the petitioner which is the foundation for the prayer made to be impleaded as party in this proceeding is insufficient to permit impleadment.

Learned counsel prayed for permission to withdraw the I.As. They are dismissed as withdrawn.

I.A. Nos. 5 & 5A

Reply to be filed within a week. List them on 08.05.1996

I.A. No.:	Order Date: 08.05.1996	
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I.A. Nos. 5 & 5A

Mr. Harish N. Salve, learned senior counsel for the State of Tamil Nadu submits that the eucalyptus, pine and wattle trees which have already been felled can be permitted to be removed by M/s. SIV Industries Ltd. itself (not through any other agencies) under the observation of the concerned officers and to that extent the earlier interim order made by this court to be modified for the present. Shri Anil S. Diwan, learned senior counsel for the

applicant SIV Industries submits that such a modification of the earlier interim order will suffice for the present and that I.A.s may be heard later for making the final order thereon. We consider this submission of the learned counsel to be reasonable in view of the fact that admitted / there are eucalyptus, pine and wattle trees which have already been felled within the coupe allotted to M/s. SIV Industries. Accordingly we modify the earlier interim order to this extent only. These applications will come up for further hearing on 22.07.1996. That the I.A. No. 7 for orders on 22.07.1996.

I.A. No.:	Order Date: 22.07.1996	
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I.A. No. 5, 5A & 7

It would be appropriate that a similar matter from Kashmir (Number to be given by counsel – Mr. V. Krishnamurthy) is heard along with these matters since the points for decision in all of them appear to be similar.

Tag these matters together.

It is brought to our notice that some persons have filed certain Writ Petitions, the subject matter of which is substantially the same in that of these matters and a learned Single Judge has issued certain directions therein by order dated 14.05.1996 which do not match with the orders made herein. It is also submitted that Writ Appeals have been filed in the Madras High Court before a Division Bench against that order. Shri Salve, learned counsel for the State, submits that all the material facts would be placed on record in the form of an affidavit within two weeks from today. He is permitted to do so.

It is directed that in the meantime the authorities are not required to Act on any directions given by the High Court at variance with the directions given by this court in these matters in respect of the same subject matter and that the High Court or any other court would not entertain any matter the subject matter of which is covered by the scope of these matters.

Shri Diwan, learned counsel for the applicant – SIV Industries, submits that particulars of the Eucalyptus, Pine and Wattle trees already felled by the SIV Industries have been furnished in respect of which permission for removal was granted by the court on 08.05.1996. We further direct that the concerned forest authorities would verify the correctness of that statement and mark the felled trees and submit a report to that effect in this court after which only the removal of the felled trees should be permitted. It is also directed that the SIV Industries would also furnish full particulars of their stock within two weeks.

In the facts and circumstances of this case, there appears to be some conflict between the interest of the Defence Ministry and that of the Ministry of Environment, since permission is sought by the Ministry of Defence for the felling of certain trees. It would, therefore, be appropriate that the Ministry of Environment is represented by a separate counsel to avoid any embarrassment to the learned counsel appearing for the both the departments. Learned Attorney General is requested to look in to this matter to ensure proper representation on behalf of Ministry of Environment.

List the matter on 02.09.1996

I.A. No.:	Order Date: 02.09.1996	
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I.As for intervention are allowed.

W.P. (C) No. 171/96

Shri Beg, learned counsel for the State of Jammu & Kashmir submitted that a slight variation in the interim order already made is required because of the pressing need of the State Government to take the necessary rehabilitation measures, implementation of the power projects and removal of dead wood, for silviculture. He submits that a suitable application in this behalf would be filed supported by an affidavit of a responsible officer giving therein the particulars of the requirements of the State under each of these three needs. This be done within a week. In the affidavit so filed, particulars would also be given of the area from which the trees are proposed to be cut and the impact thereof.

W.P. (C). No. 202/95

I.A. No. 8

This application is filed for permission to cut and remove 984 Eucalyptus trees, out of which approximately 200 trees have already fallen. The reasons given in the application indicate the urgency for granting permission to this effect because of the likely hazard from the continuance of the trees in that sensitive area of the Ordnance Factory. We therefore allow the application and permit the Ordnance Factory to cut and remove these 984 eucalyptus trees. We make it clear that the entire exercise of cutting as well as removal of the trees from the site would be carried on only by the ordnance factory itself using its own vehicles for the purpose. These trees if not already hammer-marked, should also be hammer-marked by the DFO, Nilgiri.

In view of the nature of the petitions and points involved therein, we direct issue of notice to Chief Secretaries of all State Governments other than those who are already made parties.

Learned Attorney General who is present states that he himself would be appearing in this matter because of its significance, for the Union of India.

List both the matters on 23.09.1996 at the end of the board.

I.A. No.:	Order Date: 23.09.1996	
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Shri Anil B. Diwan, learned counsel for the SIV Industries submits that due compliance of the order dated 22.07.1996 has been made by the SIV Industries and after verification of the correctness of the statements furnished by it, the felled trees have also been hammer-marked by the concerned authorities to enable removal of the felled trees by the SIV Industries itself and not through any other agency, by use of trucks under the full control of the SIV Industries. Learned counsel also submits that the removal of these felled trees is for consumption by the SIV Industries itself in its factory. Shri Harish N. Salve, learned counsel for the State of Tamil Nadu accepts his submission to be correct. This being so, we permit removal of these felled trees which have been duly hammer-marked by the concerned authorities, by trucks belonging to the SIV Industries or those which are used under full control of the SIV Industries itself for consumption in its factory. The entire removal would be done under the direct control of the concerned forest officers.

In spite of notice being issued to all the State Governments, many of them have not entered appearance. We therefore, direct issue of fresh notice by service of notice on the standing counsel for the State, at Delhi.

I.A. No. 3 in W.P. No. 171/96, I.A. No. 14 in W.P. No. 202/95 and the applications relating to tea and coffee plantations raising questions of some urgency be listed on 07.10.1996.

(A separate folder containing Record of Proceedings opted in these matters may kindly be prepared by the

concerned sections for use of the Honorable Court).

I.A. No.	Order Date: 07.10.1996	
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I.A. Nos. 7, 10-13 in W.P.(C) No. 202/95

This order relates to all the coffee, tea and cardamom plantations, in respect of which, as an interim measure, it is directed as under:

1. Shade lopping of trees providing shade to tea, coffee and cardamom plantations may be permitted wherever it is warranted as per the considered technical opinion of a committee consisting of District Forest Officer and Collector or his nominee.
2. The wind fallen trees may be permitted to be removed in order to protect other trees in the private lands and Government man-made plantations. The above committee can by a detailed order permit the removal of such trees specifying the reasons for such order.
3. The branches of the trees after the shade lopping are to be utilized within the Nilgiri District for fire wood only in order to meet out the local fuel wood requirements and other requirements within the plantation.
4. The lops and tops (branches) and the wind fallen trees may be permitted by the said committee to be removed and to be sold through the Government fuel wood depots maintained by the Forest Department and the remaining wood (timber and pulp wood) are to be given to the Forest Department for further allotment of sale to wood based industries as per the existing policy of the Government.

There appears to be controversy about the kind of interim order required to be made for cutting of the trees in these plantations. It is appropriate to obtain technical opinion on the point (illegible ...) before making an order relating to this aspect. Shri Salve, learned counsel for the State of Tamil Nadu, undertakes to obtain the technical opinion from TANTEA (Tamil Nadu Tea Plantation Corporation Ltd., R&D Wing) by obtaining replies to the relevant queries including those supplied by learned counsel for the plantations. This he undertakes to do within three days. Learned counsel for the plantations may furnish set of queries within two days. The matter would be considered for making the necessary direction in this behalf thereafter. This order disposes of the above I.As. to this extent.

It is submitted by some learned counsel appearing for the plantations that some trees have already been cut and they should be permitted to be removed. It is directed that an application giving full particulars in this behalf be made, supplying a copy thereof to the learned counsel for the State of Tamil Nadu for their response. This be done within three days. The matter be considered thereafter.

I.A. No. 14

This I.A. will be taken up on 26.11.1996.

The main matter would be taken up on 26.11.1996. All parties including the State may file any further affidavit, if any, within four weeks. Only in respect of Kashmir matters, the case would be taken up on 09.10.1996.

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

I.A. No.:	Order Date: 26.11.1996	
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List on 27.11.1996 at the top of the list.

I.A. No.:	Order Date: 27.11.1996	
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Heard in part.

I.A. No.:	Order Date: 28.11.1996	
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Heard in part.

In spite of notice being served on all the state Governments, there is no representation on behalf of most of the State Governments except Jammu & Kashmir, Madhya Pradesh, Kerala, Orissa, Punjab, Karnataka, Maharashtra, Tamil Nadu Gujarat and Union Territory of Pondichery. Learned counsel representing the states of Mizoram and Tripura made a brief appearance at the end of the hearing today. In view of certain matters which arose during the hearing yesterday and today, it became necessary to have the version of the seven North Eastern States in particular, but no assistance to that effect was available to the court on account of the absence of any representation at that time on behalf of any of the seven North Eastern States. It is necessary that effective representation on behalf of each of those seven states is ensured during the entire hearing of this matter. It is necessary for the Secretary dealing with Forest and Environment in each of these seven North Eastern States to remain present during the hearing of this matter. We therefore, direct the personal presence of the Secretary dealing with Forest and Environment of each of the seven North Eastern States, namely Assam, Nagaland, Meghalaya, Mizoram, Manipur, Tripura and Arunachal Pradesh in addition to the Secretaries of the States of Sikkim, Kerala and Maharashtra. Learned counsel appearing for these states will ensure their personal presence.

List the matter on 03.12.1996 for further hearing.

I.A. No.:	Order Date: 03.12.1996	
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Part-heard.

I.A. No.:	Order Date: 04.12.1996	
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Part-heard.

I.A. No.:	Order Date: 05.12.1996	
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Part -heard.

I.A. No.:	Order Date: 10.12.1996	
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Part -heard.

I.A. No.:	Order Date: 11.12.1996	
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Part -heard.

I.A. No.:	Order Date: 12.12.1996	
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I.A. Nos. 7, 9-14

I.A. Nos. 7, 9, 10, 11, 12, 13 and 14 in W.P.(C) No. 202/95 and I.A. Nos. 3, 4, 6, 7, 8 and 10 in W.P.(C) No. 171/96 are disposed of. List the matter on 25.02.1997 as part heard.

W.P. (C) No. 202 of 1995 with W.P. (Civil) No. 171/96

In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, learned counsel appearing for the States and the parties/applicants and, in addition, the learned Amices Curiae, Shri H. N. Salve, assisted by Sarvashri U.U. Lalit, Mahendra Vyas and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the court, we have formed the opinion that the matters require a further indepth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel and, therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned counsel on these aspects.

It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the 'Act') and the meaning of the word 'forest' used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately resulted in ecological imbalances and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term 'forest land', occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in Ambica Quarry Works and others versus State of Gujarat and ors (1987 (1) SCC 213), Rural Litigation and Entitlement Kendra versus State of U.P. (1989 Suppl. (1) SCC 504), and recently in the order dated 29.11.1996 in W.P.(C) No. 749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and Ors.). The earlier decision of this Court in State of Bihar vs. BanshiRam Modi and ors. (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area, which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government, which has failed to appreciate the correct position in law so far, will

forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct:

I GENERAL

1. In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any forest. In accordance with Section 2 of the Act, all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provision of the Forest Conservation Act, 1980. Every State Governments must promptly ensure total cessation of all such activities forthwith.
2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and plywood mills in Trap and Changlang in Arunachal Pradesh and within a distance of 100 kms. from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.
3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.
4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North Eastern States to any other State of the country either by rail, road or water ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area, which is not a forest.
5. Each State Government should constitute within one month an Expert Committee to:
 - (i) Identify areas which are 'forests', irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest;
 - (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and
 - (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.
6. Each State Government should within two months, file a report regarding:-
 - (i) the number of saw mills, veneer and plywood mills actually operating within the State with particulars of their real ownership.
 - (ii) the licensed and actual capacity of these mills for stock and sawing.
 - (iii) their proximity to the nearest forest.
 - (iv) their source of timber.
7. Each State Government should constitute within one month, an Expert Committee to assess:
 - (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;

- (ii) the number of existing saw mills which can safely be sustained in the State.
- (iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.
9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU & KASHMIR:

1. There will be no felling of trees permitted in any 'forest', public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.
2. In 'forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber and that only from areas other than those notified under the Jammu & Kashmir Wildlife Protection Act, 1978 or any other law banning such felling or removal of trees.
3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS Officer posted in the State of Jammu & Kashmir, a representative of the State Government and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member Secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.
4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam.
5. All timber obtained, as aforesaid or otherwise, shall be utilized within the state, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.
6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will –
 - (a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and
 - (b) be undertaken by either the Corporation itself, the Jammu & Kashmir Forest Department or the receiving agency.
7. The State of Jammu & Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

8. No sawmill, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 kms. from the boundary of any demarcated forest areas. Any existing mills falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATE OF UTTAR PRADESH AND WEST BENGAL

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest' and which has not been converted from an earlier 'forest'. This ban will not apply to permits granted to the right holders for their bonafide personal use in Himachal Pradesh.
2. In a 'forest' the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.
3. For this purpose, the State Government is to constitute an expert Committee comprising a representative from MoEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and deceased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.
4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all 'forest' areas. This will however not apply to:
 - a) trees which have been planted and grown, and are not of spontaneous growth; and
 - b) are in areas which were not 'forests' earlier but were cleared for any reason.
2. The State Government, within four weeks from today, is to constitute a committee for identifying all 'forests'.
3. Those tribals who are part of the social forestry program in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.
4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:
 - a) The felling of shade trees in these plantations will be –
 - i) limited to trees which have been planted, and not those which have grown spontaneously;
 - ii) limited to the species identified in the TANTEA report.

- iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and
 - iv) under the supervision of the statutory committee constituted by the State Government.
- b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.
- c) The State Government is directed to ascertain and identify those areas of the plantation which are a 'forest' and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (b) and (c) above will not apply to such areas.
- d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of 'forests'.
5. As far as the trees already cut, prior to the interim orders of this court dated 11.12.1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one-time measure.
6. In so far as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977, in CA Nos. 1344-45 of 1976. After the order is made in those Civil Appeal on the I.As. pending therein, if necessary, this aspect may be re-examined.
7. This order is to operate and to be implemented, notwithstanding any order at variance made or which may be made by any Government or any authority tribunal or court including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood and the steps taken by them to find alternatives to the use of wood.

I.A. Nos. 7, 9, 10, 11, 12, 13 and 14 in Writ Petition (Civil) No. 202/95 and I.A. Nos. 1, 3, 4, 5, 6, 7, 8 & 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of, accordingly.

List the matter on 25.02.1997 as part-heard for further hearing.

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

I.A. No.:	Order Date: 19.12.1996	
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W.P. (C) No. 897/96 (preliminary hearing)

A. RANGARAJAN & OTHERS vs. UNION OF INDIA & OTHERS.

This writ petition relates to a matter connected with the National Forest Policy which is under consideration in Writ Petition Nos. 171/96 and 202/95. It would be appropriate to connect this writ petition with those matters for it be heard along with those writ petitions.

Issue Notice.

Tag with W.P. (C) Nos. 171/96 and 202/95

I.A. No.:	Order Date: 10.01.1997	
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List this matter on 20.01.1997

I.A. No.:	Order Date: 20.01.1997	
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There is no time available today to hear this matter, which will take quite some time. The matter is to be heard by the same Bench. It, therefore, be listed at an early date before the same Bench (Honorable J.S. Verma and B.N. Kirpal, JJ).

I.A. No.:	Order Date: 03.02.1997	
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Taken on Board.

The Bench (Honorable Verma & Kirpal, J J) which has to hear these I.As. could not be formed today. There is urgency for hearing these I.As. which have to be heard by the same Bench.

Accordingly the I.As. be listed for hearing before the same Bench (Honorable Verma & Kirpal, J J) at 2.00 pm on 07.02.1997 if that bench is not formed on that day as the regular bench.

I.A. No.:	Order Date: 07.02.1997	
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List the matter on 11.02.1997

I.A. No.:	Order Date: 11.02.1997	
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All the State Governments are required to file their response before the next date of hearing.

Learned Attorney General stated that there is no particular difficulty felt for the present by the Central Government in implementation of this court's order dated 12.12.1996. He added that on receipt of reports from the State Governments before the next date, namely, 23.02.1997, the Central Government should further examine the matter and make the necessary submissions thereafter.

Learned counsel appearing for some of the applicants submitted that a direction be given to the effect that no eviction may be made from any land or building containing machinery and equipment or any other facilities for housing, school or dispensary etc. in the meantime on the basis of this court's order dated 12.12.1996. We consider it appropriate to do so. It is accordingly directed that our earlier order dated 12.12.1996 is not construed to mean that it directs any such eviction in the meantime having the consequence of disturbing the existing status.

I.A. Nos. 17 & 18: Dismissed as withdrawn.

I.A. No. 24: Dismissed as withdrawn

I.A. No. 27: Mr. D. N. Mukherjee, who was appearing for the State of Meghalaya, has passed away. Issue fresh notice to the State Government of Meghalaya. Notice be also served on the Resident Commissioner of the State of Meghalaya at New Delhi returnable on 25.02.97

I.A. No. 28: Dismissed as withdrawn

I.A. No. 30: Dismissed as withdrawn.

I.A. No. 31, illegible & 51: I.As are allowed. Affidavits on their behalf be filed within a week.

I.A. No. illegible 55 & 56: Prayer for impleadment is allowed. Affidavits be filed within a week. The remaining prayers for these I.A.s will be considered later.

I.A. No. 37-49: Dismissed as withdrawn.

I.A. No. 50: I.A is disposed of accordingly.

I.A No. 52: This application is taken on record. The applicant-Society is permitted to assist the learned amicus curiae. Mr. Aruneshwar Gupta, learned counsel for the state of Rajasthan, submitted that the circular dated 16.08.1995, Annexure 4 to this I.A. has been withdrawn by the state government on 20.12.1996.

I.A. No. 53: Dismissed as withdrawn.

I.A. No...../97: Taken on board. *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

In W.P. (C) No. 202/95

In view of the serious allegations made in the I.A which are supported by documents including copies of letters written by the Collector of District Bastar to the State Government, we direct that the reply be filled by the Government of Madhya Pradesh within a week. The reply is to be supported by the affidavit of the Chief Secretary to the state government or an Officer of an equivalent rank conversant with the facts of the case. The affidavit must also mention the action taken by the State Government in this matter.

In the facts and circumstances giving rise to the filling of this I.A. and the nature of allegations contained therein. We direct the state Government to ensure that no trees are felled in the forest of the Bastar District, even under any permission granted by the local government until further orders.

The remaining I.A.s would be considered at the next date of hearing.

List on 25.02.1997 as directed earlier.

I.A. No.:	Order Date: 25.02.1997	
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Writ Petition (Civil) No. 39/97 is delinked.

Part-heard.

I.A. No.:	Order Date: 26.02.1997	
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I.A. No. 76:

This I.A. has been filed by the Association of planters of Kerala for impleadment. The same is allowed.

I.As. No. 77, 78, 83, 84-85, 86-87 and 92:

In view of the order made in I.A. No. 76 by which the Association of Planters of Kerala has been impleaded, the question whether these I.As, should be allowed would be considered at a later stage.

I.A. 90

The I.A. is dismissed as withdrawn.

I.As 96-97

The I.As are dismissed.

I.A. 98-99

The I.As are dismissed

I.As 101-103:

The I.As are dismissed.

The matters remained part heard.

I.A. No.:	Order Date: 27.02.1997	
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I.A. Nos./97 filed on behalf of Adivasis Vikas Parishad and Gondwana Samaj, is taken on board and dismissed. *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

One order in W.P. (C) No.202/95 [with W.P. (c) No. 171/96 and W.P. (C) No. 897/96] and the other order in I.A. Nos. 6-14 in CA Nos. 357-75/77 [with I.A. No. 1 in CA 2457/77, I.A. No.3-4 in CA Nos. 1344-45/76 and W.P. (C) No. 202/95] were dictated. The same be listed for pronouncement on 04.03.1997.

Learned counsel may file brief written submissions by 07.04.1997.

The matters remained part-heard and the same be listed for final hearing on 22.04.1997.

I.A. No.:	Order Date: 04.03.1997	
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I.A. No. 111 is taken on board. The permission prayed for is refused. However, it would be open to the applicant to assist the amicus curiae.

Shri H. N. Salve, the learned amicus curiae conveyed to us certain facts which R.N.Kaul is keen to apprise the court about his earlier association to some extent with Arunachal Plywood Industries Limited. The particulars thereof furnished by Shri Salve are placed on record. The Learned Attorney General and the other Learned Counsel appearing in the case have seen the same and all of them unhesitatingly stated that these facts make no difference and Shri R.N. Kaul would be an appropriate person as a Member of the Committee, which we are constituting by a separate order being passed today.

One order in W.P.(C) 202/95 [with W.P. (C) 171/96 and W.P. (C) 897/96] and the other order in I.A. Nos. 6-14 in CA Nos. 357-75/77 [with I.A. No. 1 in CA 2457/77, I.A. No.3-4 in CA Nos. 1344-45/76 and W.P. (C) No. 202/95] were pronounced by the court containing inter alia, the following directions:

W.P. (C) No. 202/1995 etc.

The Chief Secretary of the State of Maharashtra/U.P. will ensure strict compliance of the direction 'General Directions' contained in para 4 of the signed order and file a compliance report within two weeks.

It is made clear that the order passed by this court in these matters, including the order dated 12.12.1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments, notwithstanding any order or direction passed by a court, including the High Court or Tribunal to the contrary.

We further direct the Registrar General to communicate the order dated 12.12.1996 as well as the present order to the Registrars of all the High Courts to ensure strict compliance. It is also clarified that the orders passed by this court including the order-dated 12.12.1996 and this order will apply to all Autonomous Hill Councils in the North-Eastern States as well as the Union Territories.

It is made clear that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these matters.

I.A. No. 6-14/1996 in CA Nos. 357-75/1977 etc.

In modification of the earlier orders in the Civil Appeal No. 367-75 of 1977, 2457 of 1977 and 1344-45 of 1976 and Writ Petition No.202/95, I is directed as under:

- i. As far as shade trees in the Janmam areas are concerned, they would be governed by para 4 (a) of our order dated 12.12.1996 insofar as it applies to the state of Tamil Nadu. However, all trees so felled in the Janmam areas shall be delivered by the Plantation to the State Government which will be free to deal with the dispose of the same. The State Government shall, however, keep a record of all such trees received by it. This will apply also to trees felled prior to the interim orders which are still in the possession of the plantations.
- ii. Insofar as fuel trees are concerned, we direct that felling of fuel trees be carried on strictly in accordance with the Report of TANTEA. After felling of fuel trees, the Plantations shall submit the account of such trees to the State Government They may consume for their own use such number of fuel trees as are necessary

and give an account of the same to the State Government Any fuel trees not required by them would be surrendered by them to the State Government and the State Government would be free to deal with such trees. The State Government shall, however, maintain an account of any fuel trees received by it.

- iii. We further clarify that the direction that there will be no further expansion of the Plantation so as to involve encroachment [by way of clearing or otherwise of forest] will apply to the Janmam lands as well.

I.A. Nos. 6-14 of 1996 in CA Nos. 367-75 of 1977, I.A. No. 1 of 1996 in CA 2457 of 1977 and I.A. Nos.3-4 of 1996 in CA Nos. 1344-45 of 1976 are allowed in the above terms.

The Golf Course at Kodaikannal and Udagamandalam are permitted to function subject to the condition that the District Collector and the District Forest officer of the area concerned are associated with the functioning of the same till the approval of the Government of India received.

Both orders are Reportable.

List on 08.04.1997 for fixing a date.

Signed orders are placed on the file

ORDER

1. After hearing Mr. H.N. Salve, the learned Amicus Curiae, learned Attorney General and learned counsel appearing for the State and other parties in these matters, it is clear that no substantial variation in the earlier order dated 12.12.1996 is required to be made as an interim measure; and that some minor variation to the extent indicated hereinafter is all that is required to be done at present.

We are satisfied that there is need to constitute a High Power Committee to oversee the strict and faithful implementation of the orders in the North Eastern Region of this court and for certain ancillary purposes. Accordingly we direct as under:

- a) There shall be a Committee as under:-
Shri T.V. Rajeshwar, Chairman; Shri R.N. Kaul, Retd. I.G. of Forests—member; and one representative nominated by the Ministry of Environment and Forest (MoEF)—Member Secretary.

Shri T. V. Rajeshwar and Shri R. N. Kaul have given their consent for the purpose.

- b) This Committee shall oversee preparation of inventory of all timber in all forms including timber products:
- Lying in the forest or in transit depots; and
 - Lying in mill premises.

The inventory should, wherever possible, indicate the origin and source of the timber.

The Committee may for this purpose select suitable person who would be made available by the concerned State Government at its request.

As far as possible, such inventory should be prepared within eight weeks from today.

- c) The Committee may, if it considers appropriate, permit the use or sale of any part of the timber or timber products. Any sale shall be effected through the Forest Corporation of the State under overall supervision of the Committee.
- d) The net sale proceeds after deduction of the transaction related costs and payment of wages to the labour and staff shall be deposited by the Forest Corporation or through Forest Department in a designated account.

The modalities will be worked out by the Committee.

- e) The Committee may, through the Amicus Curiae, only for such directions from time to time as it considers appropriate.
- f) The MoEF will make available as far as possible within a week, office space and provide secretarial and all other related facilities (including local transport and telecommunication) befitting the stature of the committee.

The MoEF will make arrangements for and meet expenses of travel of the Committee. All arrangements for stay etc. of the committee (Outside Delhi) as may be necessary, would be the responsibility of the State Government concerned.

The Assam Government will make similar office and other facilities available in Guwahati.

It is for the sake of convenience at this stage that the Central Government and the State Governments are being directed to make certain payments and meet all the expenses. However, the question of liability for payment of these amounts would be considered at the final hearing and suitable directions for the purpose given at the stage indicating the principal for determining the liability for making the payment.

- 2. It is clarified that the directions contained in the order dated 12.12.1996, this order would not apply to minor forest produce, including bamboos, etc.
- 3. The State of Meghalaya has asserted in its affidavit that a significant quantity of timber is required for use in the State itself by the rural tribal population. It has also asserted that there is a loss of revenue to the State Government on account of restrictions placed by the order of 12.12.1996 and a large number of people of the State have been deprived of the employment. The State is directed to file an affidavit with full and complete particulars of:
 - a) The quantity of timber which comes from its forest for use by the rural tribal population, the extent to which it is made available to the rural tribal population including the terms on which it is so made available.
 - b) The revenue derived by the State by way of royalty from the minerals, mines and forest area, purchase tax on export of timber, sale value of timber drawn from the Government forests and the extent and quantity of such sale and the manner of sales;
 - c) The number of wood based industries within the State and the number of persons employed in such industry.

4. All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.
5. A total of 5322.97 cubic meters of timber presently held by the private parties in their stock purchased from the J&K State Forest Corporation as per Annexure D to the affidavit dated 18th February 1997 filed on behalf of the Government of J&K is permitted to be moved; and any such movement be effected after due certification, consignment wise made by the Managing Director of the State Corporation, which will include certification that the timber has come from State Forest Corporation sources (as per para 6(a) at page 11 of the earlier order dated 12.12.1996). The stocks of kail, chir and fir in the depots of the Forest Corporation are permitted to be disposed of by the Forest Corporation in any manner, which would include movement and disposal of the same even outside the state as per the requirements as indicated in above said para 6(a). All this would be done by the Forest Corporation itself.

The above directions are to be read along with those contained in the order dated 12.12.1996.

MINING MATTERS

We direct that –

1. Where the lessee has not forwarded the particulars for seeking permission under the FCA, he may do so immediately;
2. The State Government shall forward all complete pending applications within a period of two weeks from today to the Central Government for requisite decisions;
3. Applications received (or completed) hereafter would be forwarded within two weeks of their being so made.
4. The Central Government shall dispose of all such applications within six weeks of their being received; where the grant of final clearance is delay, the Central Government may consider the grant of working permission as per existing practice.

GENERAL DIRECTIONS

It is made clear that the order passed by this Court in these matters, including the order dated 12.12.1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments, notwithstanding any order or direction passed by the court, including a High Court or Tribunal in to the contrary.

We further direct the Registrar General to communicate the order dated 12.12.1996 as well as the present order to the Registrars of all the High Courts to ensure strict compliance. It is also clarified that the orders passed by this Court including the order-dated 12.12.1996 and this order will apply to all Autonomous Hill Councils in the North Eastern States as well as the Union Territories.

It is made clear that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government

and the State Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these matters.

I.A. No.:	Order Date: 04.03.1997	
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I.A. No. 6-14 / 1996 in CA 357-75/77
 Manjushree Plantations Ltd. & ors. etc. versus The State of Tamil Nadu With
 I.A. No. 1 of 1996 in CA 2457 / 77
 M/s Malapuram Traders vs. District Forest Officer With
 I.A. No. 3-4 of 1996 in CA 1344-45/76
 I.R Coelho (Dead) by Lrs. Vs. The State of Tamil Nadu & Ors.
 With W.P. (C) 202/95

ORDER

In modification of the earlier orders in the Civil Appeal No. 367-75 of 1977, 2457 of 1977 and 1344-45 of 1976 and Writ Petition No.202/95, I is directed as under:

- i. As far as shade trees in the Janmam areas are concerned, they would be governed by para 4 (a) of our order dated 12.12.1996 insofar as it applies to the state of Tamil Nadu. However, all trees so felled in the Janmam areas shall be delivered by the Plantation to the State Government which will be free to deal with the dispose of the same. The State Government shall, however, keep a record of all such trees received by it. This will apply also to trees felled prior to the interim orders which are still in the possession of the plantations.
- ii. Insofar as fuel trees are concerned, we direct that felling of fuel trees be carried on strictly in accordance with the Report of TANTEA. After felling of fuel trees, the Plantations shall submit the account of such trees to the State Government They may consume for their own use such number of fuel trees as are necessary and give an account of the same to the State Government Any fuel trees not required by them would be surrendered by them to the State Government and the State Government would be free to deal with such trees. The State Government shall, however, maintain an account of any fuel trees received by it.
- iii. We further clarify that the direction that there will be no further expansion of the Plantation so as to involve encroachment [by way of clearing or otherwise of forest] will apply to the Janmam lands as well.

I.A. Nos. 6-14 of 1996 in CA Nos. 367-75 of 1977, I.A. No. 1 of 1996 in CA 2457 of 1977 and I.A. Nos.3-4 of 1996 in CA Nos. 1344-45 of 1976 are allowed in the above terms.

The Golf Course at Kodaikannal and Udagamandalam are permitted to function subject to the condition that the District Collector and the Distt. Forest officer of the area concerned are associated with the functioning of the same till the approval of the Government of India received.

I.A. No.:	Order Date: 05.03.1997	
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Taken on Board

The allegations made in the application are of serious nature suggesting complicity of not only the then Commissioner of Bastar Division Shri Narayan Singh but also of several other highly placed persons in the State Administration. The affidavit filed on behalf of the state of Madhya Pradesh by Secretary to the State Government also admits

certain facts which provide the foundation for some of the allegations made in the application. There is thus a strong prima facie case appearing from the facts admitted on behalf of the State Government itself to suggest serious irregularities committed by some persons in the state administration or those having close proximity with some men in power in the state . In our opinion such a situation calls for a prompt impartial inquiry into these allegations to enable the court to decide the nature of orders required to be made on this aspect of the matter in the present proceedings. This is necessary in public interest.

In these circumstances we request the learned Lokayukta of the State of Madhya Pradesh to make an inquiry into these allegations either by himself or in any other manner he may deem fit as expeditiously as possible. On receipt of the report of the concerned Lokayukta of the State of Madhya Pradesh, the matter would be taken up for further consideration.

The learned amicus curiae as well as the learned counsel for the state of Madhya Pradesh may furnish to the Registrar (Judicial) all documents which are required to be transmitted to the learned Lokayukta of Madhya Pradesh. A copy of the I.A. together with the affidavit filed on behalf of the state of Madhya Pradesh and other material documents supplied by counsel together with a copy of this order be sent by the Registrar (Judicial) to the learned Lokayukta forthwith.

It is made clear that the earlier orders made in this behalf shall continue until further orders.

I.A. No.:	Order Date: 14.03.1997	
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W.P. (C) 39/97

Research Foundation for Science versus Ministry of Agriculture & Ors.

We find that in a broad sense the issues raised in this writ petition are connected with the questions which are being considered by this Court in W.P. (C) 202 of 1995 and the other connected matters, which have been entertained in public interest and an amicus curiae has been appointed in those matters to deal with all the questions involved therein and connected therewith. We deem it fit that the issues raised in this writ petition also are considered in those matters only and not by a separate writ petition which would result in multiplicity of proceedings. For this reason, we do not consider it necessary to entertain this writ petition. However, we grant liberty to the petitioner to assist the court through the amicus curiae in W.P. (C) 202 of 1995 etc. so that any issue not fully covered directly by the questions therein which has been raised in this petition can also be raised by the amicus curiae in those matters for the consideration of this Court.

The writ petition is disposed of in the above manner.

I.A. No.:	Order Date: 31.03.1997	
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I.A No. 123

Learned counsel seeks to withdraw the application. The application is dismissed as withdrawn.

I.A. No.:	Order Date: 08.04.1997	
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List on 22.04.1997

I.A. No.:	Order Date: 22.04.1997	
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In respect of most of the states, if not all, it is not clear from their affidavits as to what is the exact programme

of that state in respect of the subject matter of these writ petitions and the extent to which steps have already been taken to do the needful. In order to deal with the several I.As which have been filed seeking interim directions/modifications of the interim directions already made it is necessary to have comprehensive statement of all the states about the past activity and their future programme to tackle the problems and prevent degradation and degeneration of the forests. After hearing the learned Attorney General, The Amicus Curiae and the learned counsel for the several states, it does appear that the time is needed by the states to file a Comprehensive statement as above and the matters can be heard only thereafter. The learned Attorney General submits that the Central Government also involved in performance of the necessary exercise including the study required for the formulation/revision of the National Forest Policy and that this exercise will take some more time to complete. We are also informed by the learned amicus curiae that the report of the Rajeshwar Committee is likely to be submitted by the end of this month. The common request of all the learned counsel including the learned Attorney General is that the hearing of these matters be deferred for the time being to enable completion of the exercise by all the concerned authorities so that the court is required to hear and decide only those aspect of these matters which remain after the exercise has been completed by all the authorities/governments. They also submitted that hearing for the purpose of some interim directions alone may be required but that too may be done early next month.

All the states are required to file the Comprehensive Statement as above on or before 03.05.1997.

In order to save time, Shri Rajeshwar is requested to handover his report to the learned amicus curiae Shri Harish N. Salve who would then furnish copies of the same to the learned Attorney General and counsel for the States concerned.

Research Foundation for Science Technology and Ecology and Bombay Environmental; Action Group are permitted to file their affidavits through the amicus curiae.

List on 06.05.1997.

(Check the directions given in the book on Wildlife Laws: Ritwick Dutta)

I.A. No.:	Order Date: 07.05.1997	
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I.A. Nos. 1, 5, 5A, 15, 16, 19-23, 25-27, 29, 33-36, 52, 54-75, 77-89, 91-92, 93-95, 100, 104-110, 112-118, 120-122, 124-140, 150-169, 170-178, 179-206/97

List on 08.05.1997

I.A. No.:	Order Date: 08.05.1997	
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It has been brought to our notice that a PIL mater – Civil Rule (PIL) SH No. 1 of 1996, Paul Lyngdoh vs. State of Meghalaya & others – pending in the Shillong Bench of the Gauhati High Court, which has been filed by the Khasi Students Union is also a related mater. It is, therefore, appropriate that that matter is also heard by this Court as a connected matter. In view of the fact that in the matters pending in the Court every facet of the problem throughout the country is under consideration, it is appropriate that no aspect of this matter be considered separately by any other court in any form. Accordingly, we direct transfer of Civil Rule (PIL) SH No. 1 of 1996 to this Court. Notice of this order be given to the parties in that petition. The question of directing financial assistance to the Khasi Students Union for appearing before the Court would be considered on their appearance.

Report of the Committee for the North Eastern States shall form part of the record.

The confidential Report of the High Powered Committee for the North-Eastern Region (two copies) be kept in a sealed cover by the Registrar (Judicial).

After hearing the learned amicus curiae, the learned Attorney General and the other learned counsel, we direct as under:

A. In the State of Uttar Pradesh the following is permitted:

1. Principal Chief Conservator of Forest (PCCF) may, on a case to case basis, consider grant of permission to an existing licensed saw mill to relocate itself, provided that the relocated site is not within 10 km of any existing forest.
2. In alleviate the unintended hardship which may be caused to the ordinary populace in the hill areas who need forest produce for their survival, it is clarified as under:
 - a) Nothing contained in the orders passed by this court would prevent the UP Forest Corporation from directly undertaking the exercise of collecting forest produce including fallen wood (but not any felling or cutting of trees or timber) to the extent strictly necessary, and distributing the same ex-depot to the people living in the hill areas.
 - b) The forest corporation may, with the prior permission of the PCCF, remove dead or dry trees for supply in the same manner ex-depot to people residing in those areas. The Forest Corporation shall, (i) undertake such activity itself without engaging any outside agencies, and (ii) keep an account of the dead and dry trees felled and removed by them, and shall by way of an affidavit file the same in this Court.

B. In relation to the seven North-Eastern States, it is further directed as under:

- a) The ban of felling and transportation of trees and timber as already imposed shall continue.
- b) As directed by the High Powered Committee, the State Government shall take all measures necessary to bring the felled timber lying in the forest to the depots/storage points and have it stacked.
- c) After the process of inventerisation is over, the HPC may permit saw mills and other wood based industry to utilise their own legitimate stocks of timber for conversion into finished produce. Such finished produce may then be disposed of by these mills under supervision of the HPC and the State Forest Department. The permission granted by the HPC to these mills shall be on suitable terms to ensure that no malpractice occurs in the future, and the mills shall be required to file an undertaking to comply with such terms, any breach thereof having the same consequence as a breach of the order of this court.
- d) After the inventory of the felled timber gathered at the depots/storage points is complete, the HPC may permit sale of such rounded timber for utilisation within the State to the extent it is from a lawful source. The movement of rounded timber within the State as well as the movement of finished products within and outside the State shall be under transit passes – the issuance and disposal of which will be under the overall supervision of the HPC.

- e) No person other than a local inhabitant, a Forest Officer or Police Officer or any other personnel on official duty shall be permitted to enter the reserved forests except in accordance with permission in writing issued by the PCCF.
 - f) The ban on movement of cut trees, timber or veneer from any of the seven North Eastern States to any other State in the country in any manner applies to the grown and/or felled timber from any private plantation.
- C. In case the time specified for completion of the task by any of the Committees constituted pursuant to the orders of this Court has expired, the time is extended till the completion of the exercise by them or a period of three month.
- D. We also clarify that the Government of Maharashtra is permitted to consider grant of permission / licence to the Pune District Leprosy Committee to run their band(sic) saw mill. The State Government would consider the representations made to it and decide them expeditiously in accordance with and in conformity with the orders made by this court.

The earlier orders made by this Court would stand modified/clarified in the aforesaid manner.

List on 14.07.1997 for fixing a date.

I.A. No.:	Order Date: 14.07.1997	
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Confidential Report of the Committee in sealed cover is taken on record. The Registrar (Judicial) is directed to keep it in safe custody.

Learned Amicus Curiae has produced in the Court the Second Report of the High Powered Committee for North Eastern Region dated 12.07.1997 and invited our attention to para 2.23 thereof at page 15 of the Report. The Committee has mentioned therein failure of certain State Governments and other Authorities to comply with the directions given to them pursuant to this Court's orders. At this stage, it is sufficient for us to observe that the failure to comply with any such direction by any one is likely to be visited with penal and other consequences which may ensue from the failure of these authorities to comply with the directions given to them. We do hope, all the State Governments as well as the authorities concerned would do the needful to prevent this situation to their detriment.

List on 28.07.1997 for fixing a date.

I.A. No.:	Order Date: 28.07.1997	
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Order of this date is missing.

I.A. No.:	Order Date: 19.08.1997	
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"Having heard learned counsel for the parties and the learned Additional Solicitor General, we are satisfied that this Court's Order dated 13.09.1996 on I.A. No. 18 in W.P. (C) No. 4677/85 is in effect to govern the constructions made under the proposal of the Delhi Development Authority (DDA) called 'The International Hotels Complex' in South Delhi and mention of the area of 315 hectares in relation to that complex is inadvertent since the DDA's proposal itself excluded the constraint area described at page 33 of the paper book (page 13 of the booklet)

which is a total of 92 hectares including the shopping Mall and Hotel site of 25 hectares within which is located the site of the petitioner's proposed Hotel under construction in an area of 4 hectares. In other words, the proposal of the DDA called "The International Hotels Complex" in South Delhi is to be understood as that for the area of 315 - 92 = 223 hectares as shown in the DDA's proposal itself. This clarification of this Court's order dated 13.09.1996 has become necessary on account of the fact that the concerned authorities are construing the order dated 13.09.1996 to operate also in respect of the aforesaid constraint area of 92 hectares in addition to some other areas which are even outside the area of 315 hectares. However, it is made clear that the petitioner and all other similarly situated outside the 223 hectares of the area of the proposal of the DDA are required to abide by all the conditions of clearance from the environmental authorities including taking the measure necessary for checking pollution and other requirements of law.

In view of the manner in which this Court's aforesaid order dated 13.09.1996 is to be construed, the order of the Authority of 31.01.1997 and 07.03.1997 does not survive.

The Special Leave Petition is disposed of in these terms"

I.A. No.: 225	Order Date: 15.09.1997	
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I.A. No. 225 on the main writ petition be listed for hearing immediately after the conclusion of the hearing in W.P. (Cri.) No. 340-43/93.

I.A. No.:	Order Date: 26.09.1997	
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Learned Amicus Curiae is requested to look into this matter. Meanwhile, no action would be taken by the Government of Maharashtra to close down the unit at Konahwa run by the Pune District Leprosy Committee.

I.A. No.:	Order Date: 17.10.1997	
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List these and all other interlocutory applications along with the main matter.

I.A. No.:	Order Date: 07.11.1997	
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Mr Salve has produced a letter of Shri. T V Rajeshwar Chairman High Powered Committee dated 06.09.1997. We have perused the letter of Shri Rajeshwar is permitted to hand over charge of Chairman of High Powered committee to Shri R N Kaul with effect from 13.11.1997 till his return from his foreign trip.

I.A. No.:	Order Date: 16.12.1997	
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I.A. 225/97

Heard Shri Anil Dewan, learned counsel, for the applicant M/s Wimco Ltd., Attorney General and Mr. Salve, Amicus Curiae. The applicant company is permitted to close their operation in Dhubri factory in Assam in accordance with law applicable in this behalf. I.A. stands disposed of accordingly.

I.A. 108/97

No further order on this I.A. is necessary. It, therefore, stands disposed of.

I.A. 260/97

Heard Shri Raju Ramacandra, learned counsel for the State of Arunachal Pradesh, the learned Attorney General for the Union of India and Mr. Salve, learned Amicus Curiae. There are several reliefs claimed in this I.A.. One of them relates to illegally felled timber which is lying in the depots of the State and elsewhere within the forest area. The other relief relate to the legally felled timber, saw timber and veneer. We are of the view that at this stage an appropriate order should be made only in respect of the illegally felled timber lying anywhere within the forest area including the depots. The questions relating to the so called legally felled timber etc. shall be considered later after the exercise with regard to utilisation/disposal of the illegally felled timber has been completed. This order is, therefore confined only to the utilisation/disposal of the illegally felled timber.

It is clear that the ownership of all illegally felled timber within the forest area including that in the depots is of the state of Arunachal Pradesh and, therefore, the proceeds thereof must go to the State. In order to fetch a proper price for the same, it is necessary to make suitable directions for the disposal/utilisation of all such timber in a manner so that the proceeds thereof are available to the State Government. We, therefore, direct that all the illegally felled timber within the forest area including the depots would be sold by public auction at Delhi under the supervision of the High Powered Committee after permitting inspection of the same at the site to the intending bidders. The modalities for the performance of this exercise would be laid down by the HPC and the entire exercise of permitting inspection of the timber and its auction after due advertising, would be under the supervision of the HPC. We also direct that the State of Arunachal Pradesh and Union of India would render full assistance to the HPC in the performance of this exercise including the facilities for the removal of the purchased timber by the buyers thereof. The prohibition against movement of timber outside the North East region, enforced by the earlier orders, would stand modified only to this extent. The total sale proceeds of the said timber would go to the State of Arunachal Pradesh which will utilize one half of that amount for raising plantation by local tribal population within the State so that this part of the amount would be utilized only for the purpose of forestry and assistance to the local tribal population. The remaining one half of the total sale proceeds, after deduction of the expenses therefrom, would go to the State coffers for other developmental activities in the State. One getting a report from HPC of the completion of this exercise the IA shall be taken up for further orders.

The other North Eastern States which want any order to be passed in respect of the timber in their State, may respond to the comments of the HPC made in relation to it and also approach the HPC with their request to enable HPC to give its comments thereon. The request so made by concerned North Eastern States together with the comments of the HPC would then be considered for issuing the appropriate directions, if any. The State desirous of seeking any directions in this behalf, should approach the HPC within a week. The HPC is requested to give its comments till 05.01.1998. List on 06.01.1998.

I.A. No. 71, 79, 104, 105, 107, 113, 121, 166, 261/97

The interim report of the Lokayukta of Madhya Pradesh clearly holds that 849 trees in 'Bara Jhar ke Jangal' have been permitted to be felled for the benefit of one person, namely Shri Viren Netam, younger brother of Shri Arvind Netam, former Minister of the State Government and Shri Shiv Netam, Forest Minister, Government of MP. Particulars of the benefit derived by the Netam family have also been indicated. The report suggests that this happened because of the misuse of authority by these persons. We consider it expedient to know from the State of MP, the action, if any, taken by it against these persons and the others named in the report including Shri Narayan Singh, former Commissioner of Bastar and some other Government officials who facilitated the illegal felling of trees in the Bastar Forest. We, therefore, direct the Chief Secretary of the State to state an affidavit the steps, if any, taken by the State Government in this behalf. The affidavit be filed within two weeks. A copy of the report be furnished by the Registry to the standing counsel for the state of MP. Copies thereof be also furnished

to the learned attorney General and Amicus Curiae.

List on 06.01.1998.

I.A. No. 13/97

Taken on board. Issue notice.

I.A. No.:	Order Date: 07.01.1998	
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I.A. Nos.....in W.P. 202/95 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on board.

Learned Amicus Curiae states that he has been informed by Shri A.M. Khanwilkar, advocate that he himself saw large scale mining in forest area and reckless denuding of forests in villages Atri, Banjari and Banwari under Police State Halia in District Mirzapur, which is in flagrant violation of the orders made by this court from time to time.

Shri Anand, Secretary, Ministry of Environment, who is personally present, also inform us of illegal mining activity continuing in Doon Vally in spite of the orders made by this Court to prevent that illegal activity. These are matters which require urgent directions after ascertaining full facts. For the purpose we appoint a Committee consisting of Shri A.M. Khanwilkar and Shri Gopal Singh, advocates for this Court and an officer of the Ministry of Environment to be nominated by the Secretary. The Committee is requested to immediately visit those villages in Mirzapur District as well as the Doon Valley and to submit its report at the earliest. In the first instance, the expenses for the visits of the Committee would be incurred by the Government of India, which will also make all the necessary arrangements. The directions to the Government of UP to pay the amount so spent would be made later. The District Magistrate and the Superintendent of Police will render all assistance needed by this Committee for the performance of its task.

If the above allegations be true, it is indeed surprising that the Government of UP has not taken the preventive action so far. The Government of UP must report on affidavit of an officer of the rank not lower than Secretary to the Government the factual position as well as the action, if any, taken by the Government of UP so far. This be done by 12.01.1998.

List on 13.01.1998.

I.A. No..... of 1998 of W.P. (C) 202/95 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on board.

Learned Amicus Curiae has moved this application wherein it is suggested that each of the States and the Union Territories furnish the information called for in the questionnaire filed along with the application. We think it is necessary that this is done. Accordingly, it is directed that each of the states and the Union Territories furnish the information as required in the questionnaire within two months.

I.A. No. 60/1997 of W.P. (C) 202/95

Learned Amicus Curiae for directions being issued as mentioned the application, Shri G. L. Sanghi, learned counsel for the State of Madhya Pradesh has not objection to grant of prayers (1) and (3) in the I.A.. While the matter covered by prayer (2) is left by the Government of MP to the discretion of this Court for making such orders, as it may consider appropriate. Shri Sanghi also stated that the Government of MP has been actively pursuing the matter and is doing all that is necessary in the light of the report of the Lokayukta of Madhya Pradesh, but because of certain constraints, it has not been possible for the State Government to do all that is necessary in this behalf. Shri Sanghi stated on instructions that the Government of MP has no reservation in the matter and is committed to a full investigation into the matter, identification of all the culprits and necessary action including prosecution of the culprits so identified.

We are also informed that the Board of Revenue of MP is seized of the matters in which validity of the transactions of transfers by tribals is under consideration so that the question of restoration of the land to the original owner (tribal) on annulment of those transactions would depend on the outcome of those matters. Shri Sanghi stated that the appropriate procedure would be adopted to request the Board of Revenue to hear and decide all those matters at the earliest so that necessary action could be taken by the State Government as a follow up measure in the interest of the tribal land owners who have been duped in this manner by the transferees in contravention of the statutory provisions. In view of this statement made by learned counsel for the State of MP no order at this stage is called for on prayers (1) and (3) in the application. The same would be taken up for consideration after decision is rendered by the Board of Revenue in those matters. The Government of MP will report to this Court the decision of the Board of Revenue as soon as it is rendered.

Prayer No. (2) in the application is for a direction for investigation to be made by the Central Bureau of Investigation in the facts and circumstances of this case. We take note of the fact that the State Government in spite of its desire as reported to us, has been unable to deal with the matter expeditiously and have it investigated in the manner required in spite of the report of the Lokayukta of MP. In these circumstances, to uphold the rule of law, it is necessary that investigation into the entire matter covered by the report of the Lokayukta of MP be made by the CBI; and that the necessary follow up action including prosecution of the persons found involved should be made by the CBI. In view of the stand taken by the Government of MP and its obvious inability to complete the task expeditiously, we make this direction and require the CBI to undertake this task and complete it expeditiously.

A copy of the report of the Lokayukta of MP and the connected papers be sent to the Director, CBI with a copy of this order for prompt action.

Liberty is granted to the Director, CBI to seek any further directions which may be found necessary.

List on 13.01.1998.

I.A. No.:	Order Date: 13.01.1998	
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I.A. Nos. 71, 79, 104, 105, 107, 113, 121, 156, 260, 261, 262 and 263 in W.P. (C) 202/95

We have pursued the report of the Committee constituted by this Court's order dated 07.01.1998. The report given after visiting the site discloses in alarming situation of lawlessness requiring urgent drastic action to stop the illegal activities in the area in question. Shri I. K. Dalela, Director of Geology and Mining, Government of UP, is present in the Court. In response to our query as to when did he come to know for the first time of the illegal

mining activities in that area, he told us that it was only on Saturday, the 10.01.1998 the he came to know of this fact for the first time when the committee constituted by the Court visited the site. He also tells us that he has been in this office for the last 5 years. These facts to be taken in to account while fixing the responsibility of the persons responsible for commission of the illegalities and for conniving with the same. In view of the magnitude of the problem and the inaction of the authorities so far, the fact that the Director of Geology and Mining is even now most causal in his approach towards the problem, as is evident from his demeanor in court before us, we have no option except to require the personal presence of some of the senior most officers of the State Government before we issue further directions in the matter.

In these circumstances, we direct that the Chief Secretary of the Government of UP should remain personally present in the Court tomorrow (14.01.1998). The counsel for the State of UP would ensure the presence of the Chief Secretary by taking such steps as are necessary to inform him of this order.

The Director, Geology and Mining would also remain personally present in Court.

In view of the contents of the report of the Committee, particularly paragraphs 9 and 10 thereof, we also issue notice to Shri V.L. Das, Mining Officer of the area to show cause why proceedings to punish him for contempt of the Court should not be initiated against him. The reply be filed within 2 weeks.

The learned Amicus Curiae submitted that this morning Shri A.M. Khanwilkar, a member of the Committee has been informed on telephone that after the office bearers and other members of the Vindhya Kisan Sabha had met the committee members and apprised them of the facts, they have been threatened by some miscreants for having given information to the Committee. Amicus Curiae submitted that in these circumstances an appropriate order may be made to ensure proper protection and security to these persons and members of their family who have assisted the committee since they have been threatened on account of assistance they have rendered to the committee at the time of the spot inspection under the orders of this Court. We are of the opinion that said direction is required to be made immediately.

Accordingly we direct that the Director General of Police of U.P. and the concerned IGP of the zone will ensure proper protection and security being given to the office bearers of the Vindhya Kisan Sabha and Narsingh Singh, Netaji, Pushpraj Singh, Anand Shekhar and Secretary of Vindhya Kisan Sabha who have assisted the committee in the performance of its task under the orders of this Court. The learned counsel for the Government of UP will take immediate steps to apprise the concerned authorities of this direction to enable them to take immediate steps for this purpose.

The Conservator of Forests, Shri V. K. Thakur is present. We are informed that he has assisted the committee in the spot inspection. He reiterates the facts stated in the report of the committee. Shri Thakur further informs us that ever since he assumed this office about a year back, he had been protesting against the illegal mining activities and for this purpose he had also informed the mining department as well as the District Magistrate, but to no effect. We appreciate the work of the Conservator Shri Thakur in this direction and hope that he and other such officers would be able to do the needful hereafter.

List the matter tomorrow (14.01.1998)

I.A. /98 (FILED BY Mr. P. K. Manohar Advocate) in W.P. 202/95 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Issue notice to the Government of Karnataka through standing counsel. Reply be filed within 2 weeks.

Learned Attorney General submits that the perception of the Ministry of Environment and Forests is as under:

It has been estimated by the HPC that about 1.20 cubic meters of illicitly felled seized timber, belonging to the State Governments is lying in the forest and depots for varying periods of time between 1 to 2 years and is thereby getting degraded on account of decay and rotting of the wood. It is necessary to dispose it off at the earliest to minimize any further loss in its monetary value. There is, in addition, considerable quantity of timber used by the private industry and local people. In view of the approaching monsoon season (April 98) all such timber needs to be disposed off with urgency to save further loss in quality, as also in value, albeit with proper checks and balances.

Given the weak infrastructure in the North Eastern Region, it does not seem feasible to transport such huge quantities of timber for auction in markets outside the region in a short time. However there would be uncertainty of the response in timber market far away from the source of timber which has been subject to elements of degradation in varying degrees. There is also the likelihood of local resentment, in an otherwise sensitive area, if all such material is removed from the region without processing and value addition, which could be conceived as creating an adverse effect on the region economy.

Even though the proliferation of wood based industries has been the main cause of degradation of forests in the North Eastern States, considering the extent of forests (64% of the geographical area) and the dependence of the local people on the forest resources in the region it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries. However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated in the maintenance of environment and ecology as well as bonafide local needs.

There shall be no fresh felling in the forests belonging to the Government, District and Regional councils till the disposal of their existing stocks of legal and illegal timber.

In view of the multi-dimensional issue impinging upon forest protection, foolproof institutional arrangements need to be put in place, and made functional under the direct supervision of the North-East council (NEC). Technical backstopping in the forestry matter will be provided by MoEF by opening a separate cell in the Ministry under an officer of the rank of CCF and starting a satellite office of the Forest Survey of India at Shillong.

We appreciate the perception of MoEF as reflected by the learned Attorney General.

We have heard the Amicus Curiae, the learned Attorney General and learned counsel for North-Eastern States. In view of the report of the HPC and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North Eastern states, we consider it appropriate to make the following order:

1. Disposal of timber shall commence only after the concerned Principal Chief Conservator of Forests irrevocably certifies that inventorisation of all felled timber in the state has been completed.
2. As a first measure all inventorised timber including seized timber lying in the forest should be immediately transported to specified forest departments.
3. All illegal/illicit timber found in possession of an offender or abandoned in the forest shall be confiscated to the State Government and shall be disposed off in accordance with the procedure to be adopted for disposal of Government timber.

4. Out of the seized timber, logs found suitable for manufacture of veneer and plywood shall be processed by the State Government within their own factories and by hiring such facilities. The finished product can be marketed freely.
5. The remaining timber belonging to Government and District councils shall be first offered for sale to Government Depts. For their bonafide official use and the rest shall be sold in public action or through sealed tenders later fixing floor price by an Expert Committee with a representative from the MoEF. Private timber owners whose stocks have been cleared by HPC shall have the option of selling the timber either in the auctions organized by the State Forest Department/Forest Development Corporation or Direct.
6. The State Government shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests.
7. Timber as per inventory cleared by HPC may be allowed to –
 - a) Be converted/utilized if the unit is located within the notified industrial estate. As the relocation in proposed industrial estates may take some time, existing units with only legal stocks may convert this timber, as one time exception, notwithstanding anything contained in para 12 hereunder, till such stocks last subject to the maximum period as per the norms prescribed by the HPC (vide their III report), or six months whichever is less. Any stock remaining thereafter shall vest in the State Government. However, fresh trees/timber will be allotted to these units only when they start functioning within the designated industrial estates. The territorial Deputy Conservator of Forests/Divisional Forest Officer shall be responsible for ensuring that such units process the legal stocks only and will closely monitor the various transit permits (inward and outward) and maintenance of the prescribed records. All such records shall be countersigned (with date) by an officer not less than the rank of an Assistant Conservator of Forests.
 - b) allowed to be sold to other units, which are located in these industrial estates subject to the condition that such transactions are touted through an authority notified/constituted by the Principal Chief Conservator of Forests.
 - c) the State Government shall ensure disposal of illegal timber before permitting the conversion/disposal of legal/authorized timber available with the wood based industries.
8. Transportation of auctioned timber (as well as legal timber) including sawn timber outside the North-Eastern Region shall only be done through railways under the strict supervision of the Forest Department. The Railway Board shall give priority for providing rakes/wagons for such transportation.
9. Modalities for transportation of timber/timber products and alternative modes in case of difficulties in transportation by Railways, will be worked out by the State Government in concurrence of the Ministry of Environment and Forests.
10. Existing inventorised stock of timber originating from plantations in private and community holdings in the States of Meghalaya, Mizoram, Tripura, Manipur and Nagaland may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months.

Pricing of Timber

11. The State Governments shall ensure that timber/forest produce is supplied to industries, including Government Undertakings, at full market rate. The existing royalty shall be reviewed and revised upwardly by a committee

constituted under the Chairmanship of Principal Chief Conservator of Forests with representatives from the concerned Departments and shall also include a concerned Departments and shall also include a representative of Ministry of Environment and Forest. The price of timber for which royalty has not been realized in full shall also be reviewed by this committee and the concerned industry shall be required to pay the revised price or the royalty (including surcharge, fee etc.) whichever is higher after deducting the part royalty already paid.

Licensing

12. License given to all wood based industries shall stand suspended.
13. Wood based industries which have been cleared by the HPC without any penalty shall have the option to shift to industrial estates which shall be identified by the States within 45 days and developed within six months thereafter.
14. Units which have been penalized because they were found to exceed normal recovery norms, but were within 15% of the said norms, will have a right to approach the HPC on or before 09.02.1998. The HPC shall examine all relevant material in particular the income tax excise records for the preceding three years. The HPC shall dispose of all such applications within 45 days thereafter and such mills may be granted licence if the HPC finds that it is not against public interest so to do.
15. Units which have not furnished details/information to the HPC so far or which have not been cleared by the HPC shall not be granted any licence and the stocks in their custody if any, shall be confiscated to the State Governments. In case of leased mills belonging to corporations / trusts / cooperative societies owned / controlled / managed by the State Government and where the lessees have been penalized by the HPC, the leases shall stand revoked. Such mills shall, however be eligible for re-licensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government.
16. Units who do not want to shift to the designated industrial estates shall be allowed to wind up as per law.
17. Henceforth, licenses of units shall be renewed annually only in those cases where no irregularity is detected.
18. There shall be a complete moratorium on the issue of new licenses by the State Governments or any other authority for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed⁵²⁷ with the concurrence of Ministry of Environment and forest.
19. Number of wood based industries shall be determined strictly within the quantity of timber, which can be felled manually on sustainable basis as determined by the approved working plans from time to time. If it is found that units after relocation in industrial estate have excess capacity then their capacities shall be reduced pro-data remain within the sustainable levels.

Forest Protection

20. An action plan shall be prepared by the Principal Chief Conservator of Forest/Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable

⁵²⁷ The ban imposed on opening new saw mills/wood based industries and/or issuance of new licences in Nagaland State extended for another five year by order dated 30.10.2002

areas and quarterly report shall be submitted to the Central Government for approval. The approved plan together with the modifications if any, shall be acted upon.

21. To ensure protection of the forest wealth the forest officers in the North Eastern States may be empowered with authority to investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other states in the country.
22. The State Governments shall be responsible for providing all facilities including security and police force to strictly ensure forest protection measures to stop illicit felling, removal and utilization of such timber. The Chief Secretary shall review the various matters concerning forest protection and development in his state at least once every six months with senior forest officers up to the rank of conservator of forests. Region Chief Conservator of Forests or MoEF shall be invited to all such meetings.

Scientific Management of Forest

23. Working plans for all forest divisions shall be prepared by the State Governments and get approved from the Government of India. Forest working shall be carried out strictly in accordance with the approved prescriptions of the working plans. The working plans should be prepared within a period of two years. During the interregnum the forests shall be worked according to an annual felling program approved by the MoEF which shall be incorporated in the concerned working plan. In case of working plan is not prepared within this time frame, future feelings will remain suspended till the regular working plan is prepared and got approved.
24. The forests under the District, Regional and Village counsel shall be worked in accordance with working schemes which shall specify both the program for regeneration and harvesting and whose period shall not be less than 5 years.
25. The maximum permissible annual yield in the interim measures suggested above, shall not exceed the annual harvestable yield determined by MoEF. The plantation schemes raised on private and community holdings shall be excluded from these requirements but shall be regulated under respective State rules and regulations.
26. The State shall identify ecologically sensitive areas in consultation with leading institutions like the Indian Council of Forestry Research and Education, Wildlife Institute of India, North-Eastern Hill University, North Eastern Regional Institute of Science and Technology, leading NGO, etc. and ensure that such areas are totally excluded from any kind of exploitation. The minimum extent of such areas shall be 10% of the total forest area in the state.

Action against officials

27. The State government shall identify within 45 days all those forest divisions where significant illegal fellings have taken place and initiate disciplinary criminal proceedings against those found responsible. The first Action Taken Report (ATR) in this regard would be submitted to the Central Government within three months, which shall be followed by quarterly reports till the culmination of the matter.

General

28. Timber extracton in forests irrespective of ownership, except in private plantations shall be carried out by the State Agency only. The States shall endeavour to adopt pattern obtaining in the State of Himachal

Pradesh as described in para 2.5.3 or the Rajadani Committee Report. If there be any local laws/customs relating to the forest in any State, the concerned State Government may apply to this Court for the needed modification, if any, with alternative proposal.

29. The penalties levied on the wood based industries as ordered by the HPC shall constitute the revolving fund to meet the expenses involved in collection and transportation of seized illegal timber. These can be augmented by utilizing the funds generated by the initial sales of illegal timber already available in the forest depots.
30. Each State shall constitute a State Level Expert Committee for matters concerning the preparation of working with their implementation, development of industrial states, shifting of industrial units to these estates, rules and regulations regarding the grant and renewal of licenses to wood based industry and other ancillary matters under the Chairmanship of Principal Chief Conservator of Forests and with a nominee of MoEF as one of its members. Any decision of this Committee which is not acceptable to the state Government shall be referred to the Central Government.
31. The existing permit system in Arunachal Pradesh shall stand abolished. The State Government may provide financial assistance in cash or kind in the form of timber only for the bonafide use of the local tribals alone. Such concessional timber shall not be bartered or sold. Felling of trees for such purpose shall be carried out only by a Government agency.
32. The total sale proceeds from the sale of seized timber, as well as timber products manufactured and disposed by the State Government (vide para 4) and penalties would be credited to the State Revenues. Out of this, the State shall utilize one half of the amount for raising forest plantations by local tribal population and as assistance to the tribals. The remaining one half of the total sale proceeds, after deduction of the expenses there from, would go to the state coffers for other developmental activities in the State.
33. The State shall ensure that sufficient budgetary provisions are made for the preservation of biodiversity and protection of wildlife.
34. To ensure that timber / forest produce smuggled across the border may not be used as a cover for trade in illegal timber, it is directed that all such timber seized by customs / Border security force should not be redeemed in favour of individuals who are smuggling it but should be confiscated and handed over to the concerned State Forest Department along with offenders, vehicles, tools and implements for prosecution under the relevant acts.
35. For the proper and effective implementation of these orders, MoEF will have the liberty to issue suitable directions consistent with this order.
36. Action taken report be filed by each State Government and the MoEF every two monthly.
37. Liberty to apply for modification/clarification in case of good.

(Note: In this order the term 'State Government' would include District Council also except where the context implies otherwise.)

I.A. No.:	Order Date: 14.01.1998	
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I.A. Nos. 71, 79, 104, 105, 107, 113, 121, 156, 260, 261, 262 and 263 in W.P. 202/95

Mr. R. S. Mathur, the Chief Secretary of Government of Uttar Pradesh is present in person. He has orally apprised us of the action taken by the State Government in the last 16 hours after the order was made by this Court yesterday. An affidavit of an officer of the level not lower than the Secretary to the State Government be filed today giving details of the action so far taken by the State Government in this behalf. The Chief Secretary also informed us that action has already been taken to provide protection and security to the persons in compliance with this Court's order made yesterday. He added that further action is being taken by the State Government to fix the responsibility of the concerned officers of different departments whose acts and omissions enabled the commission and continuance of the illegalities in the area in question, in addition to taking the necessary steps by stopping those activities new. We are also informed by the Chief Secretary that the Area Mining Officer – Shri V.L. Das, has already been placed under suspension and the Director Geology and Mining Shri I. K. Dalela has been asked to give his explanation whereafter further action as found necessary would be taken. We direct that full details of all action taken hereafter be placed before the court on affidavit of an officer not below the rank of the Secretary to the State Government be filed on or before 22.01.1998.

In view of large quantities of illegally mined minerals admittedly lying in the area, as evident from the material produced before us, we direct the District Magistrate, Mirzapur, UP to seize the same forthwith together with instruments and vehicles used for commission of these illegal activities including vehicles used for transportation of the minerals. The District Magistrate will exercise these functions as a Commissioner of this Court. Particulars of the seized goods be furnished together with details of persons from whose possession they are seized by the District Magistrate on or before 22.01.1998.

The Chief Secretary assures us that the District Magistrate functioned in this capacity would be rendered full assistant by every department of the Government and all concerned to enable to perform this task expeditiously.

List on 23.01.1998 at 2.00 pm.

Arguments of the parties to suggest ways and means to dispose off the felled timber in the forests of North-Eastern Region are in progress. List on 15.01.1998.

I.A. No.:	Order Date: 15.01.1998	
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I.A. Nos. 71, 79, 104, 105, 107, 113, 121, 156, 260, 261, 262 and 263 in W.P. 202/95

In view of the report of the HPC, various directions have been issued for disposal of the felled timber which is lying in the North Eastern States in terms of the signed order.

I.A. 251 to 257 of 1997 (filed by Mr. Santosh Bharti and presented through Amicus Curiae)

Taken on Board.

Issue notice to the State of Madhya Pradesh, to be served on the standing counsel. List on 23.01.1998.

I.A. 104, 219, 260, 261 and 262

In view of the orders passed by us in W.P. (C) 202/95 and W.P.(C) 171/96, these applications stand disposed of.

Rest of the applications will be considered on the next date of hearing.

It is stated by Mr. P. K. Aggarwal, learned Senior counsel that our earlier orders directing payment of wages etc. to be made to the workmen have not been complied with by several employers. If that be so, particulars of such instances be given in writing within one week to the counsel for the concerned State Governments and the State Governments shall have the matter enquired into by its Labour Commissioner or a similar authority and submit the factual report within four weeks thereafter. The matter would be considered on receipt of the report.

List the matter on 28.01.1998, before a Bench consisting of Honorable Dr. Justice A. B. Anand, Honorable Mr. Justice B. N. Kirpal and Honorable Mr. Justice V. N. Khare.

I.A. No.:	Order Date: 23.01.1998	
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I.A No. 254-257 & 263

The District Magistrate, Mirzapur has submitted a report regarding seizure of illegally mined minerals, vehicles, etc.. A perusal of the report shows that large scale illegal mining activities have taken place. The seized materials shall remain in the custody of the District magistrate till further orders.

In the affidavit filed on 22.01.1998 by the Secretary, State of Uttar Pradesh, Department of Industrial Development, action taken between 14.01.1998 and 21.01.1998 has been indicated. In paragraph 4 of the affidavit it has been stated that in case crime No. 6 of 1998 out of 11 persons, against whom the case had been registered, four were arrested and 6 had surrendered in the Court. That so far as Mr. Manvendra Bahadur Singh is concerned, it is stated that the police teams were sent to apprehend him in Lucknow, Mirzapur, Allahabad and number of other places but he was not found. It is further stated in the affidavit that Mr. Manvendra Bahadur Singh filed a Criminal Writ Petition No. 132 of 1998 in the High Court of Allahabad on 19.01.1998 and an order came to be made thereon by the High Court on 20.01.1998.

Mr. Manvendra Bahadur Singh has voluntarily appeared in this Court today and has filed an affidavit. Mr. G. L. Sanghi, learned Senior Counsel appears for him. We have perused the copy of the writ petition filed in the High Court which was made made available to us by Mr.Sanghi and find that there is conspicuous silence in the writ petition about the proceedings pending in this Court as well as various orders made by this court from time to time. From a perusal of the order made in the writ petition by the High Court on 20th January 1998 it appears that additional Govt. Advocate was present in the court on behalf of the State. Presumably, the pendency of the proceedings in this court and various orders made from time to time were not within his knowledge and were, therefore, not brought to the notice of the High Court. Learned Counsel for the State submits that the State Govt. will immediately bring facts regarding the pendency of the proceedings in this court and various orders made by this court to the notice of the High Court at Allahabad.

Learned Amicus Curaie has drawn our attention to the complaint filed by one Vijay Singh son of Jagdish Singh regarding illicit mining activities being carried out in Banjari Kalan. A perusal of that complaint shows that besides other persons named therein, the name of Manvendra Bahadur Singh has been specifically mentioned. This complaint is dated 20.12.1997. According to Mr. Goel, learned counsel for the state of UP, FIR no. 5 of 1998 was registered on the basis of that complaint but we are surprised to find that the name of Manvendra Bahadur Singh does not figure in that FIR. The submission of Mr. Salve that his name appears to have been

deliberately left out cannot be said to be far fetched. The SHO concerned from Mirzapur, who registered the FIR on the basis of that complaint, shall file an affidavit in this court and explain the omission. The needful shall be done by him within two weeks. Learned State counsel shall communicate this order to the concerned SHO. The state of UP is also directed to file an affidavit of a competent police officer to disclose when and where search was made for apprehending Manvendra Bahadur Singh in connection with Crime Case 6 of 1998. The affidavit shall be filed in two weeks.

Learned counsel appearing for the State of Uttar Pradesh submits that enquiry report of the Commissioner, Varanasi Division has been received with regard to illegal mining activities. He shall file a copy of that report together with its translation within two weeks. This court shall also be informed by the next date as to what further action, if any, has been taken against Mr. Das, the Mining Officer. The State of Uttar Pradesh shall further state on an affidavit of a competent officer not below the rank of Secretary to the Govt. an up to date position regarding outstanding mining leases or quarry licenses which have been issued by the State of Uttar Pradesh throughout the State together with the details of the names of the parties. The same shall be filed within six weeks, as prayed for by learned counsel for the state. Since it is stated in the action taken report by the State of Uttar Pradesh that directions have been issued to immediately stop mining activities, we expect that the state shall take appropriate steps to see that those directions are carried out in letter and in spirit.

I.A. No. 278/1998

We have heard learned counsel for the State of Uttar Pradesh, learned Attorney General and the learned Amicus Curiae. In view of the difficulties explained in the application, in modification of our order dated 12.12.1997 and subsequent orders, we clarify that the local residents of Uttarakhand (8 Districts) shall be permitted to avail the rights and concessions in respect of forest produce meant for the bona fide personal use of local population in the regions which are located 1000 meters or more above the sea level. 32000 cubic meters of forest produce may be also utilized by them subject to the procedure as detailed in paragraph 4 of the application, which reads thus:

“To ensure that forest produce meant for bona fide personal use alone is used, there have always been in-built safeguards in the rules and practice followed by the Forest Department. As per the practice, indent comes through the village headmand and is examined by DFO who issues orders for marking of the forest produce to be granted / permitted for a particular village. After the marking, the collection of forest produce is overseen by government instrumentalities. The existing safeguard is working properly and check posts also exist to ensure that no misuse takes place.”

Care shall be taken to ensure that grant of rights to local populace of the hill areas does not adversely effect forest conservation in Uttarakhand area of the State of Uttar Pradesh.

I.A. stands disposed of.

I.A. No./98 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

The application for direction is taken on board.

Issue notice to the State of Jammu & Kashmir through the standing counsel. Notice shall be made returnable by 27.01.1998.

List on 28.01.1998 at 3.30 pm.

I.A. 254-257/1998

Issue notice to the State.

Mr. Sanghi, learned counsel appearing for the State of Madhya Pradesh accepts notice and prays for two weeks time to file objections. His prayer is allowed.

List after two weeks.

I.A. No.:	Order Date: 28.01.1998	
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I.A. Nos. 71,79,105,107,113,121 & 166 / W.P. (C) 202/95

List the matters tomorrow, the 29.01.1998 at 2.00 pm.

Mr. Das, the Mining Officer, to whom notice was issued by this Court to show cause why contempt proceedings be not initiated against him, shall remain present in court tomorrow.

I.A. No.:	Order Date: 29.01.1998	
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I.A. Nos. 71, 79, 105, 107, 113, 121 & 166 / W.P. (C) 202/95

Shri B.L. Das, Mining Officer, to whom notice was issued to show cause why proceedings to punish him for contempt of court, on 13.01.1998, be not initiated his present in court along with his counsel Mr. Raju Ramachandran, Senior advocate. Reply has not been filed till date. Mr. Raju Ramachandran submits that there has been some confusion in the matter of filing the reply because of the date given by the Registry of this Court in the formal notice issued to Shri Das. Though we are of the opinion that since Shri Das was present in court, when notice was given to him and, therefore, there was no scope for any confusion, but in the interest of Justice, we accede to the request of Mr. Raju Ramachandran and grant one week further time to Shri Das to file his reply.

We request Mr. Salve, learned senior advocate assisted by Mr. V. U. Lalit to assist the court in the contempt proceedings against Shri Das. The contempt proceedings shall be listed separately with a separate number from the Registry.

List the contempt case after three weeks.

I.A. No. 16

An affidavit has been filed by Mr. T.P. Singh, Law Officer, Forest Department Government of J&K. The same is taken on record.

After hearing learned counsel for the parties, it appears appropriate to us to stay the operation of the orders dated 10.08.1997 issued by the Government of J&K, Forest Department and the order dated 27.12.1997, issued by the Chief Conservator of Forests, Jammu, we further direct that there shall be no felling of the Khair trees nor any of the khair trees, if already felled, shall be removed from the forests. Notice shall issue to the

Contractor Shri Vijay Singh, S/o. Shri Rasal Singh and M/s. B.K. Katha (P) Ltd. to show cause why the orders/agreements for extraction of Khair trees issued in their favour be not cancelled.

We are not satisfied with the affidavit filed by Shri I. P. Singh, Mr. Mathur, learned counsel appearing for the State of J&K, submits that he may be granted some time to file a better affidavit. We grant his prayer and give him two weeks time to do the needful. Mr. Mathur shall also cause an affidavit of some competent official from the Forest Department of the Government of J&K to be filed disclosing whether any other agreements have been entered into with any other contractors for felling or removal of khair trees as also if any other orders have been issued in favour of any of the other parties relating to the felling and removal of khair trees. The particulars of all such cases shall be disclosed in the affidavit. The needful shall be done in three weeks.

List the I.A. after four weeks.

I.A. No.:	Order Date:12.02.1998	
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I.A No. 227/98

List on 23.02.1998 along with the main matter.

I.A. No.:	Order Date: 23.02.1998	
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Contempt Petition (C) 157/98 and W.P. (C) 202/95

In response to the contempt notice, reply affidavit has been filed by respondent, Shri V. L. Das. In our opinion this affidavit does not deal with all the allegations which have been made in the Report particularly those concerning him, Mr. Raju Ramachandran, learned senior counsel appearing for the respondent/contemnor submits that he may be permitted to file an additional affidavit clarifying the entire position. We allow his prayer. Let the needful be done within two weeks.

The contempt petition shall also be listed along with I.A. 263 on the date fixed in that I.A..

I.A. 254-257 & 278 in W.P. (C) 202/95

I.A. No. 254

In view of the orders made in I.A.255-257, no orders are required on this application. The application shall be consigned to records.

I.A. 255-257

Replies have been filed on behalf of the State of Madhya Pradesh to al the three interim applications. Copies of the replies have been furnished to Mr. Salve, learned amicus curiae. He submits that he may be granted a short adjournment to examine the replies and make further submission on the interim applications. We grant his prayer. The three interim applications shall be listed after two weeks.

I.A. No. 276

Reply affidavit has been filed on behalf of the State of Karnaaka. Copy of the same has been furnished to learned Amicus Curiae who prays for two weeks time to examine the reply and make further submissions.

List after two weeks.

I.A. No. 227

Dismissed.

I.A. No. 263

This I.A. shall also listed after two weeks along with I.A. 255-257.

Learned Amicus Curiae has drawn our attention to some of the photographs taken by the Members of the Task Force (wildlife sub group) during the site inspection in January 1998 and in December 1997. In Buffer Zone of Kanha National Part and in adjoining corridors in East Mandia Forests, Mr. Salve submits that these photographs depict that under the garb of removing infected saal trees, the trees which do not have any disease have also been cut and thereby orders of this Court have been frustrated and violated. The Report of the Task Force (wildlife Sub Group) is not available with the court or with the learned amicus curiae. Mr. Ahmad, learned Additional Solicitor General who appears for the Union of India shall furnish copies of the Task Force Report to learned amicus curiae and to the court within one week. A copy of the report shall also be furnished to learned counsel for the State of M.P.. Learned Additional Solicitor General submits that apart from the report of the Task Force, if there are any other reports or materials available with the Union Government, pertaining to the subject matter in issue, the same shall also be furnished to the Court as well as the learned amicus curiae during the time period.

Keeping in view the submissions made by the learned amicus curiae and with a view to see that no illegal felling of trees takes place, we restrain the State Government of MP and its functionaries to cut any trees hereafter, even if in the opinion of the State Government, the particular trees are considered to be deceased trees, till further orders.

This matter shall be listed on 26.02.1998 at 3.45 pm.

Report of the Commissioner, Varanasi Division has been received. Copy of the report has been furnished to learned Amicus Curiae. The same shall come up for consideration along with I.A. 263 on the date fixed in that I.A.

There is another aspect of the case which has caused us concern. The learned Amicus Curiae, Mr. Salve, has drawn our attention to the State of Forest Report, 1997. It is submitted that between 1995 and 1997, dense forest to the extent of 17777 sq. kms. has been lost to the country. This presents a rather dismal picture and in an alarming situation depicting deforestation on a large scale. We find from a perusal of the Report that major defaulters appear to be the States of Andhra Pradesh, Madhya Pradesh, Assam, Manipur, Nagaland, Orissa and Meghalaya. Copies of the State Forest Report 1997 have not been filed in the Court so far. The learned Additional Solicitor General undertakes to file the copies of the report within two weeks. Copies of the report shall also be furnished to learned counsel, appearing for the above-mentioned defaulting states so that they can explain the position of their respective states with regard to the deforestation of that magnitude.

List after two weeks.

Learned Amicus Curiae submit that he has received a telegram from which it is revealed that one Shri Ratneshwarnath of Kankar, Baster District has been arrested on 20.02.1998 and is being held at Jagdalpur. A copy of the telegram has been furnished to learned counsel for the State of Madhya Pradesh who shall ascertain the position and state an affidavit about the correct position. The needful shall be done on or before 26.02.1998.

List on 26.02.1998 for furnishing of the information regarding the detention/arrest of Shri Ratneshwarnath at 3.45 pm when the matter concerning the restrain order issued by us today to the State of Madhya Pradesh is listed.

A communication has been received from the Officer on Special Duty of the Lokayukta, Madhya Pradesh for extension of time to submit the report. The time is extended by six weeks. The learned Lokayukta shall be informed accordingly.

I.A. No.:	Order Date: 26.02.1998	
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Report of Task Force (Wildlife Sub Group) regarding felling of trees in Madhya Pradesh.

Telegram received by Ld. Amicus Curiae regarding detention/arrest of Shri Ratneshwarnath of Kankar In W.P.(C) 202/95.

Copies of the State of Forest Report, 1997 and the other documents recorded in the order dated 23.02.1998 have been filed in the Court by the learned Additional Solicitor General, Mr. Altaf Ahmed. Copies of the same have also been furnished to the learned Amicus Curiae as also to learned counsel for the State of MP.

An application has been filed through the learned Amicus Curiae for certain directions in the case of Saal trees, which are Borer infested and for stopping indiscriminate felling of Saal trees. According to Mr. Salve, under the cover of the borer epidemic, Saal trees which have the capacity to survive are also being indiscriminately cut. Mr. Sanghi, learned senior counsel appearing for the state of MP disputes the charge and takes notice of the application for directions. He undertakes to file response of the State Government by Monday, 02.03.1998. The application be listed for further orders on Tuesday, 03.03.1998 at 3.30 pm. In the meanwhile, we, however, consider it proper to direct the State of MP to stop felling of the 'infested trees' of any category. These directions, however, shall not come in the way of the State Government to remove the debris of the previously cut trees lying scattered on the forest floor and as a matter of fact we expect the State Government to take prompt and adequate steps to remove the debris.

In response to the notice concerning the arrest of Shri Ratneshwarnath, an affidavit is undertaken to be filed by the State during the course of the day. Copy of the same shall be furnished to learned amicus curiae. This matter shall also be listed on Tuesday, 03.03.1998 at 3.30 pm.

I.A. No.:	Order Date: 03.03.1998	
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Mr. Salve, learned amicus curiae submits that the Government of Assam has issued an order on 12.02.1998 whereby wood based units, which have been cleared by the HPC have been permitted to "procure further stocks" from any other units so cleared by the HPC and convert these procured stocks and dispose of finished stocks. It is submitted that under cover of the implementation of the order of this Court dated 15.01.1998 fresh activity appears to have been permitted to the units, which runs counter to the spirit of the order dated 15.01.1998. The learned Amicus Curiae submits that he shall file an appropriate I.A. in this connection and seek directions. We grant him permission to do so. He shall furnish a copy of the application to Mr. A.S. Bhasme, learned counsel for the State of Assam, who will have one week's time thereafter to file response of the Government to that application. Copy of the response by the Government of Assam shall be furnished to learned Amicus Curiae on or before 17.03.1998. I.A. shall be listed for orders after the Holi holidays, on a Friday at 2.00 pm.

I.A. No. 291

The Government of India, MoEF had constituted a Task Force vide Notification dated 16.01.1998 on SAL BORER

ATTACK IN MADHYA PRADESH. The Task Force submitted an interim report to the Government of India on 02.02.1998 which presented a rather disquietening picture. We need not go into the merits of that Report or examine its contents at this stage. Suffice it to notice that seven categories of infested trees have been identified by the Task Force, the extent of infestation being maximum in category 1 of the trees.

With a view to ensure that only infested trees are cut and such trees which, even if infested, are still capable of surviving or rejuvenation are not cut, we consider it appropriate to constitute a Committee to oversee the marking of the infested trees in the affected areas of the forest to be identified by the State of MP. The marking shall be done compartment-wise. The committee shall also supervise the categorization of the trees on being identified by the Forest Department of the MP Government at the time of marking of these trees.

We constitute that Committee with –

- Shri R. B. Lal, Director, Tropical Forest Research Institute, Jabalpur as the Chairman;
- One nominee of the Board of Indian Counsel of Forest Research Education, Dehradun, as the member; and
- Professor Mr. J. S. Singh, Head of the Department of Botany, Banaras Hindu University, Banaras, as the Second Member.

Shri Suresh Chand, conservator of forests, Regional Office, Bhopal, MoEF shall be the Member Secretary of the Committee. The Committee is requested to supervise the marking and categorization of the infested trees at the earliest. The state shall provide all possible assistance to the Committee as well as bear the total expense involved. The Coram of the Committee for the day to day functioning shall be three. The Committee shall submit its interim reports and the same shall be done fortnightly. The felling of trees of categories 1, 2 and 6 has mentioned by the Task Force, after the marking and categorization is completed in a particular compartment, is permitted to be undertaken by the State.

List after four weeks.

Regarding Telegram

We find that a case was registered against Shri Ratneshwarnath and he was arrested in that connection. He has since been released on bail. We need not, therefore, proceed with the matter any further.

I.A. No.:	Order Date: 23.03.1998	
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I.A. No. 263/98

An affidavit has been filed by Shri Pushp Raj Singh, s/o Shri Pradhuman Singh, who had assisted the Commission, which visited the village to find out the state of affairs about the illegal mining activities in the forest area. From a perusal of his affidavit, it transpires that Shri Pragya Ram Mishra, Chief Development Officer had been deputed by the District Magistrate to prepare a report which was to be submitted to this Court, but that report has not been forwarded and in the report submitted by the District Magistrate also there is no reference to the report of Shri Pragya Ram Mishra either. If what is stated in the affidavit is correct to any extent, it does portray a rather distressing situation. We direct learned counsel for the State of UP to produce the report in original received from Mr. Pragya Ram Mishra, Chief Development Officer in this Court on the next date in a sealed cover.

In the affidavit of Shri Pushp Raj Singh it has also been averred that illegally mixed materials, other than the ones which have been seized under directions of this Court, are still lying at various places in the District and the same have not been seized by the District Magistrate. This is stated in paragraph 7 of the affidavit. The total number of slabs is stated to be roughly about 50000. Mr. Adarsh Goel, Advocate appearing for the State of UP submits that after receipt of the copy of the affidavit of Shri Pushp Raj Singh, the Administration had instituted an enquiry into the factual aspects contained in the affidavit and that the result of that enquiry is being compiled and shall be filed

in this Court before the next date.

Let the report together with the report of Shri Pragya Ram Mishra in original be produced within 10 days.

I.A. No. 298/98 in I.A. No. 263/98

I.A. No. 298/98 seeking extension of time to submit the status report is allowed and the delay is condoned. The status report has since been filed. Mr. Salve has been provided with a copy of the status report relating to the mining leases or quarry licenses etc.. He submits that within 10 days he shall examine the report and made his submissions. This I.A. be listed along with the connected matters (arising out of I.A. No. 263/98).

I.A. No. 60

The Central Bureau of Investigation, Bhopal has forwarded to this Court a copy of the FIR registered on 27.01.1998. That has been taken on record.

Contempt Petition (C) 157/98 in W.P. (C) 202/95

An additional affidavit has been filed by Shri V. L. Das in response to the notice issued to him to show cause why contempt proceedings be not drawn up against him. In his affidavit it is averred by Shri Das that he had been complaining about illegal mining activities being carried out in forest area of Mirzapur District to the District Magistrate. It is also stated in the affidavit that he had been sending notes and also writing letters in that behalf to the administration. If the assertion is correct, the matter assumes serious proportions. It appears, therefore, appropriate to us to direct the District Magistrate to produce entire record concerning the mining activities in forest areas, Mirzapur District in general and the complaints and communications received from Shri Das in particular.

A copy of the additional affidavit as well as the earlier affidavit filed by Shri V. L. Das shall be forwarded to the District Magistrate, Mirzapur for such response as he may consider appropriate and necessary to make. Learned counsel for the State of UP submits that he shall communicate this order to the District Maistrate and have the record produced in this Court within two weeks.

The contempt petition No. 157/98 shall be listed separately after two weeks on a non-miscellaneous day.

I.A. No.:	Order Date: 25.03.1998	
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I.A No. 299

I.A. No. 299 of 1998 to be listed.

I.A. No.:	Order Date: 03.04.1998	
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I.A. No. 279-281 and 300

Status quo regarding possession be maintained till the matter comes up before the appropriate Bench on 27.04.1998.

I.A. No.:	Order Date: 15.04.1998	
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I.A No. 263 & 298

On 23rd March 1998, we had directed the learned counsel for the State of UP to produce the report sent by Pragaya Ram Misra, Chief Development Officer to the District Magistrate along with the affidavit / report disclosing what action, if any, was taken on that report. Mr. Goel has filed the report of the District Magistrate in Hindi with its English translation.

In the report, the steps taken on the District Magistrate in her capacity as the Court commissioner to seize various equipments used in illegal mining, vehicles i.e. trucks, tractors, camels etc. and material obtained from illegal mining i.e. stones, patia etc. have been detailed. In the report, the District magistrate has also controverted the stand taken by Shri Pushpa Raj Singh in his affidavit filed in this court. We shall revert to that aspect later on.

From the various reports affidavits and seizure memos filed in this court a clear picture of the extent of illegal mining and the damage done to the hills and forests does not clearly emerge. The picture is rather hazy and lot of grey areas have been left. The deforestation and illicit mining has caused immense damage to the environment and ecology. The identification of the persons including government officials involved in it has not been clearly disclosed. With a view to get complete picture of the extent of illegal mining done, deforestation and the damage to the hills and the forests and to identify the culprits as also the manner of restitution and reforestation it appears appropriate to us to appoint an independent commission which shall survey the area and submit a detailed report on all these aspects. We therefore, direct the Chief Secretary to the government of U.P to nominate a police officer not below the rank of an inspector general of police to conduct such a survey along with Shri Gangopadhyay Director Indira Gandhi National Forest Academy, Dehradun and submit a report on all aspects. Copies of various reports and affidavits already filed in this court along with the copies of the seizure memos shall be furnished by learned state counsel to the Commission through the Chief Secretary within 10 days. The commission may also seek assistance from Shri A.M Khanwilkar, Shri U U Lalit and Shri Gopal Singh, Advocates who are assisting the learned Amicus Curaie in this case while conducting the survey and assessing damages etc. The learned advocates above mentioned advocates may also make available to the Commission copies of the photographs, video cassettes and any other material which is likely to assist the Commission in submitting its complete report. The entire material maybe given to Shri AK Goel, learned counsel for the state of U.P who shall forward the same to the Commission through the Chief Secretary. The expense which may be incurred by the learned advocates shall be reimbursed to them by the state of UP. The Commission shall submit its report within six weeks. The expenses in so far as the Commission work is concerned including the fee and other expenses of Shri Gangopadhyay shall be borne by the state of U.P. on being so intimated. The fee and the expenses of the learned advocates (mentioned above) who maybe called upon to assist the Commission shall also be borne by the State of U.P.

The learned District Magistrate as Commissioner of this court has seized various materials. All those materials are hereby attached till further orders. Any seizure hereinafter made by the District Magistrate or by the Commission also stand attached immediately on such seizure being effected. Directions to deal with the material shall be issued after receipt of the report from the Commission.

Some more seizure memos have been filed by Shri AK Goel in the court today. The same shall be taken on record.

On 23 March, 1998 we had also directed that a copy of the affidavit of Shri Puspa Raj Singh be furnished to the learned counsel for the state of M.P. who may respond to the allegations which concern to the state of M.P. particularly those contained in paragraph 8 of the affidavit. In response thereto, an affidavit has been filed by Shri A.P.S Chauhan, Conservator of Forests, Sagar Circle, Sagar, MP. In paragraph 2 of the affidavit it has been deposed that a team had gone to the site of Lodhi village on 27.3.98 and made enquiries and that it was found that no illegal transportation of illegally acquired slabs had been made into Madhya Pradesh from the report of the District Magistrate filed today it transpires trucks have access to illegal mining area via M.P and that the people belonging to Humana town of Madhya Pradesh indulge in illegal mining activities also which activity has been going for a long time. Likewise, it has also been stated in the report that transportation of illegally extracted mines and minerals takes place through the borders of Madhya Pradesh. The Affidavit of Shri APS Chauhan is rather cryptic and conceals more than what it reveals. We are not satisfied with it. We accept a better affidavit and a clear disclosure from an officer of the rank of Conservator of Forest. Shri AK Agnihotri, learned counsel appearing for the state of MP submits that he realizes that the affidavit of Shri Chauhan is not a complete affidavit and prays for a short adjournment to enable the conservator of Forest to file a detailed affidavit in this on behalf keeping in view the observations made by us in our earlier order. We grant him two weeks time to file the affidavit and we emphasize that we expect a complete and full disclosure to be made in the affidavit.

Shri O.P Dube, Officer on Special Duty Lokayukt Karyalaya has addressed a letter dated 6 th April 1998 to this court seeking extension of time by one month for submitting his report. We grant his prayer Shri Dube shall be accordingly informed. List after six weeks.

I.A. No.:	Order Date: 04.05.1998	
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I.A. 12 to 16 and Contempt Petition (C) 539-96 in W.P.(C) 171/96

We have heard Mr. Salve, learned Amicus Curiae and Mr. Dipankar Gupta, learned Senior counsel appearing for the officials of the State of Jammu and Kashmir in these applications. Prima facie it appears to us that the categorical and specific directions given by this court on 10.05.1996 and subsequently on 12.12.1996 and 04.03.1997 have been respected in their breach. Before we proceed to deal with the matter further, learned counsel for the State of Jammu and Kashmir is directed to indicate the names of the officers who issued various administrative orders based on which permission to fell and remove khair trees was given.

The needful shall be done by Mr. Gupta by tomorrow.

I.A. No.:	Order Date: 05.05.1998	
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I.A. No. 60

The Final Report of the Bastar Malik Makbuja Enquiry Committee with comments of the learned Lokayukta, Madhya Pradesh has been received from the Office of the Lokayukta, Madhya Pradesh. Learned counsel for the parties are permitted to examine the report and in case they want copies of the report, the same shall be made available to them on payment. So far as the supply of copy to the learned amicus curiae is concerned, the same shall be made without payment. Learned counsel may after examining the report, file their response, if any, within eight weeks.

List after eight weeks.

I.A. No. 166

Mr. Sanghi, learned Senior Counsel appearing for the State of MP submits that a detailed affidavit giving the difficulties being experienced by the tribals in the area on account of the order of this Court and suggesting certain remedial steps shall be filed within eight weeks. Its advance copy shall be served on Mr. Lalit.

List after eight weeks.

I.A. No. 291

The third interim report has been furnished by the Committee appointed by this Court after visiting the borer-affected areas on 27.04.1998 and 28.04.1998. According to the committee, some more detailed study is required to be undertaken. We request the committee to do the needful and furnish their report within eight weeks.

It appears that Prof. J.S. Singh, head Department of Botany, Banaras Hindu University, Varanasi has expressed his inability to join the committee because of his pre-engagements. Learned counsel appearing before us may suggest a substitute for Mr. Singh. List on 12.05.1998 for nominating a substitute in place of Prof. Singh.

I.A. No. 276

This application presents rather a disturbing picture of the manner in which forests in Chaikamagalur division have been denuded. It appears that forests have been destroyed and fragmented due to encroachments for growing coffee plantation and agriculture etc. The affidavit filed by Mr. Prasad on behalf of the State of Karnataka on 04.02.1998 does not make us any wiser about the effective steps taken by the State to prevent deforestation, remove encroachments and restore the forests to its original position. Mr. Magaraja, learned counsel granted one week's time to file a proper affidavit giving all details. Besides giving the status report it shall also be disclosed in the affidavit as to why action under section 64A of the Karnataka Forest Act, 1963 has not been taken against the encroachers, even though as many as 416 cases of encroachment are reported to have been detected by the State Government itself. It is stated that cases have been registered and in some cases even charge sheets have been filed. Mr. Magaraja shall inform us the progress made in all such cases.

On 12.12.1996, directions were issued by this Court banning the felling of trees all over the country including in the State of Karnataka to save forests and prevent deforestation. The State of Forest Report 1997, however, discloses that the area of forest has come down by 5 sq. km. in 1997. Obviously, trees have been permitted to be felled after the order of this Court dated 12.12.1996 in violation of that order. Before we proceed to bring to book the violators, we grant an opportunity to the State of Karnataka to explain its position in the light of the 1997 status report. The learned amicus curiae submits that because of the violation of the orders of this court and the inaction on the part of the state to protect the forests in Karnataka, a District Judge may be appointed as a Receiver for the entire area of erstwhile forests. We shall examine that request at a later stage.

I.A. No. 385

This order will dispose of I.A. No. 385 of 1997 filed by the State of UP seeking certain directions and modifications of our earlier order.

On 08.05.1997, this Court permitted the Principal Chief Conservator of Forest of the State of UP on case to case basis, it consider grant of permission to an existing licensee of saw mill to relocate itself, provided that the relocated site is not within 10 km of any existing forest. Mr. Goel, learned counsel for the State of UP submits that modification is necessary to be made that the area of 10 km would not include trees standing on either or both

sides of the road and Railways. We clarify that the direction dated 08.05.1997 not to relocate the saw mill within 10 km of any existing forest, excluding the trees on either side of the roads and the railways outside the existing forests and the 10 km ban be considered in that light.

Mr. Goel further submits that the State Government has examined the rules on the subject and is of the opinion that the rules require to be amended and a cabinet decision has been taken to amend the rules but before notifying the same to bring it to the notice of this court, and seek permission.

We allow the state Government to amend the relevant rules in accordance with the law keeping in view various orders and directions issued by this court from time to time on the subject. It is, however, made clear that the permission hereby granted is not in dilution of any order passed by this court on this subject. We also clarify that by the grant of this permission, we should not be taken to have pronounced as the validity or otherwise of the Rules nor expressed any opinion on the correctness or otherwise on the proposed amendments.

In case any other clarification or modification is required of the earlier orders of this court, the State of UP shall be at liberty to file an appropriate application in that behalf.

Application (I.A. 385) is disposed of.

I.A. No. 16 in W.P. (C) No. 171/96

We have heard Mr. Dipankar Gupta, learned Senior Counsel appearing for the officials of the State Government who have filed their counters in response to the notice issued by this Court. We have also heard Mr. T. R. Andhyarujina, learned Senior Counsel representing Mr. B.A. Karimi, the Managing Director of M/s. Bekay Katha Pvt. Ltd., who has filed an affidavit in this Court on March 1998.

Mr. Dipankar Gupta, in response to the directions issued to him by us on 4th of May, has brought to our notice various steps which are taken by the Administrative Dept. and the Forest Dept. of the State of J&K after the order of this Court dated 10.05.1996, 12.12.1996 and 04.03.1997.

From the perusal of the office notings, it appears that M/s. Bekay Katha Pvt. Ltd. represented to the State Government vide letter dated 18.03.1997 that this Court had exempted 'minor forest produce from the ban on fellings' vide order dated 04.03.1997. On the basis of that representation, an office note was prepared in which para 65 read thus:

"Katha is a minor forest produce. The katha is manufactured from the Khair wood. In pursuance of the order dated 04.03.1997 there is now no ban on the felling of khair trees from the forest areas as per the working plan".

This note was put up before Mr. S.R. Bhagat, the then Additional Secretary, Forests, who on 20.03.1997 directed the forwarding of the representation of M/s. Bekay Katha Pvt. Ltd. to the Principal Chief Conservator of Forest for necessary action, keeping in view the Supreme Court orders and the contractual obligations. The file was then put up before Mr. Vijay Bakaya, Additional Chief Secretary, Forests who recorded in para 58 of the noting as follows:

"This is a matter of interpretation of whether 'Khair' can be treated as minor forest produce. Let us discuss on 25.03.1997 at 3.00 pm with PCCF, MDSFC, Conservator working plan."

Opinion was thereafter sought from ICFR&E, Dehradun as to whether 'khair' tree was a MFP.

After the matter was referred to the Indian Council for Forestry Research & Education, another note appears to have been prepared by the office and submitted to Shri Bhagat, Additional Secretary, Forests in para 70 of the noting it is recorded:

"In view of the above opinion of the Indian Council for Forestry Research and Education, Khair is a minor forest produce and in terms of the order dated 04.03.1997 passed by the Supreme Court of India there is now no ban on extraction of MFPs from the forest areas".

Mr. Vijay Bakaya, the Additional Chief Secretary suggests in para 75 of the note observed:

"This issue was discussed at length with all the officers of the department. They were of the view that as per the books on the subject, only Katha is MFP and their tree is timber and therefore Supreme Court direction on MFP is

....."

However, in spite of the above observation, we find that directions were issued to allow khair trees to be felled for extraction of Katha to M/s. Bekay Katha Pvt. Ltd.

The noting in paragraph 65 (supra) to the effect that Katha is a minor forest produce and that it is manufactured from Khair wood read with the noting in paragraph 75, in which it is categorically recorded that even as per the books on the subject, it is only Katha, which is minor forest produce while Khair is timber go to show that the distinction was very much present to the minds of the officials and they were also conscious of the fact that the order of this Court dated 04.03.1997 was not applicable to Khair trees vide orders of the Court dated 10.05.1996 and 12.12.1996 ban was placed on felling of various trees including Khair trees. The order dated 04.03.1997 did not lift the ban on the felling of Khair trees and yet the State Government Officials allowed the felling of Khair trees. Prima facie, we are satisfied that there has been a deliberate attempt to circumvent the order of this Court and there has been a willful breach of the orders of this Court. We therefore, consider it appropriate to issue notice to M/s. S. R. Bhagat, Vijay Bakaya and R. A. Karimi, Managing Director of M/s. Bekay Katha Pvt. Ltd to show cause why contempt proceedings be not initiated against them. (At this stage, we refrain from issuing any notice to M/s. P. P. Sharma, M. A. Bukhari and Bharathi who are present in court). The notice shall be returnable within six weeks. All the three alleged contemnors shall be personally present in the Court on 28th July at 2.00 pm. The State Government shall produce the file (which has been shown to us) relating to the subject, which contains the noting referred to by us in our order as also the letter of M/s. Bekay Katha Pvt. Ltd. dated 18.07.1997, available on the next date.

Mr. H.N. Salve, learned Senior Counsel, Mr. V. U. Lalit, learned counsel and Ms. Shabnam Lone, learned counsel are requested to assist the court in the contempt proceedings. Learned counsel are present and accept this assignment. Advance copy of the reply affidavit of M/s. Bhagat, Bakaya and Karimi shall be served on Mr. Lalit. The contempt proceedings shall to separately numbered under the title "In re. S.R. Bhagat & Crs."

List on 28.07.1998 at 2.00 pm.

I.A. No. 13

The prayer in this application is to direct the State Government to implement the directions of this Court and to relocate the band saw mills in specified sawmills zone and to pass such other further orders.

We have heard learned amicus curiae Mr. Salve and the learned Advocate General of J&K Mr. Salaria.

Mr. Salaria submits that he would furnish a status report supported by the affidavit of a competent officer of the State Government to indicate now the direction of this Court, with regard to relocation of the band saw mills have been carried out and to what extent. He is granted six weeks time to furnish the status report along with the affidavit with an advance copy to Ms. Shabnam Lone, who assists the learned amicus curiae in this case.

We clarify that the directions regarding the relocation of band saw mills is only in respect of such band saw mills which are licensed. These directions would not apply to the unlicensed or illegally set up band saw mills. The State Government shall be at liberty to remove/demolish or stop the unlicensed and/or illegally set up band saw mills in accordance with law.

Mr. Salaria submits that the list of band saw mills attached to the application is vague and essential details are wanting. Ms. Shabnam Lone is directed to furnish a list of the applicants together with their licence numbers and the electric connection numbers of the band mills to the learned Advocate General of the State to enable them to identify the saw mills band so that the needful shall be done by her within two weeks.

List on 28.07.1998 at 2.00 pm.

I.A. No. 12

On 12.12.1998 we gave the following directions:-

"The movement of trees or timber (sawn or otherwise) from the State shall for the present, standing suspended except for the use of DGS&D, Railways and Defence. Any such movement for such use will –

- a) be effected after due certification, consignmentwise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and
- b) be undertaken by either the Corporation itself, the J&K Forest Department or the receiving agency".

The State of J&K was directed to file within one month a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transportation outside the State (other than for consumption by the DGS &D, Railways and Defence). That affidavit has not so far been filed. We cannot therefore, make any progress in so far as this application is concerned. The learned Advocate General of the State of J&K, who is present, submits that a detailed affidavit clarifying the entire position shall be filed within six weeks. We allow him to do the needful. An advance copy shall be served on Mr. Lalit.

We find from the record of I.A. No. 12 that an additional affidavit has been included in the paper book which was filed by the applicants on 19.03.1998. Its copy has not been served on Mr. Lalit, assisting the learned amicus curiae. (The registry is directed not to receive any affidavit or application from any private party unless its copy has been served in advance on Mr. Lalit assisting the learned Amicus curiae). Mr. Altaf Naik submits that he shall serve a copy of the addition affidavit on the learned Advocate General for the State of J&K and Mr. Lalit, within one week.

List on 28.07.1998 at 2.00 pm.

I.A. No. 14 & 15

These I.A., which have been filed for implement and directions by some private parties do not require any consideration by us. These petitions are rejected and consigned to record.

I.A. No.:	Order Date: 28.05.1998	
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(With applications, for consideration of letter dated 24.05.1998 for extension of time received from M/s. P. B. Gangopadhyay & S.C. Chobe, Member of the Commission appointed by Honorable Supreme Court in I.A. 263 in W.P.(C) 202/95 with office report)

Time has prayed for is extended.

I.A. No.:	Order Date: 10.06.1998	
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(For consideration of letter dated 07.06.1998 received from P. B. Gangopadhyay, Member of the Commission for further extension of time to submit report with office report)

As prayed for the time is extended till 30.06.1998.

I.A. No.:	Order Date: 22.06.1998	
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List in the first week after re-opening of the Court.

I.A. No.:	Order Date: 06.07.1998	
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I.A No. 391

List the matter immediately after reopening.

I.A. No.:	Order Date: 16.07.1998	
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I.A No. 391 in 291

Mr. H.N. Salve, learned amicus curiae takes notice of the application and prays for a short time to file the reply. He submits that the reply shall be filed by Monday, the 20.07.1998.

After hearing learned counsel for the parties, it appears appropriate to us to direct the Committee headed by Shri R.B. Lal to advise us whether the purpose for which this application has been filed namely to cut one or two live trees which contain sap per ha to catch Sal borers beetles can be served by permitting cutting of category-II trees, in which we are told by the learned amicus curiae sap is also available.

In case the category-II trees can serve the purpose, the Committee shall permit the felling of such trees to the minimum extent possible under their supervision. However, if the Committee is of the opinion that the felling of Category II trees would not serve the purpose and trees of some other category are required to be felled to achieve the objective, they may inform this Court by Monday, the 20.07.1998 and if necessary then by fax addressed to the Registrar General of this Court.

Post on Tuesday, the 21.07.1998 at 2.00 pm for further orders.

I.A. No.:	Order Date: 20.07.1998	
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Writ Petition (C) 551 of 1997

List this petition along with W.P. (C) 202/95

Writ Petition (C) 749 of 1995

A communication has been received from the learned District Judge, Dehradun, seeking four months time, as prayed for, is granted. The District Judge shall be informed.

Writ Petition (C) 469/96 & CPs. 14-134/98 in W.P.(C) 749/95

List along with W.P.(C) 749/95.

I.A. No.:	Order Date: 21.07.1998	
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I.A No. 391 in 291

Through this application for directions, the State of MP seeks permission to cut trees for the purpose of catching and killing adult insect by using 'trap-tree operation' to prevent further growth of Sal borer.

On 16.07.1998, we had requested the Committee headed by Shri R.B. Lal to advise us whether the purpose for which the application had been filed could be served by permitting cutting and felling of category-II trees and if not, to indicate how the purpose could be achieved. The Committee has submitted its report on 18.07.1998.

We have perused the report and heard learned counsel for the parties.

Keeping in view the report of the Committee and in order to arrest the epidemic, we permit the State of MP to

fell and use Category-IV trees for use as trap trees. In addition, they may also fell and utilize unsound or injured and wind fallen trees as trap trees. The trees shall be cut, one tree per two hectares, as suggested by the Committee. The felling shall be done under the supervision of the Committee and the State shall inform this court about the total number of trees which are felled and used, including trees which are of unsound, injured or wind fallen condition. The area from where felling takes place shall also be indicated. The information shall be supplied before the next date.

List the mater after ten days.

I.A. No.:	Order Date: 28.07.1998	
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I.A. No. 264

Directions issued by this court on 07.01.1998 to various States and Union Territories to file their response to the questionnaire have not evoked response from the States/Union Territories of Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, J&K, Karnataka, Kerala, Maharashtra, Meghalaya, Nagaland, Punjab, Tamil Nadu, Tripura, Uttar Pradesh, National Capital Territory of Delhi, Andaman & Nicobar Islands, Chandigarh and Pondicherry. Learned Counsel appearing for the defaulting States/Union Territories pray for and are granted four weeks time to file their response to the questionnaire. This shall be treated as the final opportunity for doing the needful.

I.A. 276

Mr. H. N. Salve, Learned Amicus Curiae started his arguments at 2.00 pm and was on his legs when the court rose for the day. The matter remained part heard.

I.A. No.:	Order Date: 29.07.1998	
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I.A. No. 276

We have perused the affidavits filed on behalf of the State of Karnataka on 12.05.1998 and 24.07.1998. Whereas both the affidavits reveal that there has been encroachment of the forest land all over the State and that the encroachment has existed prior to 1978 and has continued till 1997. We are unable to find out the total extent of such encroachment, as that has not been disclosed in the affidavits. We, therefore, direct the State of Karnataka to file an affidavit, indicating the total extent of encroachment of the forest land: (1) as was existing prior to 27.04.1978 all over the State; (2) the position of total encroachment as existing in 1988 and (3) the extent of encroachment which has taken place till 1997. The information shall be furnished district wise. The affidavit shall also disclose the steps taken by the State to retrieve the encroachment and preventive measures taken for be referred to the Government of India to regularize the encroachment which had occurred after 1978, till date. The State shall also indicate the non forestry use to which the encroached land has been put by the encroachers and, in particular, where coffee plantation has taken place. The extent of that area, together with the details of the encroachers shall be furnished in that affidavit.

We notice from the affidavit already filed that a joint survey had been conducted by the ADIR, Revenue Department and the Forest Department. The report of joint survey, however, is not placed on the record. The State of Karnataka is directed to furnish a copy of the report.

The learned Amicus Curiae has brought to our notice that so far as Thatkola Reserve Forest is concerned, in District Chickmagalur, there has been large scale deforestation even after the order of this court prohibition the felling of trees were made.

We appoint Mr. R. M. N. Sahai, Conservator of Forests, as the Commissioner of the Court, and direct that Mr. Sahai shall immediately go to Thatkola Reserve Forest and give a report about the present state of affairs in that forest. The needful shall be done by him within two weeks. Learned counsel for the state of Karnataka undertakes to apprise Mr. Sahai of this order and offer all possible assistance to him to undertake the task assigned by us to enable him to file the status report.

We consider it appropriate to restrain each and every person occupying and part of the forest land in the State of Karnataka not to change the nature of that 'encroachment' during the pendency of these proceedings. The directions hereinabove given with regard to the maintenance of status-quo by the encroachers on the encroached forest land would not imply that legal proceedings initiated against them have been stayed. Those proceedings shall continue. The directions given by us shall be widely publicized by the State for the knowledge of the encroachers.

Let the affidavit be filed by the State within six weeks.

I.A. 279-281 & 300

We have heard learned counsel for the parties in these applications. The applicants were served with a notice dated 13.01.1997 by the Range Forest Officer calling upon them to remove their encroachments within 24 hours of the receipt of the notice, as it was found that they had unlawfully trespassed into the forest land. In stead of showing cause to the Range Forest Officer, the applicants rushed to the High Court of Gujarat through various special Civil Applications. By an order dated 09.07.1997 the Division Bench of the High Court dismissed the Special Civil Applications with the observation that they did not find any good ground to entertain those petitions at this stage. Since the applicants had rushed to the High Court against the issuance of notice by the forest range officer without having given any response to the notice, the High court rightly dismissed their Special Civil Applications. We find no fault with the order the High Court dated 09.07.1997.

Learned counsel for the applicants submits that the applicants belong to socially and economically backward classes and that they would show cause to the Range Forest Officer against their eviction and may be granted some time to present their case to the Range Forest Officer against the notice dated 13.01.1997. He further states that no clarification, as sought for, in the present applications is necessary in view of the provisions of the Act. We agree, in the interest of justice, to grant applicants two weeks time to show cause to the Range Forest Officer against the notice dated 13.01.1997. Mr. Dave, learned Senior counsel appearing for the State of Gujarat submits that in the interest of justice and to be fair to the applicants, the State shall not take steps to forcibly dispossess the applicants during the aforesaid period of two weeks to enable them to approach the Forest Range Officer. We record his submission.

With the aforesaid directions I.As are disposed of.

I.A. 166 & 255-257

Adjourned. List again.

Suo Motu Contempt Petition (C) 290-292/98 and I.A. No.16

The respondents to whom notices were issued to show cause by proceedings under the contempt of Courts Act be not taken against them are present along with their counsel. The Advocate General for the State of J&K is also present.

The respondents have tendered apologies and have also filed their written apology on behalf of the respondents in the Court also and submit that the respondents are truly repentant.

We adjourn the consideration of the contempt petition by three weeks and in the meanwhile direct learned counsel for the respondents to have a conference with learned amicus curiae and show him the records concerning the case before the next date so as to find out the extent and the manner in which restitution can take place.

Mr. Dipankar Gupta, Learned Senior counsel appearing for the respondents and the learned Advocate General for the State of J&K submit that the State Government shall ensure that there is no felling of any Khair trees from the forests or from private land until the issue is decided by this Court. We record their assurance.

List on 03.09.1998 along with I.A. No. 12, 13 and Contempt Petition 539 of 1996.

I.A. No.:	Order Date: 30.07.1998	
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State of Forest Report – W.P.(C) 202/95

In spite of the directions given on 23.02.1998, the state of A.P., Assam and Meghalaya have not filed the reports. Learned counsel appearing for these States pray for some more time to file the reports. Four weeks time as prayed for, is granted subject to payment of Rs. 2000/- as costs by each one of the defaulting States.

So far as the State of Orissa is concerned, not only they have not filed the report but nobody appears on its behalf today either. A direction shall issue to the Chief Secretary, State of Orissa, to have the report filed in this court in accordance with the directions issued on 23.02.1998 by the next date. The State of Orissa shall pay Rs.5000/- as costs for this adjournment.

The costs shall be deposited by all the defaulting States in the Registry within four weeks. Directions for disbursement of the costs shall be given later.

I.A. No. 263, 298 & 392

A copy of the report submitted by the Committee comprising of Mr. P.B. Gangopadhyay and Mr. B.C. Ghouse, which has been filed in this Court, shall be furnished by the Registry to the learned Amicus Curiae. The applications be listed for further directions on a date to be fixed by the Registry on being intimated by the learned Amicus Curiae.

I.A. No. 60

Pursuant to the directions of this court, dated 07.01.1998 in I.A. 60 report of the Lokayukta, Madhya Pradesh, along with connected papers were forwarded to the Director, Central Bureau of Investigation. Final report from the Lokayukta, MP has now been received with a covering letter from Mr. O.P. Dubey. Copy of the final report shall also be forwarded to the Director, CBI for necessary action/investigation.

Suo-Motu Contempt Petition 157/98

List the contempt petition after eight weeks.

I.A. No. 299

List next week. Mr. Lalit may convey to the Registry the date of the next week for taking up this application.

I.A. No.:	Order Date: 06.08.1998	
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I.A. No. 299

In paragraph 8 of the application, seeking clarification/modification of the order dated 15.01.1998, it is stated that a large quantity of legally fell timber belonging to the State Government and the Forest Corporation is held up and would suffer deterioration and rot, if not allowed to be processed and disposed of pending disposal of the illegally seized timber.

Dr. Singhvi, appearing for the State is granted one week's time to file an affidavit giving details of the legally felled timber belonging to the State Government of the Forest Corporation, which is held up for want of disposal of the illegally seized timber. The source from where the legally felled timber was acquired, as also the present location of the same shall also be indicated in the affidavit.

Put up on 17.08.1998 at 3.00 pm as requested.

I.A. 391 in I.A. 291 – W.P. (C) 202/95

Upon mentioned by the learned Amicus Curiae, we take note of the communication addressed to the learned amicus curiae by the Chairman of the HPC for North Eastern Region dated 05.08.1998. A notice shall issue to the petitioner in CR No. 5920/97 pending in the High Court of Gauhati to show cause why the proceedings in the said Civil Rule not transferred to this court. Till further orders from the court, the proceedings in CR 5920/97, in which a notice has been issued to the HPC and the Member Secretary of the HPC implead there in, as respondent Nos. 2 and 3 shall remain stayed. A copy of this order shall be communicated to the Registrar of the High Court of Gauhati by fax by the Registry.

I.A. No. 391/98

As affidavit has been filed by Mr. V. R. Khare, Additional Principal Chief Conservator of Forest, Government of MP, Bhopal, stating that the State of MP has cut and used category IV trees and has also used unsound or injured and wind-fallen trees for trap-trees operation and that it has not utilized more than one tree per two hectares. A response has been filed by the learned amicus curiae to the interim application filed by the State of MP on 02.06.1998. A copy has been furnished to Mr. Sibai, learned senior counsel appearing for the State of MP. He wants time to examine the response and seek instructions with regard to the suggestions contained in various communications attached to the response filed by Mr. Salve.

The matter is adjourned by three weeks, as requested.

In the meanwhile, our directions dated 21.07.1998 shall continue to remain in operation.

I.A. No.:	Order Date: 17.08.1998	
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I.A. No. 299

Dr. Singhvi, learned senior counsel appearing for the State of Arunachal Pradesh submits that he will file a clarificatory chart supported by an affidavit with regard to the quantity of fully paid/partly paid/unpaid timber within two weeks. Dr. Singhvi for the State and Mr. G. L. Sanghi, learned senior counsel appearing for Sawmill

Owners' Association may give a proposal regarding disposal of the timber and the connected matters in writing to the learned Additional Solicitor General who shall seek instructions from the MoEF with regard to the proposal. The question as regards modification, if any, of clause 7(c) of the order dated 15.01.1998 would be taken up for consideration after the proposal is considered by the learned additional Solicitor General and the clarificatory affidavit is filed in this Court by Dr. Singhvi.

Mr. Sanghi is permitted to file an additional affidavit, which shall be placed before us on the next date of hearing for consideration.

List on 04.09.1998 at 2.00 pm.

I.A. No.:	Order Date: 10.09.1998	
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I.A. No. 12/97

Mr. Salve, learned amicus curiae has drawn our attention to a letter (attached with the affidavit of Shri Kuldip Singh, Annexure 1/2) bearing No. 348/Simla/Ban dated 20.02.1997. According to that letter, the total volume of stock of timber comprising Deodar, Fir, Kail and Chir works out to 110059.68 cft. This figure has been given on the basis of a report given by the Conservator of Forests (West) vide letter No. 675/Timber dated 18.02.1997 and concerns 5 traders mentioned in that letter. In this additional affidavit filed on behalf of the applicants, it is deposed to by the deponent of the affidavit that the affidavit filed by the State on 27.02.1997 does not reflect the correct position of the stock. Subsequent to the filing of the additional affidavit by the applicant an affidavit has been filed on behalf of the State of J&K by Mr. M. A. Bukhari, Deputy Secretary to the Government, Forest Department on 02.09.1998. According to this affidavit, on the basis of the verification by a committee, which was constituted after the order was made by this court on 5.5.1998, quantity of timber stock of 119.84 cm (4231.67 cft) was physically found present in the depots of the 5 traders, whose names have been mentioned in the letter attached as Annexure 1/2 to the affidavit of the applicant. There is, thus, a great variation with regard to the actual quantity of timber stock in the two affidavits. In the affidavit filed by the State on 02.09.1998 the averment contained in the additional affidavit filed by the applicant on 19.03.1998 have not been adverted to be controverted. There is also complete silence with regard to the correctness or otherwise of the letter dated 20.02.1997 (Annexure 1/2 attached to the affidavit of the applicant). In view of difference in the total quantity of timber, the matter assumes serious significance as one or the other document/affidavit does not reflect the correct position. We, therefore, consider it appropriate to direct the State of J&K through the learned Advocate General, who is present in Court to produce in this Court the file relating to the verification of the stock of timber of the 5 traders whose details have been given in Annexure 1/2 attached to the letter dated 20.02.1997. The names of the 5 traders also appear in the affidavit of the State dated 02.09.1998. The State shall also file an affidavit in reply to the averments contained in the additional affidavit filed by the applicant on 19.03.1998 and also respond about the genuineness or otherwise of the letter dated 20.02.1997. The file together with the affidavit shall be filed in this court within 3 weeks with an advance copy of the learned Amicus Curiae.

I.A. No. 13

An affidavit has been filed by Mr. M.A. Bukhari, Deputy Secretary to the Government Forest Department. In the affidavit it is disclosed that there are only 14 persons who are in possession of band saw licenses and not 15 persons as mentioned in the petition. It is further stated that all the applicants mentioned in the petition have their saw mills very close to the demarcated forest (within 1/2 to 2 kms.) and that their licenses have not been renewed after 1993. Para 7 of the affidavit then reads thus:

"At this stage, it may be pertinent to mention that as per the report of Principal Chief Conservator of Forests letter dated 29.06.1998, addressed to the Advocate General, the total number of band sawmills as on 01.06.1998 within the State is 2517, out of which 1122 exist beyond 8 kms. of Demarcated Forests, 1395 exist within 8 kms. of demarcated forests. Apart from these, there exist 155 who operate without licenses. It is further stated that 733 mills have been dismantled/made non-functional. A copy of the said letter is annexed and marked Annexure R-II".

Mr. Goni, learned Advocate General for the State of J&K, submits that the State Government has enacted the Saw Mill (Registration and Control) Rules 1968 vide Notification SRO 434 dated 24.10.1968. These rules have been framed in exercise of the powers conferred by section 45 of the J&K Forest Act. Rules of the said rules provide that 'no owner of a saw mill shall carry on the business of saw milling except under and in accordance with the terms and conditions of a licence issued under these rules'.

For the preservation of forests and to prevent illicit felling, it is desirable to locate the saw mills, including the Band Sawmills, beyond 8 kms of the demarcated forests. The order of this Court dated 12.12.1998 commanded the States, including the State of J&K to ensure that no sawmill or plywood mill is permitted to operate within a distance of less than 8 kms from the boundary of any demarcated forest area. It was also directed in that order that any existing sawmill falling in this belt would be relocated. Mr. Goni submits that in view of the topography of the State, most of the areas in the State fall within 8 kms radius from demarcated forests and other protected resources and that there is only a small area which is beyond 8 kms radius from the demarcated forests and other protected resources. He submits that the State has, on this account, found itself in a difficult situation to carry out the order of this Court dated 12.12.1996 in that behalf in letter and in spirit. We, therefore, direct that the State shall constitute a committee to identify the areas where the saw mills including band saws can be relocated. In the event it is found that sufficient area is not available beyond the radius of 8 kms for that purpose, the committee may identify such areas where industrial zones can be created for shifting of the saw mills under proper security arrangement in the State. The feasibility report shall be filed by the State within 8 weeks from today. The committee shall keep the provisions of SRO 434 in view, while conducting identification of the areas and submitting the feasibility report.

I.A. No. 18

Upon being mentioned, I.A. 18 is taken on Board.

This application has been filed by the learned amicus curiae. Mr. Goni takes notice of the application. After hearing Mr. Salve, we direct the State of J&K to state on affidavit

- a) steps taken by it to ensure that no timber, other than that certified in accordance with the order of this court dated 12.12.1996 is permitted to move out of the State;
- b) steps taken by the State, including the steps taken by it for creation of agencies to ensure that there is no movement of timber outside the State;
- c) its response to the allegations that there has been rampant felling of trees within the State by various agencies, which timber has been moved outside the State, even after the order was made by the court on 12.12.1996.
- d) details of the total number of trees felled along with the total number of trees utilized in pursuance of the implementation of the Environment Plan of the State Government

The State shall also file an affidavit explaining their perception of the expression 'Private Plantations' along with a list of private plantations recognized by it where felling is being permitted at present. This list shall be supported by an affidavit of a competent authority. The needful shall be done within 4 weeks.

I.A. 401 (Patnitop Matter)

Learned Advocate General for the State of J& K accept notice of the application and prays for and is granted 4 weeks time to file the response.

I.A. 16 the Suo-Motu Contempt Petition 290-292/98

These petitions shall be listed after 8 weeks as requested by learned counsel for the parties.

I.A. No. 299

I.A. is disposed of in terms of the signed order.

ORDER

We have heard Dr. Singhvi, learned senior counsel, appearing for the State of Arunachal Pradesh, Mr. Salve, learned amicus curiae, the learned/additional Solicitor General on behalf of the Union of India as well as Dr. Dhawan and Mr. Sanghi, learned senior counsel.

Although we find force in the submission of the learned Amicus curiae that clause (c) of para 7 of the order dated 15.1.1998 is quite explicit, but after hearing the apprehension expressed by Dr. Singhvi, we consider it appropriate to clarify that clause (c) of para 7 of the order dated 15.01.1998 shall not be construed as any restraint on the State Government to dispose of the timber belonging to/venting in it which is lying on the floor of the forest or in the depots.

With the aforesaid clarification, I.A. 299 is disposed of.

I.A. No.:	Order Date: 17.09.1998	
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I.A. No. 409/98

List along with other Assam matters on one date to be fixed by the Registry.

W.P. (C) 202/95 – Mirzapur Mining Case

During the pendency of the case, we were informed by Mr. Goel, learned Additional Advocate General for the State of UP that Manvendra Bahadur Singh had been detained under the Preventive Detention Laws by the State Government. The learned amicus curiae submits that according to his information, Manvendra Bahadur Singh is not in detention and has been released on parole by the Government. Mr. Goel is not in a position to admit or deny the allegations and wants time to ascertain the true position. We would like to know from the State as to when he was released on parole and by whom and on what conditions, if any. The information shall be conveyed to us on the affidavit of the Home Secretary. The affidavit will also disclose the grounds on which parole was granted. The persons, who were arrested in connection with illicit mining in the District under the 'Goondas Act', we are informed, have been since released on bail. This is a serious matter because this Court which is seized of the case has not been informed. We direct that the particulars of all such cases shall be furnished to this court along with the copies of the orders granting bail, along with an affidavit of a competent officer.

It appears that some proceedings are pending in the High Court of Allahabad on which the last date of hearing was 11.09.1998. In those proceedings, on 21.08.1998, it was directed by the Division Bench of the High Court that a copy of the affidavit filed by Manvendra Bahadur Singh be served on the learned Additional Government

Advocate Shri Jagdish Tiwari and the learned Additional Government Advocate was directed to contact the Member of the Committee constituted by this Court. This court would like to know the nature of the proceedings in which such an order came to be made by the Allahabad High Court as also the purpose for which the committee was required to be consulted. This information shall be conveyed on an affidavit of a competent officer by Mr. Goel together with the relevant documents.

Let both the affidavits be filed within two weeks.

By our order dated 04.03.1997 directions were issued for constituting a HPC comprising of a Chairman and two members, out of which the Member nominated by the MoEF was also to act as Member Secretary. Mr. Salve, learned Amicus Curiae, has received a letter dated 14.09.1998 bearing No. EAP/HPC/PA/1/98 from Shri M.K. Jiwrajka, member Secretary, HPC. From a perusal of that letter, it appears, that it is only the Member Secretary, who is actually working in so far as HPC is concerned, because the earlier Chairman has taken leave of absence and the other Member has not been attending the office. Till substitutes are appointed, we direct that in order to enable the Secretariat provided to HPC to continue to remain functional, the Member Secretary, HPC Mr. Jiwrajka shall continue to function as the Member Secretary notwithstanding the vacancies in the Committee.

I.A. No. 399/98

All pending I.As. in writ petition No. 202 of 1995 (concerning Arunachal Pradesh) are disposed of in terms of the signed order.

ORDER

Concerned by large scale deforestation and actuated by the desire to take steps for protection and conservation of forests throughout the country, this court has made certain orders in this writ petition from time to time.

On 12.12.1996, an order was made banning all non-forest activities throughout the country, including the State of Arunachal Pradesh. On 15.01.1998, a detailed order was made with regard to disposal or confiscation of legal and illegal timber. Various I.A.s have been filed from time to time seeking directions from this court by the State as well as private parties. This Court has been monitoring the case with a view to see that its orders are implemented in letter and in spirit.

The Central Government has, in exercise of the powers conferred by sub-section (3) of Section 3 of the Environment (Protection) Act, 1986, constituted an Authority to be known as 'Arunachal Pradesh Forest Protection Authority. The notification has been issued on 17.09.1998 detailing the powers and jurisdiction of the Authority. It, therefore, now appears appropriate to us various directions in so far as the State of Arunachal Pradesh is concerned to the said Authority. It shall also be open to any party, whose application is not pending before us, who wishes to seek some directions in the matter, to approach the authority directly. The Authority shall consider the applications, both, referred by this Court and filed directly before it, and give appropriate directions, subject, however, to the condition that no direction, which is inconsistent with any of the orders or directions made by this court, shall be made. Should the authority, however, find it necessary to seek any modification or variation of any of the orders or directions issued by this Court, so as to be able to give effective relief to the concerned parties, the Authority shall be at liberty to approach this court for such modification / variation. We expect that the Authority shall dispose of the applications concerning Arunachal Pradesh within a period of eight weeks from the date of applications are received by it from this court and also within the same time from of eight weeks, from the date when an application is filed directly before the Authority by any of the parties. The Authority shall submit a report regarding disposal of the applications, together with the orders made thereon to this Court every three months.

The copies of the Interlocutory Applications shall be forwarded by the Registry by Speed Post/ Courier, at the expense of the party concerned, to the Authority without any delay. The copies of various orders made by this Court on the subject relating to Arunachal Pradesh in particular and forests in the country in general, shall also be forwarded to the Authority by the Registry for its information. Copy of the writ petition and counters be also forwarded to the Authority for its information.

Apart from deciding the applications which are forwarded by this court or filed by the parties directly before the Authority, the Authority is directed to supervise and inform this court about the implementation of various directions given by this court from time to time in this matter.

With a view to enable the Authority constituted by the Central Government vide Notification dated 17.09.1998 to function effectively and discharge its duties properly, we expect all the parties, including the State Government and the forest Corporation to extent their full and proper cooperation to it.

All pending I.As. in writ petition 202 of 1995 (concerning Arunachal Pradesh) are, accordingly disposed of.

I.A. No.:	Order Date: 29.10.1998	
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I.A. No. 263

Learned Amicus Curiae has drawn our attention to an affidavit filed by Shri Naresh Dayal, IAS, Principal Secretary, Home, Government of Uttar Pradesh in obedience to the Order of this Court dated 17.09.1998. It is submitted that the order of detention passed against Manvendra Bahadur Singh on 23.01.1998 has been quashed by the High Court, Lucknow Bench vide judgment dated 15.09.1998. Mr. Goni, learned counsel appearing for the State of UP submits that the judgment is under consideration and process for considering the questioning of filing an appeal against the same is going to. He prays for three weeks time to seek instructions.

List after three weeks. In the meanwhile, Mr. Goel shall file an affidavit regarding the latest position with regard to the detention case of Shri Manvendra Bahadur Singh.

I.A. No. 410/98 in I.A. 263

By our order dated 15.04.1998 we had appointed a two member Commission headed by Shri Gangopadhyay, Director, Indira Gandhi National Forest Academy, Dehradun to report regarding the illegal mining activities in the forest area of Mirzapur (the subject matter of application before us). The learned Amicus Curiae appears to be right in his submission that the direction given by us about the appointment of Shri Gangopadhyay is being misconstrued by the High Court as if he had been appointed as a General Commission of all matters concerning environment litigations pending in any Court. We clarify that the appointment of Shri Gangopadhyay was made for the specific task with regard to Mirzapur District having regard to the allegations made in the petition pending before us. This Court did not appoint him as a General Commission. The High Court on writ petition No. 8032 of 1998 appears to be labouring under an impression that Shri Gangopadhyay has been appointed as a general commission. This is not correct. It is open to the High Court to appoint any Commission to examine the matter pending in the petition before it, but it cannot assume that Shri Gangopadhyay is a good commission appointed by this court in environment matters.

This application is disposed of.

A copy of this order shall be sent to the Registrar, High Court for being placed before the Bench. A copy shall also be sent to Shri Gangopadhyay.

No orders on I.A. 291.

I.A. No.:	Order Date: 01.12.1998	
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I.A No. 295

List on 03.12.1998

I.A. No.:	Order Date: 03.12.1998	
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I.A No. 295

List on 10.12.1998.

I.A. No.:	Order Date: 10.12.1998	
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I.A. No. 295

We are rather distressed that many states have either not implemented various directions issued by this Court from time to time including the directions issued on 12.12.1996 and 15.01.1998 or have committed breach of these directions with the result that the efforts made by this Court to prevent large scale deforestation and for protection and conservation of forests and environment are not bearing the fruit that we expected these to bear.

The Central Government in exercise of the powers conferred by sub-section 3 of the Environment Protection Act 1987 constituted an Authority for Arunachal Pradesh known as 'Arunachal Pradesh Forest Protection Authority'. The powers and jurisdiction of the Authority was notified on 17.09.1998. Mr. K. N. Rawal, learned Additional Solicitor General appearing for the Union of India states that according to his instructions, this Committee has been functioning quite satisfactorily and many matters have been sorted out by that Authority. Keeping in view this experience of the Authority constituted under sub-section 3 of Section 3 of the Environment Protection Act, 1987, we have asked the learned Additional Solicitor General to seek instructions about the feasibility of constituting such committees/Authorities for the other States also. It would also be expedient if instructions are also obtained by him with regard to the feasibility of appointment of officers under Section 4 or issuance of directions under Section 5 of the Environment Protection Act, 1986. The response of the Central Government may be filed within 8 weeks. It may also be worth the consideration of the Central Government whether a committee of the type envisaged by sub-section 3 of the Environment Protection Act can also be constituted at national level. In the nature of a supervisory or Appellate Authority over the state Authorities.

I.A. No. 397

On 15.01.1998, after taking note of the fact situation that proliferation of wood based industries is the main cause of degradation of forests in the North Eastern States, it was directed that though it was not desirable or feasible to ban completely the timber trade or running of the wood based industries, because of the dependence of the local people on the forest resources in the region, there was need to regulate the functioning of these industries. Keeping in view the availability of forest produce, it was suggested that these industries be relocated in specified industrial zones. A specific direction was issued to the effect that 'the State Government shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests'.

In this interim application, a copy of a notification issued by the Government of Nagaland dated 15.06.1998 has been placed on record. A perusal of the Notification shows that 'the whole foothill areas of Nagaland' and 'all areas within 1 km. of National and State Highways, State Roads' have been declared as Industrial Estates for the purpose of establishing Forest based industrial Estates. There is no indication in this Notification as to whether any

prior consultation took place with the Ministry of Environment and Forests, Government of India. The learned Additional Solicitor General has drawn our attention on a communication dated 02.09.1998 (which is taken on record) issued by the Additional Inspector General of Forests, Shri S.C. Sharma to the Chief Secretary, Government of Nagaland. The set paragraph of that communication reads thus:

"The State Government has not consulted this Ministry before notifying the industrial estates. The Notification is also not in accordance with the Court order and a very large area has been declared as Industrial Estates. The intention of the Court to notify industrial estates was to keep the industries in compact blocks, where effective monitoring can be done. I, therefore, request you to kindly look in to the matter personally and reconsider the action of the State Government in this matter".

This communication was followed by another letter No. 13-16/98 dated 05.10.1998 (taken on record) from the Inspector General of Forests and Special Secretary, Ministry of Environment and Forests, Government of India to the Chief Secretary, Government of Nagaland requesting him to look in to the matter because of the non-response to the letter dated 02.09.1998 and further requesting him that "the Notification be held in abeyance immediately, if it is not in conformity with the orders of Supreme Court...". We are informed that there has been no response to the communication dated 05.10.1998 either. It is stated that the Notification has not been kept in abeyance. The Notification, ex-facie, runs in the teeth of the direction issued by this Court (supra).

A notice shall issue in this application to the respondents and to the Chief Secretary, Government of Nagaland to show cause against the application and in particular, the Chief Secretary shall also state on affidavit as to why action be not initiated for issuing a Notification in breach of the directions issued by this Court. The notice shall be made returnable within six weeks. A copy of this order shall also be served on the learned Standing Counsel for the State of Nagaland.

Till further orders from this Court, any follow up action based on the Notification dated 15.06.1998 shall stay.

Contempt Petition No. 336/98

Before considering proceeding further in this petition, let a copy of the petition be served on the learned Standing Counsel for the State of Nagaland. The learned Standing Counsel shall ascertain and inform this Court as to whether the allegation contained in paragraph 5 of the application, which amounts to encroachment into a reserved forest and are in breach of the order issued by the Court on 12.12.1996, are correct. The response to that effect shall be filed on the affidavit of a responsible official of the State Government of Nagaland. The needful shall be done within six weeks.

I.A. Nos. 408 & 409/98

It is averred by the applicant that it has a legally acquired and inventoried stock of raw material to the tune of about 2100 cubic meters. There is no indication, however, in this application as to the source from which the stock of timber had been acquired or the time when the same was acquired. Mr. M.N. Rao, learned Senior Counsel appearing for the applicant submits that he shall file an additional details affidavit with regard to the acquisition of 'legal' timber stock. Four weeks time as prayed for, is granted for the purpose.

Writ Petition (C)/98 (D-13386/98) *(This is an unregistered writ petition bearing no writ petition number and hence only diary number is mentioned in the order)*

Mr. G. L. Sanghi, learned Senior Counsel, on instructions, withdraws prayer 'B' at page 37 of the paper book. He submits that this writ petition may be considered minus that prayer and the same may be treated as an interim application, to be heard along with other four interim applications, which are already pending in this Court. We

grant his prayer. This petition shall be numbered as an I.A., after the necessary correction is made by the learned counsel on record assisting Mr. Sanghi with regard to deletion of prayer 'B'.

Writ Petition (C) 202/95 (Regarding State of Assam)

Learned counsel for the State of Assam has placed on record Notification No. FRL-150/90/VOL-I/PT.V/239 dated 23.09.1998 (taken on record) according to which the Government of Assam has notified certain Town Areas / Municipal Areas / Municipal Corporation Areas as Industrial Estates for locating wood based industrial units in the State of Assam. Mr. Rawal, learned Additional Solicitor General, appearing for the MoEF has brought to our notice a communication issued by the Additional Inspector General of Forests dated 27.10.1998 (taken on record) addressed to the Chief Secretary, Government of Assam having drawing attention of the Chief Secretary to the order of this Court dated 15.01.1998. In that communication, the Additional Inspector General of Forests has pointed out that the Notification dated 25.09.1998 is not in conformity with the order of the Supreme Court dated 15.01.1998. The learned Additional Solicitor General points out that after this letter was issued to the Chief Secretary, a meeting has taken place between the officials of the Government of India and the Government of Assam on 06.11.1998 at Gauhati, concerning the subject matter of the Notification. The Additional Inspector General of Forests had advised the Chief Secretary in his communication dated 27.10.1998 that the Notification dated 23.09.1998 be kept in abeyance and the State Government was advised to either submit a fresh proposal in conformity with the order of this Court dated 15.01.1998 or to seek suitable guidance by way of clarification from this Court.

It was in view of large scale destruction of forests and pilferage of timber by the wood based industries that this Court had made an order on 15.01.1998 directing all North Eastern States to declare industrial estates for relocation of wood based industries to that effective monitoring to be done for conservation of forests in those States. The States were directed to identify the industrial estates within 45 days of the date of the order and to develop the industrial estates within six months thereafter. The Notification issued on 23.09.1998, ex-facie, does not comply with the requirements as spelt out in the order dated 15.01.1998. It is necessary that the State Government and the Ministry of Environment and Forests (Union of India) should have a joint meeting to sort out the question of location and identification of industrial estates. The needful shall be done within four weeks.

Mr. G. L. Sanghi, learned counsel who appears for M/s. Kidply Industries Ltd, (the applicant in I.A. Nos. 217, 236/97, 285 and 286/98) submits that the applicants are prepared to give an undertaking to the effect that they shall, till the industrial estates is identified, run their unit only on imported veneer. It is submitted that on an affidavit of a responsible officer of the applicant, this Court shall be informed about the total quantity of veneer which is being imported by the unit for one year and that it shall also be disclosed as to the approximate quantity of veneer required to be imported and the parties from whom that import shall take place. The application shall be supported by necessary documentary evidences. A responsible officer of the applicant shall also file an undertaking along with that affidavit to the effect that the operation of the unit shall be confirmed to imported veneer. The applicants may also file a chart indicating the consumption and import of timber and veneer during the last three years, (domestic and imported). Necessary information shall be furnished within two weeks. A copy of the affidavit and the undertaking shall be furnished to learned counsel for the State of Assam and to Mr. P. Parmeshwaran, Advocate on record for Central Agency, who may file their response thereto within one week from the date of receipt of the affidavit. A copy of the same shall also be furnished to the learned Amicus Curiae.

General Direction

Any application filed in Writ Petition 202 of 1995 by any of the parties shall be entertained only after it has been served both on the learned Amicus Curiae and the Central Agency (office of Mr. P. Parmeshwaran, Advocate-on-record).

I.A No. 166

Not taken up

I.A No. 283

Not taken up.

I.A No. 411

Not taken up.

I.A. No.:	Order Date: 20.01.1999	
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I.A. No. 263

We are informed by learned Standing counsel for the State of UP that SDP (Cri.) No. 4117 of 1998, filed by the State of UP against Manvendra Bahadur Singh, challenging the order of the High Court, dated 15.09.1998 has since been dismissed by a Bench of this Court.

From a perusal of the record, it appears that against First Information Report against Manvendra Bahadur Singh, lodged as Criminal Case No. 6 of 1998 under Section of the Prevention of Damage to the Public Property Act, 1994 and Section 506, IPC at Police Station Halia, District Mirzapur, Manvendra Bahadur Singh filed Criminal Misc. Writ Petition No. 132 of 1998 seeking quashing of the criminal case. On 03.02.1998, by which date a counter had been filed the said writ petition, the Division Bench heard further arguments in the writ petition. At that stage a statement was made on behalf of Manvendra Bahadur Singh by his learned counsel stating that the writ petition was not being pressed 'in view of the fact that this writ petition was filed when the petitioner (Shri Singh) was not aware of the orders passed by the Hon'ble Supreme Court'. The Division Bench, while dismissing the writ petition, as not pressed, adjourned the matter to 27.02.1998, observing:

"However the matter does not rest here. The fact that if the petitioner was aware of the order passed by the Apex Court before pressing this writ petition was that event for suppressing if that fact he will liable for contempt of this Court".

Mr. Shiva Pujan Singh, advocate appears on behalf of Manvendra Bahadur Singh and has filed his Vakalat. He submits that according to his instructions, the contempt proceedings against Manvendra Bahadur Singh are still pending in the High Court. He undertakes to file an affidavit giving the stating report of the contempt proceedings together with a copy of the response filed by Manvendra Bahadur Singh in the contempt proceedings in the High Court.

Mr. Goel, learned Additional Advocate General for the State of UP shall also file an affidavit giving details with regard to the status of Criminal case No. 6 of 1998. Copy of the order by which Manvendra Bahadur Singh has been admitted to bail in the said case shall also be filed along with that affidavit. The State shall also inform the Court, if there is any other criminal case involving Shri Manvendra Bahadur Singh and if so, the status of such a case.

I.A. No. 392

Mr. Goel, learned Additional Advocate General for the State of UP submits that the State shall file an affidavit indicating the reserved price at which the seized material, as detailed in this application can be sold. It shall also be indicated as to in what manner the said may take place. Let the affidavit be filed within four weeks.

I.A. No. 298

I.A. No. 298 stands already disposed of vide this Court's order dated 23.03.1998.

Contempt Petition (C) 157/98

The contempt petition is disposed of in terms of the signed order.

Order

Concerned by large scale illicit mining and reckless quarrying of forests in certain villages of district Mirzapur, this Court issued orders from time to time placing a complete ban on the illicit mining activities. On being informed by the learned Amicus Curiae that illicit mining was witnessed by one of the learned Advocates of this Court, Shri A.M. Khanwilkar, this Court proceeded to examine the matter in some details. On 07.01.1998, Shri Anand, Secretary, Ministry of Environment was personally present in Court. He also brought to the notice of the Court continuance of illegal mining activities, in spite of various order made by this Court to prevent such illegal activities. The Court, accordingly, appointed a Committee consisting of Shri A. M. Khanwilkar and Shri Gopal Singh, Advocate of this Court along with an Officer of the Ministry of Environment, to be nominated by the Secretary to the Ministry. The Committee was requested to visit the named villages in Mirzapur district as well as in Doon Valley and submit a report. The District Magistrate and the Superintendent of Police were directed to render all assistance needed by the Committee for the performance of its task. The Committee visited the concerned villages and submitted its report dated 17.01.1998. On 13.01.1998, this Court considered the Report of the Committee and found that the Report disclosed an alarming situation of lawlessness, requiring urgent drastic action so as to stop illegal mining activities in the area in question. The Court taking serious note of statements made in paragraphs 9 and 10 of the Report which reads thus:

9. Copies of the correspondence given by the Forest Officials shows that the local administration has been apprised of the problem from time to time, but to no avail. Specific grievance was made by them against the Mining Officer. According to them, he has been issuing permits / licences / transit passes for quarrying in Forest Areas despite the ban placed by this Court. Perusal of the files showed that the Mining Officer was, time and again, informed about the order of this Court.
10. The Mining Officer was not only uncooperative but was down right insulting. No information/explanation was forthcoming from him except to state that he had done no wrong. On a specific query, in the residential office of the District Magistrate and in her presence, he even challenged the authority of the committee to ask him questions and then went on to add that 'the committee was free to report what it wanted and further that what is the maximum that can happen – hanging? Fine then hang me'. All the high officials present there were mute spectators to this offensive out burst. None chose to restrain him, leave along reprimand him.

Directed issuance of notice to Shri V.L. Das, Mining Officer of the area to show cause why proceedings to punish him for contempt of Court should not be initiated against him.

On 03.02.1998, Shri Das filed an affidavit in response to the show cause notice. In paragraph 3 of the affidavit, he deposed, "the deponent being a senior responsible officer cannot think of committing contempt of this Court or any other Court or any Commission or Committee appointed by this Hon'ble Court...". Thereafter, the deponent has stated, 'the deponent sincerely regrets and apologizes for his attitude and conduct towards Hon'ble member of the Committee and he assures this Hon'ble Court that he will not conduct himself in future in such a manner and prays for being forgiven'.

Insofar as the response to paragraph 9 of the report is concerned, the deponent has stated that he had not issued any mining lease/permit during his tenure at Mirzapur in the villages Banjar, Kalan, Atari and Panwari. In paragraph 5 of the affidavit, Shri Das again tendered his unconditional apology to this Court and to the Hon'ble members of the Committee and reiterated that no such act will be repeated in future.

Shri Das filed an additional affidavit dated 24.02.1998 on 05.03.1998. Through the additional affidavit Shri Das gave reply to various paragraphs of the report of the Committee. In paragraph 10 of the additional affidavit, it was reiterated that none of the permits/leases had been granted by him. It was, however, admitted that the forms for transit passes were supplied by him. In paragraph 12, the deponent again stated as follows:

The deponent most humbly reiterates his unconditional apology for his conduct towards the Hon'ble Members of the Committee and to this Hon'ble Court, prays he be forgiven and contempt notice be discharged.

Shri Shakil Ahmed Syed, learned counsel appearing for Shri Das, who is also present in Court, has once again tendered an apology to the Court for the objectionable conduct of Shri Das towards the member of the Committee appointed by this Court.

We have heard Shri Shakil Ahmed Syed, learned counsel on behalf of Shri Das and Shri Salve, learned senior counsel, who had been requested by the Court to assist the Court in these contempt proceedings.

There is no doubt that the conduct of Shri V.L. Das and his behavior towards the members of the Committee was most objectionable and wholly inappropriate. The expressions used by him before the members of the Committee unmistakably expose his objectionable attitude toward the order of this Court and his attempt to interfere with and obstruct the administration of justice as well as scandalize the authority of the Court. His conduct has been most reprehensible. It was a deliberate attempt on his part to insult the members of the Committee.

It is not denied by Shri Das that various orders made by this Court, including the order completely banning illicit mining activity in the area, had been brought to his notice, yet, despite this knowledge, he willfully disobeyed those orders by issuing transit forms. His action in issuing the transit forms was in direct breach and violation of the orders issued by this Court and constitutes, by itself, contempt of this Court. Apart from the fact that the ban had been issued pertaining to the area in question where Shri Das was a Mining Officer and he was made aware of the order and was obliged to ensure its implementation. Even Article 144 of the Constitution of India, which enjoins upon all authorities, civil and judicial, in the territory of India to act in aid of the Supreme Court was flouted. The action of Shri Das establishes beyond any manner of doubt that he has committed gross contempt of this court by acting in breach of the orders issued by this Court and by his objectionable and disrespectful behavior towards the members of the Committee appointed by this court.

Shri Shakil Ahmed Syed, learned counsel for Shri Das submits that Shri Das is now truly repentant of his actions and has tendered an unqualified apology and placed himself at the mercy of the Court. He submits that a lenient view may be taken and assures that Shri Das shall not, hereafter, repeat such an action.

After giving the matter our careful consideration and taking into account all factors of the case, we are of the opinion that the apology tendered by Shri Das is not a bona-fide expression of his repentance and is meant only to escape punishment. However, keeping in view the fact that Shri Das has been placed under suspension for his misbehavior with the member of the Committee constituted by this Court by the Government of UP, vide order No. 217/18.11.98/LC dated 18.01.1998 and that order for suspension is continuing till date, it appears appropriate to us to take a somewhat lenient view in the matter of imposition of sentence.

We accordingly convict Shri V.L. Das for committing contempt of this Court and sentence him to undergo imprisonment till the rising of the Court and to pay a fine of Rs. 2000/-. In default of payment of fine, Shri Das shall suffer simple imprisonment for a period of 15 days. The fine shall be paid within one week.

Before parting with this order, we wish to place on record our sincere appreciation for the assistance rendered by Shri Salve, learned senior counsel appearing as a friend of the Court as also by the member of the Committee Shri A.M. Khanvilkar, Shri Gopal Singh, learned advocate of this Court and Shri Jitender Kumar, Deputy Conservator of Forest (Central), MoEF, Government of India.

The contempt petition stands disposed of in above terms.

I.A. No. 397

While issuing notice on the application filed by the State of Assam and the Government of Nagaland on 10.12.1998, we had on being prima facie satisfied that earlier order of this Court had been respected in their breach also directed the issuance of a notice to show cause to the Chief Secretary – Government of Nagaland as to why action be not initiated for issuing Notification in breach of the directions issued by this Court. The Chief Secretary to the Government of Nagaland, Shri A.M. Gokhale has filed an affidavit in response to the notice dated 01.12.1998. We have perused that affidavit but are not satisfied with the contents thereof. Many areas have been left totally grey and the information, which this Court sought for has not been correctly furnished. It is not denied that the foothills of Nagaland along the Nagaland-Assam Border have been declared as Industrial Zone for wood based industry. There is no explanation in the affidavit with regard to the creation of Industrial Estates of a compact nature.

Mr. Dipankar Gupta, learned senior counsel appearing for the State of Nagaland submits that an additional better affidavit, giving better and fuller details shall be filed in this Court. It is submitted that since discussions are going on between the MoEF and the State Government, the outcome of those discussions shall also be placed on record through an affidavit. We grant the prayer of Mr. Gupta and allow him four weeks time to file a better and complete affidavit of the Chief Secretary to the Government of Nagaland, giving a correct and fuller picture and disclosing the manner in which the earlier directions issued by this Court have been complied with or / are being complied with. An advance copy of the affidavit shall be furnished to learned Amicus Curiae as well as to the learned counsel for the State of Assam who shall have two weeks from the date of service of the advance copy of the affidavit to seek instructions in response of the State of Assam.

This application shall be put up for further consideration after six weeks on a date to be fixed in consultation with the learned Amicus.

Contempt petition (c) No. 336 of 1998 be also listed along with I.A. 397.

I.A. No.:	Order Date: 12.04.1999	
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I.A. No. 397, 258-259/97

List on 16.04.1999

I.A. No.:	Order Date: 16.04.1999	
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I.A. No. 276

On 29.07.1998, we had appointed Mr. R. M. N. Sahai, Conservator of forests, as the Commissioner of the Court and directed him to immediately go to Thatkola Reserve Forest and submit a report about the present state of affairs in that forest. Learned counsel for the State of Karnataka had assured the Court that the State would offer all possible assistance to Mr. Sahai to undertake the task assigned by the Court to enable him to file the status report. The report has now been filed by Mr. Sahai and subsequently affidavit to update the main report. Copy of the same has been furnished to learned Amicus. The matter shall come up for further direction on the next date for considering the report.

Our attention has been drawn to a news item under the caption 'Demarcation of Tatkola forest land stopped, says Minister', which appeared in Deccan herald of 12.01.1999. A perusal of the news item shows that on going demarcation of the Tatkola forest land, which was being carried out by the Forest and Survey of India Department has been stopped under orders of a Minister of the State of Karnataka. Issue a notice to the State of Karnataka to file its response to the allegations contained in the news item, copy of which shall be sent along with the notice to the State. The State may also file their comments to the report of Mr. Sahai in the meanwhile.

A copy of the news item shall also be served along with the notice on the standing counsel for the State of Karnataka.

List the matter on 07.05.1999 before a Bench presided over by Hon'ble B.N. Kirpal, J.

I.A. No. 397

On 10.12.1998, this Court has observed that the notification dated 15.06.1998 issued by the Government of Nagaland, without consulting the MoEF, Government of India, ran in the teeth of the directions issued by this Court. Subsequently an affidavit was filed by the Government of Nagaland on 15.01.1999. From that affidavit it appeared that the Government of Nagaland had not declared Industrial Estates as contemplated by the orders made by this Court. The matter was adjourned, at the request of learned counsel for the Government of Nagaland.

An affidavit dated 22.02.1999 was filed on 23.02.1999 along with a draft notification, including annexure 'A' stating that industrial estate and minor industrial estates have now been established by the government of Nagaland. The location of those estates has been indicated in the notification. The learned Additional Solicitor General, Mr. K. N. Rawal, appearing for the MoEF, Government of India submits that the declaration of the industrial estates and minor industrial estates as contained in the Annexure to the draft Notification has been examined by the

Union of India and found to be in order.

With the publication of this draft notification, the matter is now given a quietus.

Let the Notification be published. The Government of Nagaland shall act strictly in accordance with the notification. A follow up report shall be filed by the State after three months from the date of the publication of the Notification describing the status of the shifting of wood based industries in the industrial estates / minor industrial estates.

The application is disposed of.

I.A. No. 258

Issue Notice.

I.A. No. 259

Notice shall issue confined to prayer of which reads thus:

“(b) direct the District Magistrate to refund the amount deposited by the applicant herein with interest at the rate of 24% per annum from the date of payment till the realization.”

Contempt Petition 336 of 1998

Vide our order of even date, we have permitted the Government of Nagaland to publish the draft Notification creating Industrial/Minor Industrial estates in obedience to our orders. In view of the order made by us in I.A. No. 397, no orders are required to be made in this petition. The Contempt Petition is accordingly dismissed and consigned to reject without expressing any opinion on the allegations made therein.

I.A. No.:	Order Date: 07.05.1999	
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I.A. No. 276

An affidavit has been filed on behalf of the State of Karnataka. It is inter alia stated therein that the Report of Mr. Sahai was received by the State only on 29.04.1999 and, therefore, it has not been possible for the State to file any affidavit in response to the said report. Eight weeks time is sought for to file a response. The said time is granted. Response be filed by way of an affidavit within eight weeks.

From the affidavit, it also appears that some survey was being carried out in the Chickmagalur area in respect of which certain orders were passed by the Minister concerned. Without going in to the validity of the said orders, we direct the Survey of India to continue with the survey operation which it was carrying on in the said area and it may associate in the conduct of the said survey such officers of the Forest Department as may be required. The Report regarding encroachment in the Chickmagalur area of the forest should be submitted by the Survey of India to the Court, if possible, within three months. Copy of this order be sent by the Registry to the Survey General of India at Dehradun. During the conduct of the survey and till the submission of the Report, there shall be no administrative interference in the work, which will be carried on by the team of the Survey of India. During this time, no forest officer especially the one who is associated by the Survey of India with the work, shall be transferred. Lastly, no regularization of any forest or other land in this area shall be made till further orders of this court.

To come up for further orders in the week commencing 07.09.1999. Subject to orders of Hon'ble the Chief Justice of India, the main Writ Petition (C) 202/95 and all other connected I.A.s and matters be listed for final disposal on that day.

I.A. No. 400 & 414

We see no reason to issue any direction at this stage till this Court is satisfied that sufficient plantation wood will be available to the existing saw mills. An affidavit on record should be filed within eight weeks for the purpose of satisfying this Court that plantation wood is available in sufficient quantity. List thereafter.

I.A. No. 419 & 420

Notice to Union of India and State of Madhya Pradesh.

The Amicus Curiae may file his response to the applications. The Ministry of Environment should also file a response to the applications and place on record all the material on the basis of which clearance was given by it. Response by the Ministry of Environment will be filed by 14.07.1999 and by the Amicus Curiae by 31.07.1999.

List in the first week of August 1999.

I.A. No. 417

Notice to the Amicus Curiae as well as the Union of India.

In the meantime, the applicants, i.e. the Railways are restrained from procuring or suing any wooden sleepers in the whole of India.

I.A. No. 418

Notice to the State of Tamil Nadu returnable in the first week of August 1999.

In the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularized.

I.A. (filed by Mr. Prashant Bhushan in the matter of Santosh Bharti) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

Taken on Board. I.A. be registered. Notice to the State of Madhya Pradesh returnable in the first week of August 1999.

The Amicus Curiae should also file a response.

In the meantime, it is directed that if there is any truck containing seized illegal timber, neither the timber nor the truck should be released.

I.A. No.:	Order Date: 12.05.1999	
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I.A. No. / 99 (filed on 12.05.1999) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

List this IA tomorrow i.e. 13.05.1999

I.A. No.:	Order Date: 13.05.1999	
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I.A No. 425

I.A. is dismissed.

I.A. No.:	Order Date: 28.07.1999	
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I.A No. 427

Liberty to move the Bench on 02.08.1999.

I.A. No.:	Order Date: 30.07.1999	
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I.A No. 429

Post along with other forest matters on the date fixed in consultation with the learned Amicus Curiae.

I.A. No.:	Order Date: 02.08.1999	
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I.A. No. 417

Adjourned to 07.09.1999

I.A. No. 418

Reply be filed by the State of Tamil Nadu within three weeks. Response to that reply by the Amicus Curiae be filed within 10 days thereafter. To come up on 07.09.1999.

I.A. Nos. 419 & 420

These two applications are for the purpose of getting permission to work the mines. These applications, which have been filed by National Mineral Development Corporation Ltd. (NMDC), inter alia, state that they are existing lessees and they have been operating the mines for over 20 years.

From the papers, we find that afforestation was required to be done by NMDC. It is not clear as to what was the condition, which was imposed with regard to afforestation, how much afforestation has actually been taken place and what is the present status of the trees if they have been planted. A further and better affidavit in this regard is required, which should also indicate the type of trees which have been planted by way of afforestation. Both the Ministry of Environment and the NMDC should file this affidavit within three weeks.

The State of MP should also file an affidavit indicating as to how much money has received from NMDC for the purpose of afforestation, how that money has been utilized and what is the present status of afforestation, if it has been carried out.

All the affidavits should be filed along with photographs / satellite imagery, if available / aerial photographs.

To come up on 07.09.1999.

I.A. No. 424

We have heard the learned counsel for the parties at some length and with some concern.

We are dealing here with a State which was full of teak forests which is now fast dwindling. In the reply to the application, the state of MP has justified the action of allowing trucks laden with cut wood to be taken away on the plea that wood belonged to Bhoomiswamis. How such a plea could be taken in the face of this Court's order dated 12.12.1996, is beyond comprehension. Furthermore, no details have been given as to who the Bhoomiswamis are to whom the land belonged and what is the extent of the trees which have been taken out.

Our attention has also been drawn to a case where a crane was apprehended in this forest area along with two trucks carrying timber. Our attention was also drawn to the order dated 02.06.1999 passed by one Anil Shrinivasan, Chief Judicial Magistrate, Damoh. We are surprised that despite this well considered and correct order, how the counsel for the State before the High Court conceded and did not oppose the handing over of the crane to the owners thereof. If the State finds out that the concession was made by the counsel on instructions by the State the State will give an explanation to this Court as to why these instructions were given. If the counsel acted without instructions, then no further cases relating to forests should be entrusted to him.

In order to know the correct state of affairs with regard to the allegations made in I.A. No. 257/97, we feel that the same should be looked into by an impartial agency. Mr.N. K. Sharma, Additional I.G. (Forests), Ministry of Environment, New Delhi, is directed to investigate the facts and give a report to this Court with regard to the matters contained in I.A. 257/97. Papers of this IA as well as any other relevant document including reply, affidavits, etc. should be given to Mr. Sharma who should file his report within four weeks. The State of MP is also at liberty to file any affidavit which it may choose to do so.

In the meanwhile, we direct the State of MP not to allow any movement of cut trees whether belonging to any Bhoomiswamis or anybody else. We further direct that Shri Dharamveer Kapil, Shri Srinivas Sharma, Shri Ashok Vyas, Shri Ashok Raj, Dr. A.K. Srivastava and Shri D.P. Dwivedi should immediately be relieved of/shifted from their duties/chare in connection with the Forest Department. The State of MP and Forest Surveyor of India will render all assistance and cooperation to Mr. Sharma so as to enable him to complete his task.

To come up on 07.09.1999.

I.A. No. 437

To come up on 07.09.1999.

I.A. No. 418 (on behalf of pattaholders)

Taken on board. Adjourned to 07.09.1999.

I.A. No.:	Order Date: 16.08.1999	
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I.A. No. 424

Mention has been made by Mr. Salve and Mr. Prashant Bhushan stating that pursuant to the order dated 02.08.1999 passed by this court in I.A. 424, the officers concerned and especially the officer of the DFO, Damoh, have taken law in to their own hands and are in the process of destroying the files. It is further stated that in connivance with

the State Police, Mr. Santosh Bharati has been beaten up and he is now admitted in the Intensive Care Unit of the district Hospital at Damoh. The state that they have received fax message to this effect, which shall be placed on record within two days along with the formal application/affidavit. As the matter is of some urgency, we direct the CBI through the Additional Solicitor General to depute a responsible officer today itself to go to Damoh and seal the office of the DFO and see that adequate protection is given to Mr. Bharati and such other persons who may have been injured along with him. In this regard, the Home Secretary, State of MP is directed to personally see and ensure that the person of Mr. Bharati and others are given adequate protection and no physical harm befalls them. The officer of the CBI who is deputed to go to Damoh should submit a report about the incident mentioned in the fax message received by Mr. Prashant Bhushan. The copies of fax message should be given to the Addl. Solicitor General today itself. The report of the CBI would indicate whether any State official or any other person was involved in the incident.

Matter to come up for further orders on 27.08.1999. Mr. Satish K. Agnihotri will immediately communicate this order to the Home Secretary, State of MP.

I.A. No.:	Order Date: 20.08.1999	
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I.A. No. 424 with other IAs

Heard counsel for the parties.

In modification of our earlier orders we direct that the officer of the CBI and Shri Sharma, Additional IG (Forests), Ministry of Environment, New Delhi will take in to their possession such of the records of the office of the DFO, Damoh which they consider to be relevant, and after taking the said records in their custody the officer can be desealed and can be used by the concerned officers of the State. The needful will be done by the CBI and Mr. Sharma.

I.A. No.:	Order Date: 27.08.1999	
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I.A. 477 & 478 with 424

Report has been filed by Shri Kewal Singh, Superintendent of Police, CBI/ACB, Jabalpur. The same is taken on record. The said report refers in paragraph 14 thereof, to an order of the Chief Judicial magistrage, Damoh who had directed the persons accused before him to be examined by the Medical Board consisting of three doctors. The said report was submitted. The learned Additional Solicitor General has drawn our attention to the same. A copy of the said report is placed before us. The same is taken on record. Copy be also given to the Amicus Curiae and the State of MP.

I.A. No. 480

Notice to issue to Additional Superintendent of Police Shri Bara, City Superintendent of Police Shri Sen, Town Inspector Shri Tiwari, SHO Shri Hempal Singhai, SI Sri Vinod Chobey and SI Shri Sharma to show cause why proceedings should not be initiated against them for contempt of court. Notice to be served through the State of MP.

Notice also to issue to Shri A.K. Bhat, DFO, Sagar to file an affidavit stating as to how and under whose orders was the office of the DFO opened on the night of 15.08.1999 and what action, if any, he has taken pursuant to the incident which had occurred therein.

The State of MP should also on the next date of hearing, file an affidavit indicating as to what is their stand. Notice to be returnable on 06.09.1999.

The advocate General MP drew our attention to the fact that the Lokayukta, KP is also inquiring in the matter concerning I.A. 424 and I.A. 480. The pendency of these proceedings cannot under any circumstance be regarded as inhibiting the Lokayukta from carrying his inquiry. Any report which he submits can only be of assistance to this Court.

Name wrongly typed as Shri N.K. Sharma, Additional IG (Forests) Ministry of Environment, New Delhi, in our earlier orders, be read as Shri M.K. Sharma.

I.A. No.:	Order Date: 06.09.1999	
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I.A. 424, 477, 478, 480 & 481

Pursuant to the order dated 27.08.1999 the police officers to whom notices were issued are present in Court. The Advocate General of State of MP, however, brings to our notice the fact that there is no police officer called Shri Sharma who was posted at Damoh. According to Mr. Prashant Bhushan, the officer concerned was SI Shri L.S.Mishra.

Mr. Dushyant Dave appears for the police officers and prays for time to file a reply to the show cause notice. Reply be filed within a week.

Notice also to issue to DFO Shri A.K. Bhatt and SI Shri L.S. Mishra show cause why proceedings be not initiated against them also for contempt of court, returnable after six weeks. Service will be effected through the State of MP.

We have heard the learned counsel at length and seen the Report which has been filed by the CBI under the signature of Shri Kewal Singh, Supdt. Of Police, CBI, Jabalpur. This report read along with additional affidavit filed on behalf of the applicant Santosh Bharti supported by the statements which are annexed to that affidavit which statements were made by persons before the CBI, it appears to us that immediate action is called for. It will not, in our opinion, be appropriate to say more than what is necessary because that may prejudice parties to the case. But, in our opinion the immediate action is called for, keeping in view only the Report of the CBI and the Report of the Medical Board, which was constituted by the Court in MP, which showed large number of injuries on the person of Shri Santosh Bharti and other including a broken rib. We direct that in respect of the police officers stated to be present at the scene of the incident and mentioned in paragraph 10 of the Report of Shri Kewal Singh, namely, SP Shri P.S. Bara, City SP Shri R. K. Sen, Town Inspector Shri A.P. Tiwari, Sis Shri L.S. Mishra, Shri P.S.Thakur, Shri Vinod Choubey as well as SI Shri Hem Pal Singhai and ASI Shri Narain Singh, the State Government shall pass orders immediately suspending them pending departmental action against them.

The CBI shall take charge of the case, complete their investigation and take such follow-up action as may be required in accordance with law including prosecution of the case if so warranted on inquiry being completed by them. The CBI should complete its inquiry and submit a final Report in this Court within six weeks.

We further direct that the State Government shall immediately, not later than 7 days from today, post a permanent DFO at Damoh. The State Government will also be at liberty to transfer and post other police officers to man the posts which are, as of today, being held by the officers who are to be suspended.

The departmental disciplinary action should await the final outcome of the CBI report.

The compliance report should be filed by the State Government with a week. The Advocate General, State of MP should communicate to the State Government the order passed by us today.

Addl. I.G. (Forests) Shri M. K. Sharma should also submit a report within four week from today.

I.A. No.:	Order Date: 01.11.1999	
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I.A. No. 424

On a mention being made by Mr. Rawal. The 50 wagons mentioned in the Action Taken Report by the Ministry of Environment and Forests, which are referred to in para 7 at page 9, are directed to remain seized till further orders.

Matters are adjourned by three weeks.

(these matters were listed today for hearing before a Special Bench comprising of Hon'ble Kirpal Khare and Shah, JJ)

I.A. No.:	Order Date: 22.11.1999	
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I.A. No. 424

Adjourned by two weeks. Date to be fixed by the Registry.

(these matters were listed today for hearing before a Special Bench comprising of Hon'ble Kirpal Khare and Shah, JJ)

I.A. No.:	Order Date: 17.12.1999	
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I.A. Nos. 479, 481 & 485

Exemption from filing O.T. is granted.

I.A. No. 499 in I.A. 480

Heard. The I.A. is dismissed.

These are the I.As filed by NMDC in which it is stated that it has acquired six losses in Bailadila area which is a forest land in which permission has been granted by the Central Government to carry on mining operations. It is stated that the State of MP on 20.08.1998 has also granted the necessary permission, but has observed that while cutting the trees special care should be taken to implement the order of this Court in T.N. Godavarman Thirumulkpad v. Union of India and Others, 1997(2) SCC 267.

It is clear that as far as this Court is concerned, it had prohibited the carrying on of any non-forest activity in a forest area without the permission of the Central Government. Now that the Central Government has granted permission subject to the conditions which have been or may be imposed, the applicant would, of course, be at liberty to operate on the said mines. What was prohibited by this Court was illegal cutting of tree and cutting of trees without the permission of the Central Government. It is nobody's case before us that cutting of trees in

carrying on the mining operations in the present case would be environmentally hazardous or contrary to any law specially in view of the fact that an obligation has been cast on the applicant to carry out afforestation hopefully on an area greater or larger than the area on which the trees are to be cut. In this view of the matter, the permission to carry on the mining operations is granted.

We further clarify that the order dated 11.02.1997 passed in I.A. 60/97 in W.P.(C) 202/95 stands modified to that extent. These IAs in this regard stand disposed of leaving upon the question as to the manner in which the compensatory afforestation is to be done. A comprehensive proposal in this regard will be placed before the Court by the Ministry of Environment on the next date of hearing. For this purpose, the case to come up in the second week of January 2000 along with the Damoh matter.

I.A. No. 424

Pursuant to the order dated 02.08.1999 of this Court in I.A. 424/99, Mr. Sharma, Additional IG (Forests), who was appointed by this Court and directed to go into the allegations made in I.A. 267/97 in W.P. (C) 202/95, has furnished his first report. A copy of this report has been given to Mr. S.K. Agnihotri. The Collector, Damoh is directed to file an affidavit within three weeks from today replying and/or dealing with the said report and in particular with regard to the land at Village Singrampur stated to have been purchased by Shri Ratnesh Solomon and the felling of the trees on the said land.

Till further order, we direct subject to the orders in I.A. 419 and 420 that there shall be no felling of any tree in the State of MP and there will be no movement of any timber, without further orders of this Court, from one district to another.

The State of MP through the Chief Secretary should also within three weeks from today file an affidavit in response to the Report.

Notice of the Report may also go to Mr. Ratnesh Solomon who is at liberty to file such an affidavit as he may choose to do in response to this Report within three weeks from today. Copy of the report will be supplied to him by the State of MP. Service of notice on Mr. Solomon be effected through Mr. Agnihotri.

This I.As are the other connected I.As dealing with Damoh will be listed in the second week of January 2000.

I.A. No. 421

Issue notice. Reply be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks.

I.A. No. 276

List in the second week of January 2000. In the meantime the State of Karnataka will file its further response to the Status Report with regard to Thatkola Reserved Forest which has been filed by Mr. Sahai.

I.A. (This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)

An application has been filed by Amicus Curiae in Court which is taken on record. Issue notice to the State of Rajasthan. Mr. Sushil Kumar Jain, Addl. General, accept notice. Reply be filed by 04.01.2000.

Notice also to issue to the plaintiffs mentioned in Annexure A at page 11 of the application. Notice be served by the State of Rajasthan through Mr. Sushil Kumar Jain, Dasti Service, in addition, is permitted. The State will also be at liberty to effect service on the plaintiffs through the Judicial Magistrate First Class, Alwar in whose court the cases are pending.

Notice is made returnable in the second week of January 2000.

Remaining I.As

To come up in the second week of January 2000.

I.A. No.:	Order Date: 13.01.2000	
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I.A. / 2000 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

An application has been filed by the MoEF. The same is taken on Board. Issue notice to the Amicus Curiae.

The Amicus Curiae accepts notice and waives filing any response and, in fact, he submits that the application should be allowed as prayed for.

In this application it is mentioned that the officers of the MoEF have detected and detained 66 wagons at Nangloi Railway Station and 28 wagons at Rajpur Railway Station have similarly been detained containing illegal timber.

This Court, by its Judgment in T.N. Godavarman Tirumulpad v. Union of India and Others (1997(2) SCC 267) has issued various directions in an effort to preserve and maintain the forest cover. A HPC had been established but there was no authority, other than the said HPC, who could take action in the manner which has been done in the present case by the applicant of the detention of the said wagons. Action has been taken, in the present case, according to the Solicitor General under para 35 of this Court's order dated 15.01.1998 whereby MoEF has been given liberty to issue suitable directions for the proper and effective implementation of the orders of this Court.

In furtherance of the order of 15.01.1998 and other orders passed by this Court, we allow this application and ratify various actions taken by the MoEF for detention, seizure and investigation of the above mentioned cases.

We also authorize MoEF to take such steps as it deems proper for necessary / appropriate investigation, storage, disposal, etc., of the detained timber and also to carry out such actions in future for detention, seizure and investigation of timber which may include:

- (i) Seizure of timber during investigation and or confiscation of unclaimed timber or claimed timber for which complete details sought by MoEF are not furnished within stipulated period.
- (ii) Directing State Governments/Railways/any other authority/consignees/consignors to furnish details/documents required for investigation.
- (iii) Directing State Governments/Railways/Consignees/Consignors to keep custody of the timber.
- (iv) Disposal of seized/confiscated timber through auctions/sealed tenders either directly or through State Governments or any other agency.
- (v) Constitution of a multi-disciplinary team to carry out investigations including those investigating agencies of Centre/State governments.
- (vi) Issue comprehensive guidelines and working instruction issued for regulating movement of timber and timber products, standardization of transit passes and reconciliation of movement of timber with its origin

–for inside North East – as well as outside North East.

- (vii) The applicant may delegate any of its powers to such officer or authority as it may deem necessary for giving effect to its orders.
- (viii) Any other action deemed necessary in this regard.

We further direct that no other Court/authority in the country will entertain any petition, suit/application with regard to the above mentioned cases of timber which have been seized. The applicant, MoEF will also have the power and jurisdiction to not only to suspend the licences of the saw mills which are or have been dealing in illegal timber but it also has the powers to order the sealing of the delinquent units as well as authority to order cutting off of the electricity to such units.

The seized timber, to the extent which is illegal or in respect of which there is no lawful claimant will also be sold by public action by the MoEF or by sealed tenders and the sale proceeds thereof shall be kept in a separate bank account. Any sale so made shall be reported to this Court for further orders regarding the utilisation of the sale proceeds.

If any person is aggrieved by the seizure so made, he shall be at liberty to apply to this Court in these proceedings for appropriate orders. This application is disposed of.

I.A. No. 424

An application on behalf of Shri Sheo Narain Misra, Collector, Damoh has been filed in which he has inter alia stated that when he joined the office of the Collector, he had found serious lapses on the part of the officers / officials who had not reacted/acted immediately. In paragraph 9 of the affidavit he has dealt with the question of the stamp duty in case No. 468/105/98-99 and in the same paragraph he has also given particulars about the land of Mr. Solomon on which trees of all sizes were found. The contents of the said affidavit seem to indicate that there has been an encroachment on Government Land and though the area of land which has been bought by Mr. and Mrs. Solomon was two hectares there is, in fact, a parcel of 2.20 hectares of land which has been fenced. The said affidavit also indicates that on the land in question there are more than 150 marks of trees which have been cut and that no permission had ever been given in the last ten years for the felling of any tree on the land in Khasra No. 13.

Mr. K. K. Venugopal, learned senior counsel appearing for Mr. Solomon, wants to file a reply/response to the said affidavit within three weeks. Affidavit be filed within three weeks. Within that period the State of MP also, if it so desires, may file its response. The Amicus Curiae may file his response within five weeks from today. Mr. Salve, Solicitor General (AG) will be at liberty to consult the officials of MoEF including Mr. Sharma.

I.A. No. 513/99

Issue notice. Reply/response be filed by MoEF and A.C. within two weeks. List this matter on 24.01.2000.

In the meanwhile in modification of this Court's order dated 17.12.1999 we permit inter state movement of timber through the State of MP i.e. the timber moving from one state to another state but no timber should be exported from the State of MP itself. Such movement shall be allowed only on the basis of permits being granted by the Collector certifying that the timber in question is moving from one state to another in the course of inter state sale/movement. The State Government will within two days from today notify the points of entry into the State and it will be the responsibility of the Collector of that District in which such point of entry falls to issue the necessary permits.

It is represented that some trucks which are already in the course of inter state movement are stranded inside the State of MP. The movement of such trucks will be permitted only on certificates being issued by the respective Collectors themselves to the effect that the said trucks are only transiting through the State of MP with legal timber and that no part of the timber contained in the trucks is of MP origin. We also modify our earlier order to the extent that timber imported from outside India is allowed to move in to the State of MP for its consumption. Movement of rubber wood, duly certified by the Collector⁵²⁸ in to the State of MP is also permitted.

We also permit, in modification of the earlier order, the three cable factories in the State of MP to use, in their factories, Eucalyptus and Mango tree wood. This wood would be transported to the factories in their own trucks hired by them after getting certificates from the respective Collectors in which the factories are situated to the effect that such wood would be utilized in those factories only for the purpose of making cable drums and for no other purpose.

I.A. No. 511/99

Issue notice returnable on 24.01.2000 to Amicus Curiae and MoEF.

I.A. No.:	Order Date: 09.02.2000	
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I.A. Nos. 424, 477, 480 & 539/2000

List these matter on 14.02.2000. I.A. 539 also be listed on 14.02.2000.

I.A. No.:	Order Date: 14.02.2000	
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I.A. No. 421

Mr. KN Rawal, ASG seeks four weeks time to file a reply. Reply be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks. Stay of recovery of coercive process in the meantime.

I.A. (Filed by Mr. PK Manohar, Adv.) (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

An application has been filed through the Amicus Curiae in court, inter alia, praying for clarification that the order dated 12.12.1996 contained a ban against the removal of any fallen trees or removal of any diseased or dry standing tree from the areas notified under section 18 or 35 of the Wildlife Protection Act, 1972. Let the same be taken on record.

Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 and 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary or forest⁵²⁹. If any order to this effect has already been passed by any of the respondent States, the operation of the same shall stand immediately stayed.

Reply be filed within three weeks.

The Union of India will also indicate in its reply affidavit as to what safeguards or steps should be taken in relation to such trees.

⁵²⁸ 'Collector' means either Collector or a person duly authorized by the Collector. However the ultimate responsibility will be of the Collector himself. (As per order revised dated 03.04.2000)

⁵²⁹ The words 'or forest' are ordered to be deleted by order dated 28.02.2000

The Registry should communicate this order of stay to the Chief Secretaries of all the States immediately without payment of process fee.

It is submitted by the Amicus Curiae that it has been reported in the Press that the State of Himachal Pradesh has passed some orders lifting the ban on felling of trees in that state. It is submitted that by order dated 12.12.1996 of this Court in W.P.(C) 202/95 felling of trees in any forest, public or private, has been banned and this order has not been varied so far. He, therefore, submits that if there is any order issued by the State of HP giving permission to the felling of trees, that would amount to contravention of this Court's order and would, therefore, be bad in law.

We issue notice to the State of HP to file an affidavit within three weeks so as to inform the Court whether any such order has been passed. We make it clear that if any such order has been passed, the operation of the same shall remain stayed till further orders by this Court.

I.A. No. 513

An affidavit is stated to have been filed on behalf of the Ministry of Environment in reply to this IA. The Chief Secretary, State of MP should file his response to this affidavit within two weeks from today. In particular, the Court would require information with regard to paragraph 5 of the said affidavit. If the said affidavit affirms that the land records of Damoh for the period 1910-11 to 1954-55 are missing, then the said affidavit must indicate as to when was it known that the said records are missing and what steps have been taken to trace the said records. Explanation should also be given as to why compensatory afforestation in respect of 1.03 lakh hectares as stipulated in the Ministry's order of 1990 has not been carried out. The State should show cause that as the condition which was stipulated for granting permission for diversion of 1.03 lakh hectares for non-forest use has not been fulfilled, i.e. State not be directed to reclaim the encroached land which had been allowed to be diverted.

It has been stated in the affidavit of the Ministry that there is some timber which is felled and is lying in the Government Depots which this Court may consider allowing it to be moved in public interest due to the dependency of the local population on the said timber. We are informed at the Bar, on instructions, that approximately 3 lakh cubic meters of timber is lying in the Government Depots. This quantity of timber would represent approx. 15 lakhs natural grown trees which have been cut. Be that as it may as per the additional affidavit filed on behalf of the State of MP lying in the Government Depots are wooden poles and fuel stacks, apart from cut teak and saal trees. We do not have on Court's record details of the felled timber lying in the Government Depots as, it is stated, the inventory has not been carried out in to. Considering the need of the local population, we permit the State to remove 50 per cent of the poles having a girth of not more than 60 cms each and 50 per cent of the fuel stacks which are already stored in the Government Depots. We do not permit the removal of any other type of timber from the Government Depots till further orders except that the State Government may supply 10000 cubic meters of saal and / or teak wood for small scale industries, workshops, furniture makers, etc. out of its said stock. List on 28.02.2000.

I.A. No. 514

Issue notice returnable in two weeks. The State of MP and the Union of India should file an affidavit in reply to this application. In particular, it should be stated as to what is the quantity of timber, which was auctioned by the State on or before 17.12.1999 and in respect of which payment has been received from the auction purchasers.

List on 28.02.2000.

Other IAs listed today be listed on 21.02.2000.

I.A. No.:	Order Date: 21.02.2000	
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I.A. No. 484

Dismissed as in fructuous.

I.A. No. 501

After hearing learned counsel for the parties we permit the Railways to use the sleepers which are already produced and are lying in the Railway Stores, particulars of which are details in the application. The application disposed of.

I.A. No. 503

This application was filed seeking to quash and set aside the stay orders passed by the Civil Judge (Junior Division and Judicial Magistrate, First Class, Alwar which was stated to be following by our order dated 12.12.1996 whereby mining activities were permitted in the forest area.

The learned Amicus Curiae brings to our notice the fact that subsequently the State of Rajasthan had filed Revision Petition against the said order and the High Court allowed the said applications and set aside the orders of injunction which had been granted.

Learned Amicus Curiae informs us that appeals filed by the State of Rajasthan were allowed by the District Judge, Alwar who set aside the injunction which was granted by the civil revisions filed by the mines owners against the orders of the District Judge were dismissed. We are further informed that this Court dismissed the special leave petitions against the said orders of the High Court dismissing the civil revisions. It is indeed gratifying to note that at least one State Government has woken up to the danger of deforestation and has taken up an appropriate action wherever any action is taken by the forest owner. This application is disposed of.

I.A. Nos. 528 & 528A

These IAs are dismissed as withdrawn.

I.A. Nos. 511 & 512

Learned counsel for the Union of India to file response within this week. To come up on 28.02.2000.

I.A. In I.A. 424 in W.P.(C) 202/95 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

This application for extension of time has become infructuous because the Inquiry Report has been filed. Copy of the report be given to the Amicus Curiae. This I.A is disposed of.

I.A. Nos. 419 & 420

At the request of Mr. K.N. Rawal, learned ASG, these two I.As are adjourned by two weeks.

I.A. No. 276

To come up for hearing and final disposal on 27.03.2000. Any affidavit etc. should be filed by 15.03.2000.

I.A. No. 513

This application for official translation is allowed.

I.A. No. 516

Issue notice. Reply be filed by the State of MP as well as by the Union of India within a week. To come up on 06.03.2000.

I.A. Nos. 518 & 519

These IAs are dismissed as withdrawn

I.A. Nos. 520, 521 & 539

Issue notice to the Union of India and the State of MP as well as to the Amicus Curiae. Response be filed within ten days. To come up for hearing on 06.03.2000.

I.A. Nos. 526 & 527

These I.As are dismissed as withdrawn.

I.A. No. 542

This I.A is allowed in terms of prayer A.

I.A. Nos. 540 & 541

These I.As are dismissed as infructuous.

I.A. Nos. 544 & 545

These I.As are dismissed as withdrawn

I.A. Nos. 546 & 547

Response by the State of MP be filed. To come up on 28.02.2000.

I.A. No.:	Order Date: 28.02.2000	
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I.A. Nos. 477 & 480

Pursuant to the orders of this Court, the CBI has submitted a report which is taken on record. Copies of this Report dated 20.01.2000 be given to the counsel for the State of MP and Shri Prashant Bhushan, Advocate.

No further orders need be passed except that we direct further action be taken as contained and stipulated in paragraph 74 and 75 of the said report. Action Taken Report by the CBI and the State Government will be filed within eight weeks from today.

I.As. stand disposed of.

I.A. No. 424

Having heard the learned counsel for the parties, we are of the opinion that copy of the affidavit of Shri K.S. Sharma, Chief Secretary, Government of MP filed in this Court on 10.01.2000 and all other affidavits filed in this Court in response to this application should be given to Shri M. K. Sharma, Addl. IG (Forests) for his consideration. Shri M. K. Sharma should then meet Shri KS Sharma, Chief Secretary. After the discussion between the Chief Secretary and Shri M. K. Sharma and members of his team, Shri M. K. Sharma will file a report in this Court. Shri M. K. Sharma should meet the Chief Secretary, subject to the latter's convenience, within a fortnight.

The Chief Secretary should also file a further affidavit to supplement the earlier affidavit filed in response to the application. It will be appropriate, in our opinion, if the IG (Forests) and Shri K.S. Sharma, Chief Secretary also have a discussion with each other before Shri K.S. Sharma files his further affidavit in this court. We leave it to both of them to work out the modalities of the meeting.

Report/Affidavit be filed by the respective officers within six weeks from today. It is needless to add that each authority will cooperative with the other. Copies of the Report and the affidavit be given to the Amicus Curiae, counsel for the State of MP and also to Mr. K.K. Venugopal, Sr. Advocate.

To come up on 24.04.2000.

I.A. No. 478

Dismissed as having become infructuous.

I.A. No. 511

I.A. for implement on behalf of MP Rajya Van Vikas Nigam Ltd. is allowed.

I.A. No. 512

In response to this application, an affidavit for Shri A.R. Chadha, Deputy Inspector General of Forests, Government of India, MoEF has been filed in court today. In the said affidavit on behalf of the Ministry, it has been stated that the application be favourably considered and allowed in terms of the submissions made in paragraph 3(a) and (b) of the said affidavit.

After hearing the learned counsel and pending disposal of the application, the applicant corporation is permitted that the felled timber and fuel stacks lying in the forests can be transported to its depots located in other districts. The State Corporation is also permitted to cut stumps while clearing the areas for plantation for the areas already earmarked for the plantations for monsoon 2000.

Similar permission, as suggested by the MoEF, is also granted to the Forest Department of the State.

I.A. No. 513

An affidavit of Shri NK Bhagat, Conservator of Forest (Admn / Gzt.) has been filed in court today. In paragraph 11 and 12, details of materials which have been fully paid for and which have been partly paid for and other timber, etc. which is lying in the depots of the government are given. In modification of the earlier orders, we permit the movement of the material mentioned in paragraph 11 and we also permit the sale and movement of the material mentioned in paragraph 12 of the affidavit.

The Amicus Curiae seeks time to consider the affidavit not filed.

To come up for further order on 06.03.2000.

I.A. No. 514

The State of MP should respond to the affidavit dated 07.02.2000 of Shri Santosh Bharti filed in I.A. 513. To come up on 06.03.2000.

I.A. Nos. 530 & 531

Issue notice returnable on 06.03.2000.

Remaining I.As on board

List on 06.03.2000.

In the order dated 14.02.2000 the words 'or forest' in the 2nd line from bottom at page 4 are ordered to be deleted. The Sentence would read thus:

"..... in the meantime, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park or Game Sanctuary."

I.A. No.:	Order Date: 06.03.2000	
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Adjourned to 13.03.2000.

I.A. No.:	Order Date: 13.03.2000	
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Adjourned to 27.03.2000.

I.A. No.:	Order Date: 27.03.2000	
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Adjourned to 03.04.2000.

(These matters are listed as Item 1B before a special Bench consisting of Hon'ble, Khare and Shah, JJ)

I.A. No.:	Order Date: 03.04.2000	
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I.A. No. 421

It is stated that the Amicus Curiae would be moving a substantive application for reconstitution of the HPC. On request made on his behalf, adjourned to 17.04.2000.

I.A. No. 548

Response of only 9 States / Union Territories have been filed. Replies by the other States / Union Territories be filed within two weeks. Rejoinder, if any, be filed within two weeks thereafter. List on 01.05.2000.

In clarification of our order dated 14.02.2000 on representation being made on behalf of the State of Rajasthan, it is clarified that the said interim order will have no application in so far as plucking & collection of tendu leaves is concerned.

I.A. No. 276

It is stated on behalf of the Union of India that the Survey Report has been received. Copies will be made and given to the Amicus Curiae as well as to the State of Karnataka who may file their response within two weeks. To come up on 01.05.2000.

I.A. Nos. 419 & 420

From the affidavit which has been filed on behalf of MoEF, it is evident that only 10 per cent of afforestation which was required to be done by the NMDC has been carried out. It is represented that the rest of the afforestation is required to be carried out in an area which is not within the immediate vicinity of the mines. In our opinion, that is no excuse for not carrying out the required afforestation. If the conditions for grant of the mining lease are not fulfilled, there is no reason as to why NMDC should be permitted to carry on the mining operations. This aspect should, in fact, have been overseen by the MoEF. After grant of such permissions, we expect the said Ministry to monitor and see whether the conditions stipulated by them have been fulfilled or not rather than to leave it to the Court to point out that the conditions contained in letters granting permissions have not been fulfilled. The Ministry of Environment has clearly been remiss in this respect.

Now it has come to the notice of this Court that the conditions stipulated in the permission which was granted have not been carried out. The NMDC is required to show cause why their mining operations should not be ordered to be suspended forthwith.

Copy of this order be served on the Advocate-on-Record for the NMDC.

To come up on 17.04.2000 by which time the reply should be filed by the NMDC.

I.A. No. 512

Along with the additional affidavit of Shri Narendra Kumar on behalf of the MP Rajya Van Vikas Nigam Ltd. are annexures A6 and A7. Annexure A6 contains the details of the forest produce which is to be sold by public auction and which requires inter district transport. The produce referred to therein consist of 60013 cubic meters of timber and 71220 fuel stacks. In Annexure A7, are the details of sold material requiring inter-district transport.

It is represented by Shri Mukul Rohtagi, ASG appearing on behalf of applicant-Nigam that the functioning of the said Nigam is to take up the degraded forests, raise plantations and then dispose of the produce as per the working plans. It is in this way that large quantity of forest produce is lying in the various depots of the Nigam,

some of which have been sold and some of which have not been sold.

With the concurrence of the Amicus Curiae as well as the counsel for the MoEF, the said Nigam is permitted to sell and/or transport the quantity of various produce specified in Annexure A6 and also to effect inter-district or out of state movement of the timber and fuel stacks referred to in Annexure A7 of the said additional affidavit.

List on 17.04.2000.

I.A. No. 513

Additional affidavit has been filed on 29.03.2000 of Mr. NK Bhagat, Conservator of Forests. In paragraph 4, details have been given of the unsold material lying in the depots of the State of MP. Paragraph 5 contains the figures and particulars of the sold and fully or partly paid material which are also lying in the depots of the State. With the consent of the Amicus Curiae as well as counsel for the MoEF, the State of MP is permitted to sell, remove and transport the material referred to in paragraph 4 & 5 of the said additional affidavit. Similar permission is also granted for the removal and transportation of the fuel wood stated to be lying in the depots of the State.

List on 17.04.2000.

I.A. No. 514

List on 17.04.2000.

I.A. No. 516

Let the Union of India file a reply. List on 24.04.2000.

In the order dated 13.01.2000, permission had been granted for the rubber wood to be imported on being certified by the Collector. It is obvious that the term 'Collector' mentioned in the said order does not mean that the Collector himself is to certify. It means that a person duly authorized by the Collector would be entitled to certify and the applications in this regard will always have to be made before the Collector. It goes without saying that the ultimate responsibility will be of the Collector himself.

I.A. Nos. 520 & 521

Reply by the MoEF be filed. To come up on 24.04.2000.

I.A. No. 539

List on 24.04.2000.

I.A. No. 500

List along with I.A. 513 on 17.04.2000.

I.A. Nos. 530 & 531

List on 17.04.2000.

I.A. Nos. 535 & 536

List on 24.04.2000.

I.A. No. 217

The State of Assam should file a reply within two weeks. To come up on 24.02.2000.

I.A. No. 428

To come up on 24.04.2000.

I.A. No. 471

Issue notice to the Union of India and the State of UP returnable on 17.04.2000

I.A. No. 540

Issue notice to the Amicus Curiae, the Union of India and the State of MP returnable on 24.04.2000.

I.A. Nos. 546-547

Counsel for the applicant states that the prayers made in these applications stand allowed in view of the earlier orders passed by this Court and therefore, he wishes to withdraw these applications. IAs are dismissed as withdrawn.

I.A. No. 557

I.A. is dismissed.

I.A. Nos. 558 & 559

Issue notice for 10.04.2000

I.A. No. 424

CBI should file its response to the affidavit of Shri Santosh Bharati dated 11.03.2000 which are objections to the Report of the CBI. To come up on 24.04.2000.

I.As relating to UP and North Eastern areas (Numbers to be given by the learned Amicus Curiae) be listed on 10.04.2000.

I.A. No.:	Order Date: 13.04.2000	
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I.A. No. 558

Notice.

Mr. Satish K Agnihotri, the learned counsel for the State of MP accepts notice. He waives the rights to file a reply. After hearing the counsel for the parties, we direct that in modification of our order dated 17.12.1999 the State

of MP shall first offer for sale to the applicant company owned timber or wood which the applicant requires for its own use and purposes for meeting the requirements in the underground mines. The application is disposed of.

I.A. No. 559

Notice

Counsel accepts notice but he waives to file any reply. There is not opposition to this application. The application is allowed in terms of prayer contained in paragraph 11(a).

I.A. No. 415

None present. Not pressed. I.A. is dismissed.

I.A. Nos. 339, 421, 422, 465, 495 & 496

Background information which has been furnished by the Principal Secretary of the HPC inter-alia provides that norms are fixed by the HPC with regard to the production of veneer at a figure of 75% of the volume of the round timber used by a unit which was to be treated as normal production. Copy of this background information be given to the counsel for the applicants for their consideration and response. The Ministry of Environment should also give its response and these applications be listed on the top of the list on 17.04.2000.

I.A. No. 295

In this Court order dated 10.12.1998, it is stated that the Additional Solicitor General would seek instructions about the feasibility of constituting State level Authorities under Section 3(3) of the Environment Protection Act, 1987 in line with the Authority which had been constituted in the State of Arunachal Pradesh known as 'Arunachal Pradesh Forest Protection Authority'. This Court had also observed that it should be worthwhile for the Central Government to consider a committee under section 3(3) of the State Act at the national level in the nature of a supervisory or appellate authority over the State Authorities. Even if some time is taken in constituting the State level authorities the Central Government should consider putting in place a National Level Authority which will have the technical expertise to deal with the problems which are at present handled by the High Courts and this Court and dispose them of expeditiously keeping in mind the principle of sustainable development. Mr. Raval submits that he will seek instructions and inform the court after three weeks. List this I.A. for further orders on 05.05.2000.

Communication to learned Amicus Curiae in connection with CR No. 5920/1997 pending in the High Court of Gauhati.

In the office report dated 07.04.2000, there is reference to the order dated 06.08.1998 wherein it had been directed that the High Court of Gauhati should furnish particulars to this Court with regard to CR No. 5920/1997 stated to be pending in that Court. No information or communication has been received from the Registrar of the court so far. A reminder should be sent by the Registry requiring the Registrar of the High court to furnish the necessary particulars and information.

I.A. No. 68

Dismissed as having become infructuous.

I.A. Nos. 19 & 20

Dismissed as withdrawn.

I.A. Nos. 80 & 81

Dismissed as withdrawn.

I.A. No. 100

Dismissed.

I.A. No. 408

Dismissed.

I.A. No. 409

Adjourned to 24.04.2000.

I.A. No. 221

Dismissed.

I.A. No. 247

Dismissed as withdrawn.

I.A. No. 286

Dismissed as withdrawn.

I.A. No. 403

Dismissed as withdrawn.

I.A. Nos. 426 & 429

Adjourned to 24.04.2000.

I.A. No. 427

State of Assam to file reply before the next date of hearing. Adjourned to 24.04.2000.

I.A. No. 431

Dismissed as withdrawn.

I.A. No. 474

Adjourned to 24.04.2000.

I.A. No. 236

Notice.

I.A. Nos. 217, 285 & 412

List on 24.04.2000.

I.A. No.:	Order Date: 17.04.2000	
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I.A. No. 513

State of MP should file its response to the reply/additional affidavit which has been filed in April 2000 by Mr. Santosh Bharati. Response to be filed within two weeks. List on 01.05.2000.

I.A. Nos. 419 & 420

It has been explained by Mr. Mukul Rohtagi that as far as NMDC is concerned it has complied with its obligation inasmuch as about 1300 hectares were required to be afforested by NMDC over a period of 10 years and the same is being done. With regard to the balance area of 7000 hectares Rs.40 crores have been paid to the State of MP to carrying out afforestation in the degraded forest area which s not under the control of NMDC and which is revenue land.

The State of MP will find an affidavit indicating as to what steps it has taken with regard to afforestation on its having received the said Rs.40 crores. The State might consider entrusting the job to the MP Rajya Van Vikas Nigam Ltd. with the task of afforestation specially in area like waste land which are in plenty in the State of MP.

During the course of hearing of this I.A., Mr. Raval on behalf of Central Government has placed on record a statement showing the position of the cases approved for diverting aforest land stipulation for compensatory afforestation under the Forest Conservation Act and the Compensatory afforestation done, funds to be utilized and actually utilized.

This state is to be considered as an IA and we take suo moto action thereon. The same may be separately numbered. The state reflects the position as on 29.03.2000 and provides dismal regarding. In short, after the total afforestation compensatory and otherwise which was required to be done by all the States put together there is a shortfall to the extent of 36 per cent. This statement further reflects that though funds have been realized by all the States in connection with such afforestation a very large number of States have been spent 50 per cent or less amount thereon. These states are Arunachal Pradesh, Assam, Bihar, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Mizoram, Orissa and Tamil Nadu. Notice to issue to all these states to explain as to why monies realized have not been so far spent on carrying out afforestation. Replies to be filed will indicate the heads under which the monies have been spent. Notice to also to go to those States who have not submitted quarterly performance Report upto September 1999. The Registry will send along with the notice, a copy of the Statement place by Mr. K N Raval. Notice will be returnable after eight weeks. Affidavit to be filed on the reopening day after summer vacation.

I.A. No. 421

List on 01.05.2000

APPLICATION THROUGH AMICUS CURIAE FOR RECONSTITUTION OF THE HIGH POWER COMMITTEE

An I.A. has been filed by Amicus Curiae in Court for reconstruction of the High Power Committee (HPC).

Notice. Mr. Raval accepts notice.

As of today because of the resignations of other members only Mr. Givarajika remains on the Committee as Member-Secretary. It is agreed by the Amicus Curiae as well as the Additional Solicitor General that the application be allowed. Shri SC Sharma, Addl. IG (Forests) be appointed as the Chairman of the Committee with Mr. GK Pillai, Joint Secretary, N.E. in the Ministry of Home Affairs being is other member. Ordered accordingly, they shall undertake the task which the HPC was required to take up and in addition thereto, it also will look into the following:

- a) Supervising the transportation of all the illegal timber since none of it has been sold despite orders made by this Hon'ble Court from time to time.
- b) Overseeing investigation into specific cases of illegal felling and certain other matters referred to in the confidential report given by the HPC to this Hon'ble Court.
- c) Re-examining the matter of licensing of the units in the light of events which had occurred in the interregnum, particularly the seizure of a very large quantity of timber originating from North Eastern States – Nangloi, Rajpura and Tinsukia.

The Ministry of Environment will inform Mr. S. C. Sharma and Mr. G. K. Pillai of their appointment to the HPC as expeditiously as possible.

AN APPLICATION THROUGH AMICUS CURIAE IN RELATION TO THE WORKING OF THE HIGH POWER COMMITTEE CONSTITUTED BY THIS HON'BLE COURT

Another application has been filed by the Amicus Curiae relating to the working of the HPC.

Notice. Mr. Raval accepts notice.

Reply to be filed within two weeks. Any party which may be affected by the prayers made in paragraph 10 of the application which reads as follows is at liberty to file an affidavit:

- a) Direct that the orders passed by the HPC imposing a penalty based on actual adjudication at the behest of the unit, even if it results in the imposition of penalty larger than the penalty originally imposed are valid and permissible.
- b) Clarify that no unit in respect of whom an order had not been made by HPC on or before 15.1.1998 would be permitted to shift to the industrial estate or to revive and / or restore its license; and
- c) Pass such other and further orders which this Hon'ble Court may deem fit and proper under the circumstances.

List on 01.05.2000.

I.A. Nos. 500, 512 & 513

List on 01.05.2000

I.A. No. 514

Mr. Agnihotri states that in respect of 11 circles he will be able to file a report within three days. Needful be done. With regard to rest of the circles, report be prepared as expeditiously as possible. To come up on 01.05.2000. Union of India may also file its response to the report relating to the said 11 circles.

I.A. No. 530 & 531

In view of the fact that on an earlier occasion this Court has rejected the prayer for use of wooden sleepers and has prohibited the railways from using wooden sleepers these applications are dismissed.

I.A. No. 471

Last opportunity granted to the State of UP and to the Union of India to file its reply. To come up on 01.05.2000.

I.A. No. 560

Application is dismissed.

I.A. No. 561

In view of the fact that the State of MP has already been permitted to supply ballis from it stock. This application is dismissed as withdrawn.

I.A. No. 399

Adjourned to 01.05.2000

I.A. Nos. 465, 495, 498 & 422

Notice returnable on 01.05.2000

I.A. No.:	Order Date: 24.04.2000	
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An IA has been filed on behalf of the State of UP relating to felling and extraction of 203 Saal trees from the Rajaji National Park, Dehradun. Let the same be registered and numbered.

Issue notice. Mr. Salve, learned Amicus curiae accepts notice. He submits tat in view of the averments made in the application and especially in paragraph 4 the application be allowed.

We direct that the State of UP may take appropriate steps for felling and extracting 203 Saal trees from the Rajaji National Park which are stated to have been attacked by Sal borer. This exercise will be undertaken by the

State under the supervision of the scientists of Entomology Divisions of the Forest Research Institute, Dehradun. The exercise be completed within a period of four months and the report be then submitted by the State as well as the Forest Research Institute. List thereafter.

I.A. No. 424

It is stated that a meeting has taken place between Shri K.S. Sharma, Chief Secretary, Government of MP and Shri M. K. Sharma, Addl. IG (Forests) and a report will be submitted by the next date of hearing. Let the report be submitted within one week.

List on 01.05.2000.

I.A. No. 516

I.A. 567 is also taken on board. Issue notice in I.A. 516 and 567. Reply be filed by the Union of India within six weeks. List thereafter.

I.A. No. 520

Dismissed.

I.A. No. 521

Adjourned to 01.05.2000 to await the report of the Chief Secretary, Government of MP. Response be filed before the date.

I.A. No. 539

Adjourned to 01.05.2000

I.A No. 535 & 536

I.A. 536 for exemption from filing O/T is allowed. Issue notice in I.A. 535

I.A. No. 549

Reply be filed within four weeks. List thereafter.

Remaining I.As.

Adjourned to 01.05.2000

(Note: On 01.05.2000, I.As relating to North-Eastern States be listed as Item IA and I.A. 424 at the bottom of the list)

I.A. No.:	Order Date: 28.04.2000	
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I.A. / 2000 (on behalf of SECL for intervention and for direction/modification) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

List on 01.05.2000

I.A. No.:	Order Date: 01.05.2000	
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I.A. No. 548

According to the Office Report, no affidavits have been filed by the State of J&K, Haryana, Tamil Nadu, Kerala, Orissa, Bihar, Sikkim, Nagaland and Arunachal Pradesh. These States through the Chief Secretaries are directed to file their affidavits within eight weeks from today. Each of the States shall also pay Rs.5000/- by way of costs. Costs be paid to the Supreme Court Legal Services Committee. List thereafter.

I.A. No. 565

This IA stands disposed of in terms of the Signed Order.

ORDER

This is an application by the learned Amicus Curiae seeking clarification in relation to the working of the HPC which was constituted by this Court.

The first clarification, which is sought, is with regard to the orders passed by the HPC imposing a penalty based on actual adjudication at the behest of the units even it results in the imposition of penalty larger than the penalty originally imposed. The question is whether such a penalty and/or additional penalty which is imposed on them basis of the documents produced by the units is valid and permissible.

The HPC fixed normal recovery norms after obtaining data and expert advise from different sources. The norms so fixed showed as to how much veneer etc. could be recovered from the timber and it is on that basis that it proceeded to examine the records of the different units and then determined whether there has been excess production indicating use of legal timber and thereby justifying imposition of penalty and/or additional penalty.

After hearing the learned counsel for the parties, we are in agreement with the norms adopted by the HPC. We also hold that on the basis of the documents and records produced by the units, the HPC was and would be entitled to impose penalty larger than the penalty originally imposed, as long as this penalty is based on the records so produced.

A question has arisen with regard to cases where orders had not been made by the HPC on or before 15.01.1998. This Court's order dated December 1998 had contemplated documents being filed and orders being passed by 15.01.1998. It is possible that due to volume of work, the HPC may not have been able to pass orders by 15.01.1998 even though papers and other relevant material had been submitted to the HPC by that date. We, therefore, make it clear that the HPC would be entitled to look into the records and pass orders in every case where documents and material had been placed before the HPC by 15.01.1998. We further make it clear that wherever any penalty and/or additional penalty has been imposed by the HPC, the unit concerned will have a right to approach the HPC to examine the matter afresh. In modification of paragraph 14 of the order of December

1996, we permit any unit in respect of which penalty and/or additional penalty has been levied by the HPC to approach the HPC for reconsideration on the basis of the material which it may choose to produce provided such a request is made by the unit within one month of the passing of the order by the HPC or, in those cases where orders have already been passed, within one month from today.

In as much as the HPC would in effect be discharging quasi-judicial functions, it will be appropriate that the HPC may briefly indicate the reasons in support of the order passed by it.

It is further clarified that wherever the HPC has given clearance to a unit after 09.02.1998, the unit will be entitled to relocation.

It is, however, made clear that no unit which had not furnished the record and particulars before 15.01.1998, will be entitled to the benefit of this order.

This I.A. stands disposed of.

I.A. Nos. 421, 399, 422, 465, 495, 498, 428, 409, 426 and 429

These IAs are also disposed of in terms of the signed order passed in I.A. 565. Pending disposal of the review applications, there will be stay of recovery.

I.A. No. 424

The State Government of MP will as soon as possible but not later than eight weeks from today file in Court an affidavit relating to regularization of encroachment and compensatory afforestation. It should be indicated as to what is the concrete proposal of the State Government in dealing with the question of encroachment. The nature and type of encroachment should be seen and appropriate & workable plans prepared. The affidavit will also deal with all the other points on which decision has been taken by the Chief Secretary and the Inspector General of Forests as reflected in the Minutes annexed to the affidavit of Mr. AR Chadha, Deputy Inspector General (Forests). This aspect of the matter to come up after eight weeks.

Sub-rejoinder is permitted to be filed.

List on 08.05.2000.

I.A. No. 276

List on 05.05.2000

Remaining I.As

List on 08.05.2000

I.A. No.:	Order Date: 09.05.2000	
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I.A. No. 514

This is an application to direct the State Government to issue transit passes in respect of timber from notified depots to the establishments of the members of the applicant. In the affidavit in reply filed on behalf of the State of MP, it is stated in paragraph 3 that in all the 22 forest circles the stocks lying in saw mills as on 31.12.1999 is given in the said paragraph has been verified. Particulars of the timbers in fuel wood found in the sawmills are

given in the said paragraph. There is nothing to indicate in the affidavit whether the quantity of timber and fuel wood mentioned therein is from legal sources or not. On a query being put Mr. Vivek Tankha, Advocate General appearing on behalf of the State of MP states that he is satisfied, on instructions that the timber mentioned at item nos. 1 and 2 is legal timber representing timber purchased from the Government/Authorised departments and/or it is imported from other countries. He, therefore, submits that this timber may be allowed to be processed and transported. Ordered accordingly. With regard to the rest of the timber the State Government will verify and file an affidavit affirming whether the same is legal timber or not. This clearance is given (for item Nos. 1 and 2) subject to the safeguards as may be pointed out by the Regional Chief Conservator of forests.

List these matters on 11.05.2000 at 2.00 pm along with I.A. 516.

I.A. No.:	Order Date: 11.05.2000	
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I.A. (Filed by Mr. M.L. Lahoty in Court) (*This is an unregistered IA and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on Board.

Issue notice. Notice to the State of MP returnable on 12.06.2000 before the Vacation Bench and notice with regard to State of Karnataka and Rajasthan, returnable on a date after Summer Vacation to be fixed by the Registry.

Mr. S.K. Agnihotri, Advocate, accepts notice for the State of MP. The applicant will within one week from today, file an additional affidavit indicating the exact parcels of waste land which the applicant would be in a position to develop. Copy of that affidavit be give to Mr. Agnihotri. The State of MP will fine its response by 06.06.2000. To come up on 12.06.2000 before the Vacation Bench.

I.A. No. 516 & 567

Taken on board.

While we do not grant the prayer for impleading the applicant as a party, we, however, allow the applications and permit the applicant company to dispose of the process waste in the manner indicated in Annexure E to IA 567.

On behalf of the Union of India, it is stated that similarly placed industries may also be given permission likewise. Ordered accordingly.

I.A. No. 471

After hearing the learned counsel for the parties and keeping in view the undertaking furnished by the applicant to the effect that it will manufacture cooling towers only from imported wood, we permit the State of UP to give a special permit to the applicant subject to the condition that the applicant will always abide by the said undertaking and will use the saw mill only the purpose of sawing imported timber and that the applicant will not use any indigenous or domestic timber in the manufacture of the cooling towers. Such special licence will be given on such terms and conditions as may be stipulated by the State of UP in accordance with rules.

I.A. is disposed of.

I.A. No. 539

The prayer in this application is that the applicants and other formers/tribals may be permitted to transport and sell the wood like eucalyptus, subabool and casurina grown under the Farm Forestry Program to Ms. Orient Paper Mills, Amlai. Details of the land owned by the applicants are contained in Annexure D (Page 20) to the application. The land referred to therein is situated in Tehsil Sohagpur, Distt. Shahdol (MP). On the Collector, Shahdol certifying that the wood grown on the said land described in Annexure D is only eucalyptus, subabool, and casurina, the applicants, are permitted to cut, transport and sell eucalyptus, subabool and casurina from the said land and give the produce to M/s Orient Paper Mills.

I.A. is disposed of.

I.A. Nos. 572-573

IAs are dismissed.

I.A. Nos. 574-575

I.A. 575 for exemption from filing O/T is allowed.

In I.A. 574, issue notice returnable after Summer Vacation to the Union of India, the MoEF and the State of MP. Notice also to learned Amicus Curiae.

I.A. No. 580

Issue notice returnable after Summer Vacation.

Remaining I.As.

List after Summer Vacation.

I.A. No.:	Order Date: 05.06.2000	
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I.A. Nos. 590 & 591

List on 12.06.2000

I.A. No.:	Order Date: 12.06.2000	
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I.A. No. 587

Learned counsel for the applicant is not present. List after Summer Vacation.

I.A. Nos. 590-591

Notice is accepted by Mr. SK Agnihotri, Advocate. He prays for and is allowed four weeks time for filing the counter affidavit. Thereafter four weeks time is granted for filing rejoinder. List after Summer Vacation.

I.A. No.:	Order Date: 04.08.2000	
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I.A. No. 432

Upon being mentioned, taken on board. The IA is dismissed as withdrawn.

I.A. No. 599

Issue notice. Mr. Raval and Mr. Agnihotri accepts notice.

Replies be filed within two weeks and rejoinder within two weeks thereafter. List after four weeks.

In the meantime, further proceedings against / prosecution of the petitioner are stayed.

I.A. (This is an unregistered IA and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)

The IA has been filed in Court on behalf of National Highways Authority of India. The same be registered and numbered.

Issue notice. Mr. Salve and Mr. Raval accepts notice. Reply be filed within a week.

To come up on 25.08.2000.

I.A. No. 550

Dismissed as withdrawn with liberty to take recourse to such other legal proceedings as may be appropriate.

I.A. No. 580

Affidavit in reply on behalf of the MoEF has been filed. Rejoinder, if any, may be filed within two weeks.

To come up on 25.08.2000.

Copy of the action taken report about the detention of the wagons, which has been filed in Court on behalf of the MoEF, be forwarded to the Chief Secretaries of the North Eastern States requiring them to respond to the said Report and to show cause as to why transport of timber outside the region should not be prohibited as they are unable to see that the orders of this court permitting only the hammer mark and legal timber to be transported are not complied with. Pending further orders, the Chief Secretaries will ensure that the revised guidelines dated 22.05.2000 copies of which should also be sent to the Chief Secretaries, shall be complied with.

Remaining I.As on board

Adjourned. IAs pertaining to MP be listed for hearing on 25.08.2000.

I.A. No.:	Order Date: 09.08.2000	
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NEW I.A.

An application has been filed in court. Let it be registered and numbered. Issue notice returnable on 08.09.2000. Dasti Service, in addition, is permitted.

I.A. No.:	Order Date: 08.09.2000	
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I.A. No. 574

In this application, the applicant M/s. South Eastern Coalfields Ltd. wants permission to fell trees standing on the forest land which has been released in its favour for the purpose of carrying out mining operations. According to the applicant, by order dated 13.10.1998 and 25.01.2000, 160.234 hectares in Chirmiri Colliery in District manendragarh were permitted to be utilized for carrying out opencast mining operations. One of the conditions of the permission granted was that compensatory afforestation should be carried out on 89 hectares of degraded forest land and 125.734 hectares of non-forest waste land. According to the applicant, the amount of expense involved has been deposited with the State of MP who is taking steps to comply with the requirement of reforestation and, therefore, the permission sought for should be granted.

Section 2 of the Forest (Conservation) Act, 1980 places a restriction on dereservation of forest or use of forest land for non-forest purposes. This restriction which is placed can be removed if prior approval of the Central Government is obtained. Whenever the State Government is of the opinion that the forestland should be dereserved and non-forest activity permitted, it is required to get the prior permission of the Central Government. An application in respect thereof has to be made under Rule 4 of the Forest (Conservation) Rules, 1981. The Form prescribed under Rule 4 gives the details of what the application should contain. Apart from the details of the forest land involved which is required to be dereservation, clause 6 of the Form requires details of compensatory afforestation scheme to be given. The area which is identified for compensatory afforestation has to be indicated, maps in respect thereto on which afforestation is to take place have to be annexed and total financial outlay specified. We are not referring to the other particulars which are required to be given. But all that we wish to emphasise is that the provisions of the Rules as well as the information which is sought for by the Forms have to be complied with and given before the Central Government takes up the proposal under Rules 5 of the said Rules.

When an application is received from the State Government, the Central Government under Rule 5 is required to refer such proposal to a committee for advice if the area of forest land involved is more than 20 hectares. Where, however, the proposal involves clearing of naturally grown trees in forestland or portion thereof for the purpose of using it for reafforestation, then the matter is not referred to the Committee for advice. After the advice of the Committee is received, the Central Government may under Rule 6, after making such further inquiry, as it may consider necessary, grant approval to the proposal for dereservation with or without conditions or it may reject the said proposal.

As we see it, even though the proposal for dereservation is mooted by the said state Government as far as the Government of India is concerned, this is done because of an application for dereservation, which is received from an industry like the applicant in the present case. The Central Government while granting permission specifies the area on which compensatory afforestation is to take place. The question which arises is whether the present practice, which is being followed, namely, of the applicant depositing money with the State Government and requiring it to carry out the afforestation is satisfactory or not and whether that is in compliance with the provisions of the Act and the Rules framed thereunder.

We prima facie feel that in order to ensure reforestation by reason of the release of reserved forests, the primary responsibility of carrying out the afforestation should be of the applicant concerned, the party which is going to use the dereserved forest, M/s. South Eastern Coalfields Ltd. in the present case, Mr. Raval, the learned Addl.

Solicitor General states that the Rules and guidelines which have been framed will be upgraded in the light of the experience so far. In this connection, it appears that not only should it be mandatory for the Rules and the Form provided therein to be complied with but while granting permission the Central Government must specify the period within which the afforestation must commence and be completed. Furthermore, there should be a requirement of environmental audit in order to ensure that after the saplings have been planted the survival rate is high. The Government might consider requiring each applicant who is under an obligation to carry out the afforestation to publish the results of the environmental audit every year in a newspaper and forward the same to the Central Government. It should be specified that if the survival rate of the trees planted is not upto a specified percentage, the permission, which is granted, shall automatically cease and the non-forest activity will have to be stopped. In other words, the applicant is not only to be responsible for planting trees but it should be its responsibility to look after and maintain the same and ensure its survival and full growth. The Union of India before granting permission to dereserve the forest should be satisfied that the applicant to whom the permission is ultimately being granted is such who will be in a position to carry out the afforestation as prescribed.

It should be one of the conditions imposed that if at any point of time there is non-compliance with the Rules or Regulations or terms of the conditions, then the permission granted under Rule 6 by the Central Government would stand withdrawn.

It has been brought to our notice that in paragraph 3.5 of the existing guidelines the State Government is required to create a special fund to which the individual user agency is to make deposit for compensatory afforestation. Inasmuch as the primary responsibility of carrying out the afforestation program is to be of the individual user agency, perhaps it will not be necessary for any such deposit to be made. If, however, in a particular case circumstances exist where it may not be possible for the individual user agency to carry out the afforestation itself, such cases should be very exceptional and not the norm. Then the money which is deposited with the State Government should not form part of the general budget but should be kept in a separate account to be utilized as and when required without undergoing any undue formalities.

Learned Addl. Solicitor General wants eight weeks time to take appropriate action of considering and amending the Rules and guidelines. Time is granted.

As far as the present application is concerned, the Advocate General, MP states that pursuant to the filing of the affidavit on behalf of the State Government, on the entire area except for 20 hectares the plantation has been effected and in respect of 20 hectares of degraded forest land the site preparation will be completed in the year 2000-2001 and afforestation will be completed in 2001-2002. It is further stated that the afforested area would be maintained for the next five years. As we have already noticed, the user agency in this case is the applicant M/s South Eastern Coalfields Ltd. It is their responsibility to see that the afforestation takes place in accordance with the permission which has been granted by the Union of India. The State Government will be at liberty to give the task of maintenance and looking after of the afforested area to M/s. South Eastern Coalfields Ltd. and in case there is no proper maintenance or looking after and the survival rate of the trees planted is less than 75 per cent, the Central Government will be at liberty to give notice and cancel the permission granted. The permission sought for is granted subject to the aforesaid condition. As far as the balance 20 hectares is concerned, this will be the immediate responsibility of M/s South Eastern Coalfields Ltd. to carry out the afforestation itself or through its agent.

Before concluding, we would like to observe that the Government should consider as to what safeguards should be ensured in order to see that after the permission is granted, a project is not abandoned after the cutting of the trees.

IA to come up for further orders along with IA 506 after eight weeks. The State of MP as well as M/s. South Eastern Coalfields Ltd. will also file an affidavit indicating what is the survival rate of the trees so far.

I.A. Nos. 600-601

Allowed as prayed for

Remaining I.As

List on 22.09.2000.

I.A. No.:	Order Date: 22.09.2000	
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I.A. No. 580

Consequent to the seizure of the railway wagons show cause notice dated 06.07.2000 had been issued to the applicant by the investigating team. The applicant has chosen not to file a reply to the said show cause notice, as according to Mr. Rohtagi, present application has been filed. It is more appropriate that the questions of fact involved in this application are decided by the SIT who have issued the aforesaid show cause notice. Counsel for the applicant wants ten days time to file reply to the show cause notice. We grant three weeks time to reply to the show cause notice. On the reply being filed the SIT will after giving reasonable opportunity to the applicant of being heard and producing evidence if necessary, take a decision within four weeks thereafter. This IA is disposed of.

I.A. No. 604

This is an application seeking modification of the directions issued by the MoEF with regard to movement of timber through railways from North Eastern State. If there is any difficulty felt by any consignor with regard to the applicability of the said guidelines, it is open to the consignor, like the applicant, to make a representation to the MoEF who will consider the same. This application is misconceived. Liberty is granted to make representation. IA is disposed of.

I.A. No. 609

It is stated by the learned counsel that the applicants have received a show cause notice dated 06.08.2000 with regard to the seized wagons. He further states that a reply has already been filed. A decision in respect thereof shall be taken by the SIT within six weeks from today after giving an opportunity of hearing to the applicants and taking such evidence as necessary. I.A. stands disposed of.

I.A. Nos. 569-570

I.A. 570 for exemption from filing O/T is allowed.

I.A. 569 is explained by the learned Advocate General for the State of MP that the mining lease of the applicant has been cancelled not on the ground that the mining activity was being carried on in forest land but for other reasons. It is admitted by the counsel for the applicant that pursuant to the cancellation of the lease a revision petition has been filed before the Central Government This being so, the I.A. is dismissed.

I.A. No. 424

Certain directions regarding felling & regeneration, regularization of encroachments and authority competent to write a CR of Forest Department Officer, are issued which are contained in the signed order.

To come up after 10 weeks.

ORDER

We have heard the learned counsel for the parties at some length. The concern of the State of MP is that they should be permitted to do the felling as per the working plans while the concern of the Amicus Curiae and the Central Government is that regeneration should take place.

Pursuant to the order dated 28.02.2000 passed by this Court, a discussion took place between Shri CP Oberoi, Inspector General of Forests & special Secretary on the one hand and Shri KS Sharma, Chief Secretary, MP on the other. This discussion took place on 11.04.2000 and the brief records in respect thereof have been filed in Court.

With regard to lifting/ban on felling of trees from land other than Government Forest land, it is recorded in these minutes that the State of MP was revising the Rules of Transit of forest produce and felling of trees from private areas. This Court was to be approached for lifting the ban only after the process of revision of these Rules is completed. The Advocate General for the State of MP informs us that within a month these Rules will be finalised and placed before this Court after which further order will be passed.

In regard to felling of trees from Government forests as per the approved working plans, it is recorded in the minutes as follows:

“After felling is done in a particular area as per the approved working plans, prescriptions given in the working plans are required to be properly implemented to ensure the regeneration. However, in MP at times, though felling has been done as per the approved Working Plans, necessary prescriptions, which ensure regeneration, have not been implemented, perhaps, due to non-availability of sufficient funds.

It was agreed that in future, no felling, even as per the approved working plans shall be done for any area in respect of which sufficient budgetary provisions have not been made for implementation of prescriptions given in the working plans for regeneration. IGF & SS mentioned that in respect of areas where felling has been done in last three years and the corresponding prescriptions for regeneration have somehow not been implemented, a phased program for three years may be prepared. Allocation of adequate budget provisions for implementation of the same may be made by the State Government. Chief Secretary, MP informed that State has 20% of the country's forest area, hence it should be provided central assistance on prorata basis to enable the State Government to implement the various prescriptions of the working plans. He is also mentioned that if forests are not worked as per Working Plans, it may lead to their degradation. IGF & SS has advised that the State Government may utilize funds already provided under the Central Sponsored Schemes and Central Sector Schemes and prepare suitable proposals which would be considered by the Ministry on merits”.

From the aforesaid, it is evident that the felling is far in excess on what would be justified with reference to the regeneration, and the main cause in respect thereof is non-availability of sufficient funds. Even with regard to the felling of trees as per the Working Plans in the last three years, the corresponding prescription for regeneration has not been implemented.

Two questions immediately arise for consideration. One is with regard to the implementation of the Working Plans in so far as felling is concerned and the second is with regard to the regeneration of forests. It is quite obvious that the two activities must co-exist. There cannot be felling without regeneration because that will over a period of time only result in the forest vanishing. There has been shortfall with regard to the regeneration and as a result thereof forest cover is depleting. That shortfall has to be made up and for the future such felling has to be done which will ensure that there is at least no further depletion of the forest cover, and that the targets for increase in forest cover, as contemplated in the Working Plans, are not. In other words regeneration should be commensurate with the felling, and to the extent stipulated in the Working Plans. The Working Plans were approved by the Central Government. It is, therefore, for the Central Government primarily to ensure the implementation thereof. In view of what is contained in the minutes, we feel it would be appropriate to hold that the State of MP is at liberty to approach the MoEF for permission to carry out any further felling in accordance with the working plans, and any permission which is granted hereafter will be effective and the orders of this Court will not stand in the way of carrying out the felling to the extent so permitted. A report, however, will be filed in Court within three weeks of any such permission being granted so as to enable the Court to oversee whether any orders are called for.

We are sure that the Central Government will deal with any such request made by the State expeditiously and keeping in mind all factors including the principle of sustainable development.

As far as regeneration of the forest is concerned, it is quite evident that the State of MP does not have the funds required for carrying out the task nor there is any likelihood of their being able to raise finance in respect thereof.

A suggestion has been mooted to the effect that for regeneration of forest, there should be a joint venture between the State of MP and the Central Government whereby the working capital, in whole or substantially the whole, can be provided by the Central Government and the regeneration of degraded forests carried out. Such a venture can be on a commercial basis which will be not only profitable to both the State and the Centre but what is more important, it will hopefully generate lot of employment opportunities for the local population. This aspect should be looked into a plan finalised and implemented preferably within a period of eight weeks from today. The final decision so taken may be intimated to the Court by way of an affidavit.

It is to be borne in mind that taking an overall view, it is important for the country that in certain areas where natural forest exist, the same should be preserved. The political boundaries are drawn for various considerations but as far as the environment is concerned one has to take a holistic view and in that view of the matter one cannot overlook the fact that even though the national average of the forest cover is low, even that low figure is there because of the higher percentage of the forest cover in the Hill States and in the State of MP and in North Eastern States. Majority of the states in India fall short of national average as far as the forest cover is concerned. For the benefit of the said States also – nay for the benefit of the whole region, it is important that there should not be any further depletion of the forest cover in these sensitive areas of MP and in the Himalayas and the other sensitive areas like the Western Ghats etc. In order to ensure the preservation and regeneration of forests in these areas, the Central Government should consider whether the deficient States should not be asked to contribute towards the preservation of the existing forest cover and compensation/incentive given to the forest-rich states to preserve and regenerate forest. In a sense, there should be a partnership of all the States to ensure the maintenance and improvement of the forest cover. This suggestion should be considered by a Committee of the Secretary (Finance) and Secretary, MoEF in consultation with the Chief Secretary of all the States and a report be submitted preferably within eight weeks.

Re: Regularisation of Encroachments

The learned Amicus Curiae has brought to our notice a request which has been made by the State of MP to the Central Government for regularization of encroachments. As per the aforesaid minutes dated 11.04.2000 to which the Chief Secretary, MP was a party, one of the important conditions for regularization of encroachment is the carrying out of compensatory afforestation over the equivalent land. The proposal for regularization is for the period 01.01.1977 to 25.10.1980. One cannot shut eyes to the fact that there should be encroachment thereafter.

Experience has shown that whenever regularization taken place subject to imposition of conditions such as compensatory afforestation, the regularization becomes effective without the conditions ever been fulfilled.

In our opinion, it will be more appropriate that the conditions imposed in relation to regularizations are required to be fulfilled first before any regularization is granted. The result of this would be that the regularization would be deferred but the fulfillment of the conditions ensuring inter alia compensatory afforestation would be ensured. This is a matter to be considered by the Central Government

In other words, the eligibility condition for permission to grant regularization of the encroachment would be the fulfillment beforehand of conditions under the Guidelines, especially in regard to compensatory afforestation.

The request or the State of MP should be considered by the MoEF and a decision taken within eight weeks.

Re: Authority Competent to write a CR of Forest Department Officer

The question which arises for consideration is as to who is the authority competent to write a confidential report with regard to an officer belonging to the forest department.

The Indian Forest Service is one of the All India Services. The officers selected on the basis of the All India Competitive Examination, like the officers belonging to the Indian Administrative Service, are then deployed in different States. That becomes the cadre for them.

In the State of MP, persons belonging to the Indian Forest Service are also deployed, just as they are deployed to other States. In the Forest Dept. in the State, the lowest rung for a direct recruit belonging to the Indian forest Service is the post of Assistant Conservator of Forests. Below the Assistant Conservator of Forests are three levels starting with that of a Guard, Forester and Range Forest Officer. These three lowest rungs are manned by officers belonging to the State Forest Service. Recruitment to the post of Assistant Conservator of Forests is made partly by promotion from an officer belonging to the State Forest Department (being a Range Forest officer) and partly, as already noted, by direct recruitment to the Indian Forest Service.

The hierarchy in the Indian Forest Service is that above the Assistant Conservator of Forests is the Divisional Forest Officer, thereafter on promotion a person becomes Conservator of Forests, the Chief Conservator of Forests followed by Additional Principal Chief Conservator of Forests and at the pinnacle of the pyramid is the Principal Chief Conservator of Forests.

The practice which has been adopted so far in the State of MP and possibly in some other states also, is that the confidential reports of the officers belonging to the Forest Department holding any of the posts between that of a Guard and the Principal Chief Conservator of Forests is not written by the superiors within the same service but is written by the officers belonging to the office of the District Collector and Superior officers on the Civil side. For writing of the confidential reports, the Central Government has, under Section 3 of the All India Services Act,

1951, framed All India Services (Confidential Rolls) Rules, 1970. According to Rule 2(e), the reporting authority is defined as follows:

"... 'reporting authority' means the authority who was during the period for which the confidential report is written, immediately superior to the member of the Service and such other authority as may be specifically empowered in this behalf by the Government."

The 'reviewing authority' is defined in Rule 2(f) as follows:

"... 'reviewing authority' means the authority who was, during the period for which the confidential report is written, immediately superior to the reporting authority and such other authority as may be specifically empowered in this behalf by the Government".

It seems that Rule 2(e) had been interpreted by the State to mean that the confidential report of an officer could be written by a person who is superior to him and also by such other officer who may be specified in this behalf. In view of the later portion of said Rule 2(e), the State Government have authorised officer of service other than of the Forest Dept. to write the confidential reports. In this manner, in effect, the administrative control of officers belonging to the Forest Dept. is not within the Department itself.

The aforesaid Rule 2(e) came up for consideration before this Court in *State of Haryana vs. Shri PC Wadhwa, IPS* Inspector General of Police and another, 1987 (2) SCR 1030. While interpreting the said Rule 2(e), this Court at page 1035 observed as follows:

"In this connection, it may be pointed out that it is not disputed that the conjunction 'and' occurring in clauses (e), (f) and (a) should be read as 'or'. Under clause (e), the 'reporting authority' may be either immediately superior to the member of the Service or such other authority as may be specifically empowered in this behalf by the Government. The expression 'immediately superior' obviously indicates that the reporting authority should be the immediate superior officer in the same Service to which the member of the Service belongs. The position is same as in the cases of 'reviewing authority' and 'accepting authority'. So, under the first part of clause (e), the reporting authority of the respondent could be a person who is immediately superior to him in the Police Service....."

It appears to us, and which is logical, that upto the officer of the rank of Additional Principal Chief Conservator of Forests the reporting authority has to be immediately superior officer within the forest Dept. For example, for the Assistant Conservator of Forests, the reporting authority can only be the Divisional Forest Officer and for him the reporting authority would be the Conservator of Forests for whom the reporting authority has to be the Chief Conservator of Forests and his reporting authority would be Additional Principal Chief Conservator of Forests and lastly his reporting authority would be the Principal Chief Conservator of Forests. Likewise the reviewing authority would also be the person within the same Department. It is only in case of the Principal Chief Conservator of Forests that the reporting authority will be a person other than one belonging to the Service because there is no one superior to the Principal Chief Conservator of Forests within the Service. As far as he is concerned, the reporting authority would be a person who is familiar with the work of Principal Chief Conservator of Forests and that will be person to whom he reports and who is superior to him in rank and hierarchy.

We, therefore, direct the State of MP to pass appropriate orders enumerating the reporting authorities in the manner indicating hereinabove.

The Union of India is directed to bring to the notice of the other States the ratio of this decision as well as the decision in P.C Wadhwa's case (supra) for issuing suitable orders wherever necessary.

I.A. No. 603

Mr. Mukul Rohtagi states that the applicant will comply with any condition with regarding to reforestation as may be imposed by this Court and the permission for mining may be granted. In view of the said undertaking the ad interim permission is granted and the State of MP may release the land required for the Dudichua Open Case Project and Jayant Open Cast Project in respect of which decision has been taken by the MoEF. To come up for further orders along with the case of South Eastern Coalfields Ltd. (I.A. 574).

I.A. No. 605

Issue notice. Respondents to file reply within four weeks thereafter.

I.A. Nos. 521, 606 & 607

Application for impleadment (I.A. 607) is dismissed.

In these applications, the only prayer is that the applicants may be permitted to cut and transport the plantation wood.

It has always been the intention of the orders of this Court that social forestry should be encouraged. There should be more plantation and it is that wood which should be used. However in the transport of bamboo, eucalyptus and plantation wood, it is said that natural wood is also transported. In order to prevent that, the State of MP is in the process of framing Transit Rules which we are informed will be in place within one month from today. We, accordingly, direct that on the Transit Rules being framed, approved and brought into force applicants would be at liberty to cut and transport plantation wood in accordance with the said rules.

I.A. is disposed of.

Remaining IAs

To be listed on 20.10.2000.

I.A. No.:	Order Date: 08.01.2001	
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I.A. No. 438/95

Taken on Board. Dismissed as withdrawn.

I.A. Nos. 512, 513 & 500

The Advocate General, State of MP states that the Transit Rules have been framed and approved by the Government. The same have been filed in the Court with a copy to the counsel for the Union of India. The Union of India would give its comments thereon within two weeks from today. The comments should be communicated to the State of MP and if the Rules are approved by the Union of India, the same shall be implemented immediately.

List these IAs on 22.01.2001. IA Nos. 590-591 and 571 be also connected with this batch of IAs.

I.A. No. 424

Pursuant to this Court's order dated 22.09.2000 in this IA wherein it was suggested that the Central Government should consider whether the States should not be asked to contribute. The provisions of the existing forest cover, a report of the Committee of Secretaries has been received which states that there is no consensus amongst the States on the point in issue, while some of the States have welcomed the idea. The Committee had discussions with representatives of various State Governments but about 12 states which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court. These States are Tamil Nadu, Bihar, Rajasthan, Karnataka, Maharashtra, Delhi, Haryana, Uttar Pradesh, Orissa, Gujarat, Punjab, West Bengal and Andhra Pradesh.

Issue notice to the Chief Secretaries of these States returnable on 22.01.2001. Service be effected through the Standing Counsel. Notice also to the Union of India who may consider that if in its opinion the States cannot be asked to contribute then why the Union of India should not be directed to bear the expense of maintaining the natural forest and the forest cover, especially in view of the provisions of Article 48-A of the Constitution of India.

I.A. Nos. 610, 611 & 523

Mr. Narasimha wants to file another affidavit especially with regard to the Burrow Technology for inserting the pipe. List after three weeks.

I.A. Nos. 612 & 613

Issue notice returnable on 22.01.2001.

In the meantime, Union of India should also produce the Environment Impact Assessment Study which had presumably been carried out before the permission was granted to the applicant.

I.A. No. 587

The Advocate General, State of MP states that if the applicant approaches the Government the, notwithstanding the letter dated 23.10.1997/22.11.1997 (Annexure R-1) containing the Government Policy regarding private investment for non-forest wasteland development, the State of MP will favourably consider allotting waste land to the applicant for a sufficient long period and at such terms to make it attractive for the applicant to undertake the forestry programs. The terms and conditions will be negotiated between the parties and would not necessarily be confined to those as contained in the aforesaid letter of 23.10.1997/22.11.1997. Mr. Lahoty states that the representatives of the applicant will meet the Principal Secretary (Revenue), Government of MP, Bhopal within two weeks from today. Intimation with regard to the appointment which is sought would be given by Mr. Lahoty to the Advocate General for further action.

List after four weeks.

Issue fresh notice to the State of Rajasthan, Ms. Sandhya Goswami, Adv. Accepts notice.

I.A. No. 599

Reply be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks

I.A. Nos. 588-589 & 622

Learned Amicus Curiae will ascertain as to what use Sal wood can be put to which had already been cut.

To come up on 22.01.2001.

I.A. No. 401

List on 22.01.2001 as first item.

I.A. No. 566

Pursuant to the show cause notice which was issued the States of Andhra Pradesh, Bihar, Jammu & Kashmir, Goa, Dadra & Nagar Haveli, Assam, Haryana, Tamil Nadu and Andaman & Nicobar islands have not filed the requisite affidavit/QPR. Needful be done within ten days from today.

Affidavit of 22.09.2000 filed on behalf of Shri Santosh Bharati is taken on record. Copy be given to the State of MP who may file its response within four weeks. Rejoinder be filed within two weeks thereafter.

List after six weeks.

I.A. No. 620-621

Issue notice.

In the meantime, we direct the Central Government to depute Shri MK Sharma, Addl. IG (Forests) to give a report with regard to the allegations contained in these applications after visiting the area in question. The report should be submitted within 15 days.

According to the Office Report, 21 files in original along with some loose papers have been received in the Registry. These are the files connected with the incident of Damoh. Shri MK Sharma, Addl. IG (Forests) is at liberty to inspect the said files in the Registry of the Supreme Court and he should thereafter submit further report in respect of the Damoh incident. Mr. Prashant Bhushan states that one file pertaining to the permission granted to Mrs. Solomon for cutting the trees is still missing and Shri MK Sharma should give his report in respect thereto. This aspect would be looked into by Shri Sharma while furnishing the further report. The said report be given by Shri Sharma within four weeks.

I.A. Nos. 419, 420, 549, 595, 597, 598, 603 and 605

List on 22.01.2001.

I.A. No.:	Order Date: 12.03.2001	
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The Amicus Curiae has brought to our notice an FIR No. 55/2001 which is stated to have been lodged against officials of the Forest Dept. at the behest of the SC & ST Commission. Liberty is granted to the Amicus Curiae to file a formal application, but in the meantime we stay the arrest of AK Saxena, ACF and Mahesh Chand, Forest Guard as well as the driver of the vehicle in which they were traveling on 06.01.2001 when they are stated to have seized illegally cut wood in Badaun in the State of UP. Application be filed by the next date of hearing.

Mr. KN Raval, Addl. Solicitor General has placed on record a report of the Special Investigation Team (SIT) with regard to 200 wagons of timber which were seized in and around Delhi and Tinsukhia which had originated from Tinsukhia. According to the statement filed, the total quantity of such timber was 1768.895 cubic mt in respect of 32 wagons. Details of other seizure are not readily available as the cases are stated to be pending.

The Union of India will file an affidavit giving full details, inter alia, of the consignors and the consignee of the timber and it will also be indicated as to who were the authorised representatives of the consignors before the SIT and who were the railway officials responsible for allowing illegal timber to be moved out of Assam and North Eastern States. The names of the endorsees regarding the timber on the railway receipts, if available, should also be indicated.

The Union of India shall immediately and without any undue delay and preferably within 48 hours insure the entire quantity of timber seized. The insurance should be comprehensive and should cover against all risks including fire, theft, looting, lost, etc.

Impleadment of State of Chhatisgarh is allowed.

To come up for further orders and further proceedings on 26.03.2001.

I.A. No.:	Order Date: 23.04.2001	
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Re: Special Investigation Team Report filed in Court on 12.02.2001 and Affidavit of Shri Chadha filed in Court on 23.04.2001⁵³⁰.

On 12.03.2001, Shri MK Jiwarajka had filed in Court the Special Investigation Team – Action Taken Report which pertained to seizure of 200 wagons of timber in Delhi. It was then directed by this court that an affidavit should be filed on behalf of the Union of India. This affidavit has been filed along with the analysis of the detained wagons. The details purport to show, inter alia, the names of the consignors and the consignees as well as the endorsees of the railway receipts. According to the particulars given, the loading stations were in the North Eastern States including Assam. According to the Report, a large quantity of timber did not have proper hammer marks and some of the transit passes were also invalid. We are informed that one or two applications which were filed were referred to SIT who after hearing the application has ordered confiscation of the timber as no proper explanation in respect of the source thereof had been given.

It is contended by Shri Salve, the learned Amicus Curiae that perhaps, and in fact very likely, many more wagons containing timber would have moved from North East though it is only 202 wagons which were detained. We direct the Railway Board to file within 10 days from today details with regard to movement of wagons from these North East loading stations indicated in the analysis attached to the affidavit of the Union of India to places outside the said States in the last three years. The information will indicate as to what is the quantity of timber which was sent. The affidavit will also indicate as to why the railways have permitted timber being transported which did not have proper hammer-marks and who were the officers responsible for allowing unhammer marked timber to be loaded and transported and what action has been taken in regard to them by the railway authorities.

Response to the SIT Report as well as to the affidavit of Shri AR Chadha, Deputy Inspector General (Forests), MoEF, filed in Court today along with the analysis of the detained wagons should be filed within 10 days by the Chief Secretaries of Arunachal Pradesh, Assam, Nagaland, Tripura, Meghalaya, Mizoram and Manipur. Copies of

⁵³⁰ Order Modified on 12.05.2001

the affidavit of Shri Chadha and the copies of the SIT Report may be given to the standing counsel of these States by the Registry immediately.

The affidavit of Shri Chadha discloses, and this is supported by Shri Salve, that apprehending laxity on the part of the authorities the illegal felling of timber in the North Eastern areas is again gathering momentum. It has been the experience of this Court that illegal felling and transportation of timber is firstly caused by the existence of licensed and unlicensed saw mills and the transportation of the timber by road and rail. Till we receive information of the State of affairs from the respective Chief Secretaries, we hereby prohibit movement of all timber (sawn & unsawn) and veneer from any of the North Eastern States to any other part of the country either by road or by rail or by waterways or in any other manner whatsoever. We further direct the States to take immediate action to suspend immediately the working of all the errant saw mills which are shown as the consignors in column 10 of the analysis of the detained wagons because it is from these saw mills that the illegal timber has found its way to Delhi.

Till next date of hearing, no further cutting of trees with or without permit shall be allowed.

The MoEF will also indicate as to in what manner the timber which has been seized is proposed to be sold and the proceeds appropriated.

To come up on 10.05.2001 when the Chief Secretaries, Arunachal Pradesh and Assam as well as the Forest Secretaries of all North East States should be personally present in Court.

Re: Direction with regard to setting up of Nodal Agencies in the States of MP and Chhattisgarh to dispose of the interlocutory applications with regard to overseeing the working of the forest.

The Advocate General for the State of MP has suggested that if a Nodal Agency could be set up within the State of MP to oversee the working of the forest with power to dispose of applications and take decisions, the State of MP would be willing and would allow for such a Nodal Agency to function. This Nodal Agency should be statutory and be constituted under Section 3(3) of the Environment Protection Act. The suggestion of the Advocate General is that the Nodal Agency should consist of about two nominees of the Central Government, two of the State Government and two of the NGOs and one Chairman to be nominated by the Central Government Hopefully the members of the nodal Agency should be finalised by the Central Government in consultation with the State Government This Nodal Agency, which will then become a role model for similar agencies in the other States should, if possible, be set up within the next ten days.

A similar suggestion has also been made by the Advocate General for the State of Chhattisgarh. Needful be done on this behalf within the same period. The Nodal Agencies should be delegated the power under Section 5 of the said Act as has been done in the case of Bhure Lal Committee.

To come up on 10.05.2001.

I.A. NO./2001 (filed in court by Amicus Curiae with regard to the Forest of Matheran in the State of Maharashtra) (*This is an unregistered I.A .and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

An application has been filed by the learned Amicus Curiae for direction on the alleged destruction of forest of Matheran in the State of Maharashtra.

Issue notice to the Union of India as well as to the State of Maharashtra returnable on the next date of hearing.

I.A. No. 401

This IA pertains to Patnitop. It is stated by the Advocate General, State of J&K that no further construction or conversion will be permitted at Patnitop till after the ecological balance has been restored. For restoring the ecological balance, steps are being taken to control pollution and in this regard the State Government has approached the UP Jal Nigam and other authorities. The statement of the Advocate General is recorded and a Status Report be filed within a period of four months.

List IAs pertaining to North Eastern States also on 10.05.2001.

I.A. No.:	Order Date: 10.05.2001	
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I.A. /2001 (filed on behalf of KM Chinappa) *(This is an unregistered I.A .and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

This IA has been filed in Court through the learned Amicus Curiae. Let the same be registered and numbered.

Issue notice returnable in the second week of July 2001.

Mr. ADN Rao, Advocate accepts notice on behalf of the Union of India. Service be effected on respondent No. 2 through Mr. SR Hegde, Advocate and on respondent No. 3 by ordinary process and by registered post. Union of India will file an affidavit within eight weeks and in the affidavit they will also state the reason as to why the Government of India having once notified the area as a National Park then permit mining activity to be carried out notwithstanding this Court's order of 12.12.1996.

I.A. No. /2001 in IA 659 and I.A. 659 *(This is an unregistered I.A .and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

An application in IA 659 has been filed in Court by the learned Amicus Curiae in which it is stated that a hundred year old practice is being done away with and a decision seems to have been taken permitting tempos and tractors to be allowed to have free access to all roads in Matheran which will result in destabilizing the eco-system and also will result in illegal felling of timber.

Issue notice also in the application filed today.

Mr. ADN Rao, Advocate accepts notice on behalf of the Union of India and Mr. SS Shinde, Advocate accepts notice on behalf of the State of Maharashtra.

Replies be filed within six weeks to both the applications and rejoinder, if any, within two weeks thereafter. List after eight weeks.

In the meantime, we direct the State of Maharashtra to conduct a survey and report on the forest / tree cover in the forest and non-forest land of Matheran irrespective of the ownership of the land. Any renewal of lease of any property in Matheran will be subject to the outcome of these applications. The State of Maharashtra is further directed to ensure that there is no felling of trees in Matheran and we also restrain the State of Maharashtra and/ or any other civil authority from permitting any change in the user of the roads in Matheran and in particular we prohibit the access to the said roads to tempos, tractors and other vehicles which till now were not permitted to ply.

Re: Special Investigation Team Report filed in Court on 12.03.2001 and Affidavit of Shri Chadha filed in court on 23.04.2001

List on 12.05.2001

Direction with regard to setting up of Nodal Agencies in the State of MP and Chhattisgarh to dispose of the interlocutory applications with regard to overseeing the working of the forest.

List on 12.05.2001

I.A. Nos. 487 & 489

These IAs are dismissed as withdrawn. Liberty is granted to file the fresh applications if an adverse order is passed against the applications.

I.A. No. 586

This IA is dismissed as having become infructuous.

I.A. Nos. 646 and 661

Issue notice returnable after Summer Vacations.

I.A. No. 295

List on 12.05.2001

I.A. Nos. 149, 427, 474 and 486

It is stated by Mr. Shakil Ahmed Syed on behalf of the State of Assam that industrial estates have been set up and, therefore, the saw mills can shift to the said industrial estates. In that view of the matter, these IAs have become infructuous. The same are, accordingly, dismissed as having become infructuous.

I.A. Nos. 395, 496 and 497

Adjourned.

I.A. Nos. 107 and 398

I.A. 107 is dismissed as infructuous and I.A 398 is dismissed as withdrawn.

I.A. No. 384

This IA is dismissed as having become infructuous.

I.A. No. 636

Issue notice to Union of India.

I.A. No. 660

This IA is dismissed as having become infructuous.

I.A. No. 662

List on 12.05.2001

I.A. No. 663

Issue notice.

Learned Amicus Curiae and Mr. ADN Rao accepts notice.

Heard counsel.

In modification of our earlier order, supply of timber mango planks and timber mango half wrought to size as required by the Ministry of Defence can be made by the applicant or by any other successful tender to the extent it is required by the Ministry of Defence.

This IA stands disposed of.

I.A. Nos. 612-613

Adjourned.

I.A. Nos. 617-618

There IAs are dismissed as infructuous in view of the fact that removal of forest produce like Kendu leaves, harra, sal seeds, Mahua flowers and mahua seeds from forest other than National Parks and Game Sanctuaries is not prohibited.

I.A. No.:	Order Date: 12.05.2001	
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Re: Special Investigation Team Report filed in court on 12.03.2001 and Affidavit of Shri Chadha filed in Court on 23.4.2001

After hearing the counsel for the parties in partial, modification of our earlier order dated 23.04.2001, we direct as follows:

1. The movement permitted hereunder shall be on the indent of the District Forest Officer (DFO) or any other authorised Forest Officer on an application being made by the Registered timber transporter. In case any illegal timber is found to be transported, it will be open to take action against the concerned forest official under whose supervision and control the seal has been affixed on the railway wagon. In the even the seals are tampered with the Railways can also be proceeded against. The responsibility of the above two is in addition to the primary responsibility of the registered timber transporter on whose application the indent was made.

2. Movement of timber and timber products, including sawn timber, veneer and plywood outside North-East shall be permitted only if processed in HPC cleared wood based units situated inside approved industrial estates except in respect of Mizoram where no industrial estates exist. Round and hand sawn timber save in cases where specific approval is accorded by the HPC / MoEF shall not be allowed to be transported outside North East except in the case of Mizoram. Movement of timber and timber products for Mizoram shall be regulated as per guidelines prescribed by the Special Investigating Team.
3. Felling of trees from forests shall be only in accordance with working plans / schemes or felling schemes approved by MoEF as per this Court's order dated 15.1.1998. It is again clarified that such working plans / schemes shall also be needed for felling of trees from any non-government forest area including the lands which are required to be treated as 'forest' as per this Court's order dated 12.12.1998. While implementing the working plans / schemes approved by the Central Government, State Government or the concerned authority as the case may be, shall ensure that no felling is done unless and until sufficient financial provisions exist for regeneration of such areas as per this Court's directions dated 22.9.2000. For felling of trees from non-forest area including in respect of plantations on non-forest areas, detailed guidelines / rules shall be framed by the concerned State Government which shall come into effect after the same are measured with modification, if any, by the MoEF. The guidelines/rules shall also include provision for penalties and mode of disposal in respect of any felling done in violation of such guidelines/rules. Till such guidelines/rules become effective, no felling from any area other than under approved working plans / schemes or felling schemes shall be permitted. The schemes guidelines/rules which shall be framed by the concerned State Government within three months and decision thereon shall be taken by the MoEF within one month of the date of receipt.
4. Clearances given by the HPC to the inventory of the timber other than the timber owned by the Government or Government owned forest corporations, which has not so far been transported to the notified industrial estates, stands confiscated to the State Government free from all liabilities.
5. All concerned State Government and railways shall strictly follow the guidelines issued by the Special Investigation Team. The HPC, SIT or any other authority constituted under the directions of this Court are empowered to issue orders for confiscation of any vehicle including trucks used for movement of any timber or timber products which has been or was being used for transportation of timber / timber products in violation of the order of this Court. The HPC, SIT or any other authority constituted under the directions of this Court. The State Government and other concerned authorities shall provide all necessary assistance sought for this purpose.
6. The SIT shall from time to time prescribe the maximum number of railway wagons for and of the approved loading stations, which may be allowed for each quarter for transportation of timber including sawn timber. The Railway shall ensure that in no way the limits are exceeded.
7. Periodic reconciliation of records regarding receipt, conversion, disposal and movement of timber / timber products by various wood based units shall be carried out for which detailed guidelines shall be issued by MoEF after consulting the State Governments and Railways within two months. It shall be ensured by the concerned State Governments as well as the Railways that these guidelines are strictly adhered to.
8. Transit passes printed only on water marked papers shall be used for transportation of timber / timber products with effect from a date to be fixed by MoEF which shall not be later than 01.12.2001.

9. In respect of plywood and veneer units, details guidelines shall be issued by MoEF for regulating maintenance and reconciliation of records by the unit as well as the State Government in respect of receipt of raw materials such as timber, veneer etc., conversion in to finished products, disposal and movement. The guidelines shall be issued within two months.
10. The HPC, SIT and / or any other authority constituted under the order of this Court shall be at liberty to issue directions for detention, verification, secure, confiscation, disposal etc. of timber or timber products including that in transit. Such directions issued to the registered timber transporters, consignors, owner of the consignee, transporter of State Government, Railways or any other authority shall be binding on them.
11. The question of demurrage / shortage claimed by Railways in respect of goods detained shall be decided in such manner as this Court may order. Pending such decision, the SI will be at liberty in dispose of the confiscated goods and keep the proceeds in a separate bank account after payment of direct expenses and will abide by the orders of this Court for its utilisation. The Railways will not object in the goods being lifted without payment of demurrage or wharfage in view of this arrangement.
12. The Chief Secretaries of North Eastern States shall immediately review the action taken against officials and others found responsible for significant illegal felling as per para 27 of this Court's order dated 15.01.1998 and those involved in movement of illegal timber seized / confiscated by the SIT. Whenever it is found that the action taken requires to be revised, the concerned State Government shall take appropriate steps be it in the nature of Departmental proceeding or criminal proceedings as may be necessary to assure this Court that the States are serious in creating an environment of deterrence against illegal felling of trees. The Railways shall also review the action taken and take corrective measures required. An action taken report shall be submitted to this Court through an affidavit by the concerned Chief Secretaries within sixty days, which inter alia should include their conservation about adequacy of the action now taken against the concerned officials. The proceedings for confiscation of trucks and other vehicles used for movement of illegal timber especially where such movement has taken place using fake / tempered / expired transit passes, may also be reviewed. Such review shall also be done by the Chief Secretaries while taking half yearly review measures as per para 28 of this Court's order dated 15.01.1998.
13. State of Meghalaya wanted that the natural forests including artificially generated pine plantations on private holdings in Meghalaya may be allowed to be harvested in accordance with the time honoured customary and traditional rights subject to the rules and regulations framed by the concerned autonomous district councils under the provisions of their Management and Central of Forest Act, thus read with the provisions of the Meghalaya Forest (removal of timber) Regulation Act, 1981 and preserved norms as per duly approved working schemes. MoEF will give its response to this request at the next date of hearing.

Directions with regard to setting up of Nodal Agencies in the State of MP and Chhattisgarh to dispose of the interlocutory applications with regard to overseeing working of the forest

After hearing the counsel for the parties and pending the constitution of a statutory agency under Section 3 of the Environment Protection Act, we constitute Empowered Committee each for the States of MP and Chhattisgarh, containing of representatives of the respective states on the one hand and the representatives of the MoEF on the other. These Committees will consider each of the applications which are pending in this Court or return applications which the respective Advocate General think can be regarded as representatives to be decided by the respective Empowered Committee (EC) the decisions being in conformity and in accordance with the orders passed by this Court from time to time.

For the States of MP and Chhattisgarh, the respective EC will be headed by a person nominated within one week by the Secretary MoEF, Government of India, in consultation with the Amicus Curiae and Advocate General of the respective States. The Members of the EC would be two persons nominated by the Chief Ministers of the respective States and two persons nominated by the Secretary, MoEF. Atleast one of the nominees of the States as well as the Union of India shall be non-official and preferably reputed NGO. This nomination should be completed within one week from today.

The EC remuneration with regard to the members of the committee will be considered on the next date of hearing.

The meetings of these EC will be held in the respective State's capital or at such other places which the Chairman may decide. The first meeting of the EC in the respective States would be held on or before 31.05.2001.

The EC will consider and if possible dispose of the applications which would be treated as representations in conformity with the orders passed by this Court. In case of any modification of an order, if necessary, the parties will be at liberty to approach the Court even during the Summer Vacation.

The EC should submit their report by 31.07.2001 on the work done by them.

The procedure for deciding the applications as representations will be decided by the EC which will give a reasonable opportunity to the applicants of being heard.

I.A. No.:	Order Date: 12.07.2001	
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I.A. No. 670

The Amicus Curiae may file a rejoinder within 10 days.

List this IA on 26.07.2001 at 2.00 pm.

I.A. Nos. 669 & 659

An affidavit on behalf of the Government of Maharashtra has been filed in Court today. Unfortunately, the affidavit is very cryptic and lacks necessary particulars. Further details and documents should be placed on record along with an affidavit to substantiate the averments made in this affidavit. Further affidavit be filed within four weeks from today. The state is directed to file along with the said affidavit the Survey Report called for in the order dated 10.05.2001 of this Court. List the IAs after four weeks.

In the meantime, we make it clear and direct that no vehicle like tractor tempo, car, truck or other mechanized vehicle, excepting an ambulance and a fire-engine, will be permitted to ply in Matheran irrespective of the fact that any permit has been granted or not.

Pending further orders, there shall be no movement of felled timber by natural causes or otherwise from Matheran nor there shall be any sale thereof.

In the affidavit filed in Court today, it has been stated that the State Government has communicated to the Government of India its principal approval to declare Matheran as an eco-sensitive zone by letter dated 21.11.2000. Pending decision being taken thereon, we direct that Matheran should be regarded as eco-sensitive zone with all the consequences, which flow therefrom.

I.A. Nos. 646 & 664

This IAs are dismissed as withdrawn.

I.A. Nos. 395, 496 & 497

Issue notice returnable after four weeks.

I.A. No. 636

The Union of India may file a reply within two weeks. Rejoinder, if any, be filed within two weeks thereafter. List after four weeks.

I.A. No. 513

Counsel for the parties are agreed that this IA be transferred to the EC for its consideration and appropriate decision. Ordered accordingly.

Re: Letter dated 27.06.2001 received from President, All India Scheduled Castes/Scheduled Tribes Development Council.

No action is required to be taken.

I.A. No.:	Order Date: 27.07.2001	
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I.A. No. 670

An additional affidavit of Shri SC Sharma, Addl. Director General of Forests (Wildlife), has been filed in Court today, which inter alia states that MoEF has looked into the matter afresh and it has been decided that no approval under the Forest (Conservation) Act would be accorded to KIOCL for undertaking mining operations in any unbroken area. It is further stated that taking a holistic view, the Ministry is considering to allow KIOCL to continue the mining operations over the already broken up area upto a maximum of five years. Counsel for KIOCL as well as State of Karnataka would like to respond to this affidavit. They may also respond to the submissions placed on record by the learned Amicus Curiae in relation to the Kudremukh National Park. The parties concerned may give suggestions to the Court with regard to such measures which may be required to be taken keeping in mind the principle of sustainable development. The State of Karnataka should consider afresh the final notification, which it had issued excluding the area in question from the National Park in the light of the additional affidavit filed on behalf of the MoEF.

To come up after three weeks.

I.A. Nos. 675-676

At the suggestion of the learned Amicus Curiae, hearing of these IAs is adjourned. List after two weeks.

I.A. Nos. 664 & 677

Issue Notice.

I.A. No.:	Order Date: 07.09.2001	
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I.A. Nos. 669& 659

It is stated by Mr. Raval that the MoEF has asked the State of Maharashtra to indicate and give particulars about the area of Matheran which is required to be declared as eco-sensitive, a request in respect of which was made by the State of Maharashtra vide its letter dated 21.11.2000. Mr. Raval states that the MoEF wrote a letter dated 24.07.2001 to the State, asking for some information. Copy of the said letter written by MoEF has been given to Mr. Duolokia in Court today. The State should respond to the same within two weeks. Mr. Raval states that on receipt of the said information, the requisite notification declaring the area to be ecosensitive will be issued forthwith.

Post after six weeks. The notification should be placed on record by the next date of hearing.

I.A. No. 636

A reply has been filed on behalf of the MoEF. The applicant should file a rejoinder to the same within four weeks. List thereafter.

I.A. No. 682

I.A. is dismissed.

I.A. No. 670

List after four weeks.

I.A. No. 675-676

The Advocate General of MP states that a sum of Rs.15 crores has already been transferred to the State of Chhattisgarh. Pending further orders, the said money shall not be further utilized by the State of Chhattisgarh. The State of Chhattisgarh will file an affidavit indicating how much money out of the said Rs.15 crores has been used and for what purpose.

List after six weeks.

Re: letter dated 24.8.2001 of the Empowered Committee

A letter dated 24.08.2001 is stated to have been written by the Empowered Committee constituted by this Court to the Registrar of this Court seeking certain directions / clarifications. Let the same be registered & numbered as an IA and notice to issue to the State of MP and the State of Chhattisgarh returnable after six weeks. Notice should also go to NMDC.

Re: Communication dated 5.8.1998 received by AC

The communication which was received by the Amicus Curiae on the basis of which notice was issued on 06.08.1998 should be registered and numbered as a separate IA. Fresh notice to issue, returnable after six weeks.

The notice should also go to the Registrar of the Gauhati High Court to inform this Court on the next date of hearing as to which are the cases which have been filed and are pending against the HPC or its members.

I.A. No. 679

Notice to issue to the MoEF who may file its response within four weeks. List thereafter.

I.A. No. 680

Issue notice.

Additional affidavit be filed by the applicant(s) within two weeks.

I.A. No. 683 & 684

I.As are dismissed.

Re: Rs.13000/- lying with the Registry

The amount be given to the Supreme Court Legal Services Committee.

I.A. No.:	Order Date: 10.10.2001	
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I.A. 502

Issue notice returnable after two weeks. Dasti service in addition is permitted. In the meantime, the cutting of naturally grown trees in any going projects or otherwise, except plantation wood, is prohibited from being cut. Note: Information of this order be passed by the Registry to the Administrator and Lt. Governor in the Union Territory of Andaman and Nicobar Islands.

I.A. No.:	Order Date: 23.11.2001	
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Re: Special Investigation Team Report filed in court on 12.03.2001 and affidavit filed in Court on 12.3.2001 and Affidavit filed in Court on 23.04.2001

List this matter for hearing after the Final Report of the SIT is filed.

Direction with regard to setting up of Nodal Agencies in the State of MP and Chhattisgarh to dispose of the interlocutory applications with regard to overseeing the working of forest

Report filed by the EC is taken on record and accepted.

List IA 589 along with the report on the next date of hearing.

I.A. No. 295 (Interim application through Amicus Curiae for directions regarding the State of Assam PCCF order dated 12.02.1998)

List after six weeks.

I.A. No. 664 (for directions)

Reply be filed within two weeks. Rejoinder be filed within two weeks thereafter. List after four weeks.

I.A. No. 677 (For directions/impleadment)

Reply be filed within two weeks. Rejoinder be filed within two weeks thereafter. List after four weeks.

I.A. Nos. 395, 496 & 497 (For clarification / directions on behalf of State of Meghalaya)

Replies be filed within four weeks. List on a non-miscellaneous day thereafter.

I.A. No. 424 (Interim application on behalf of the applicant, Santosh Bharti)

State of Bihar, Karnataka, Maharashtra, NCT of Delhi, Uttar Pradesh, Punjab, West Bengal and Andhra Pradesh have not filed their affidavits as per the office report dated 21.11.2001. The Chief Secretaries of these States are directed to ensure the filing of their affidavits within four weeks from today. Affidavit of the Union of India should be filed within seven weeks from today. List thereafter.

I.A. No. 566 (Suo Moto action taken by this Hon'ble Court on the statement of Mr. KN Rawal, Ld. Additional Solicitor General on behalf of Central Government showing the position of the cases approved for diverting a forest land stipulation for compensatory afforestation under the Forest Conservation Act and the compensatory afforestation done funds to be utilized and actually utilized.

Most of the affidavits have been filed from a statement which has been placed on record by the learned Amicus Curiae. It is clear that large sums of money have been realized by various States from the user-agencies to whom permission were granted for using forest land for non-forest purposes. Monies were paid by them to the State Government for compensatory afforestation but the utilisation of the money for re-forestation represents only about 63 percent of the funds actually realized by the State Governments. The shortfall is of nearly Rs.200 crores.

While on the next date of hearing the court will consider as to how this shortfall is to be made good, the MoEF should formulate a Scheme whereby whenever any permission is granted for change of user of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation then the responsibility of the same should be that of the user agency and should be required to set apart a sum of money for doing the needful. In such a case the State Governments concerned will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user agency or of the State Governments, as the State Governments may decide. The scheme which is framed by the MoEF should be such as to ensure that afforestation takes place as per the permission, which are granted and there should be no shortfall in respect thereto. Counsel for the Union of India states that appropriate scheme will be formulated on the basis of which permission will be granted in future and the same placed before this Court within eight weeks. List thereafter.

I.A. Nos. 652-653 (for directions and exemption from filing OT)

Issue notice returnable after four weeks. Dasti service in addition is permitted.

I.A. Nos. 669 in IA 659 (for directions)

Adjourned. List after four weeks.

I.A. No. 636 (for modification/directions on behalf of State of Tripura)

Out attention is being drawn to the letter dated 27.04.2001 of the MoEF to the Chief Secretary, Government of Tripura, Agartala with regard to the running of the wood based units in Tripura. As per this letter, the State Government's attention was being drawn to the Court's order dated 15.01.1998, and it has been stated in this letter that the State Government has allowed saw-mills to function in a manner which was not permitted by this Court's order. It is not on record as to whether the direction contained in this letter was complied with. However, as it prima facie appears that this Court's order of 15.01.1998 has been permitted to be violated. We issue notice to the Chief Secretary, Government of Tripura, Agartala to show cause why appropriate action should not be taken in respect thereto.

Mr. Kailash Vasdev, learned senior counsel states that in response to the letter dated 27.04.2001 there was a communication from the State of Tripura to the MoEF asking for clarifications. Be that as it may, our concern is as to why the State should have allowed the order of this Court dated 15.01.1998 to be contravened. Affidavit of the Chief Secretary be filed within four weeks. In the first instance, it is not necessary for the Chief Secretary to be personally present.

List I.A. 636 after six weeks along with the letter above filed.

I.A. No. 670 (For directions to stop illegal mining trees felling in the Kudrukukh National Park)

Adjourned to 15.01.2002.

I.A. Nos. 675-676 (for modification and stay) & I.A. No. 686 (letter dated 24.08.2001 received from the EC for State of Chhattisgarh treated as IA in pursuance of Court's order dated 07.09.2001)

This is an application filed by the State of MP for quashing the order dated 18.06.2001 passed by the EC whereby the State of MP has been directed to pay a sum of Rs.15 crores to the State of Chhattisgarh for compensatory afforestation because permission had been granted to the National Mineral Development Corporation to carry out non-forest activity of mining and NMDC and it has deposited the money with the State of MP for carrying out the compensatory afforestation. As afforestation has to be done in Chhattisgarh therefore, State of MP which had received the amount from NMDC should pay this amount.

We are informed that pursuant to the said order, a sum of Rs.15 crores has been deposited. Mr. Ravindra Srivastava, learned Advocate General for the State of Chhattisgarh states that this amount will be taken out of the general revenue of the State and gives an undertaking that this will be spent for afforestation of 3600 hectares which was an obligation cast on the NMDC. The compensatory afforestation will be carried out by the State of Chhattisgarh in accordance with the scheme. As we see it by virtue of the re-organisation there has been division of assets by applying a particular formula. The division has taken place on the basis of the respective population of the States and not on the basis of where the projects were to be undertaken. In a sense, therefore, the State of Chhattisgarh must be regarded as they have received the amount of Rs. 40.30 crores. This flows from the fact that the assets and liabilities have been divided in the proportion of 73:3790: 26.6203 persons between the State of MP and the State of Chhattisgarh. Reliance has been placed by Mr. Vivek Tankha, learned Advocate General for the State of MP on annexures P3 and P4 which are letters of the Reserve Bank of India and the Accountant General according to which the division of assets and the liabilities have taken place in the aforesaid manner. If this be so, then Rs.15 crores which has been paid under the orders of the EC by the State of

MP may be regarded as being in addition to Rs.40 crores deemed to have been received by the State of Chhattisgarh.

The learned Advocate General for the State of Chhattisgarh does not accept as correct, the proposition that the State has received Rs.40 crores which was deposited by NMDC for afforestation and he wishes to file an affidavit in that behalf. Whether this Rs. 40 crores deposited NMDC has as a result of division of assets and liabilities been received by the State of Chhattisgarh or not is therefore a point in dispute and in our opinion, this should be decided by the Reserve Bank of India which has bifurcated the assets. In the meantime, the State of Chhattisgarh will be permitted to utilize Rs.15 crores which has been paid to it for afforestation. Rs.15 crores should be kept in a separate bank account and a scheme prepared and furnished to this Court by the next date of hearing indicating the manner in which this amount will be used.

Copy of the order be sent to the RBI with the request to inform the Court on the issue as to whether the State of Chhattisgarh can be regarded as having received Rs.40 crores which had been deposited by the NMDC for afforestation.

To come up for further orders after six weeks.

I.A. No. 679 (for clarification of order dated 10.05.2001)

Dismissed as withdrawn.

I.A. No. 680 (for directions)

Adjourned. List after six weeks. Affidavit be filed in the meantime.

I.A. No. 685 (Communication received by learned Amicus Curiae from the EC for State of Chhattisgarh treated as IA in pursuance of Courts order dated 07.09.2001)

Adjourned. List after six weeks.

Contempt Petition (C) 193/2001 in W.P. 202/95

At the request of Mr. ML Verma, learned senior counsel appearing for the contemnor respondent No. 1, the petition is adjourned by six weeks in order to enable him to file an affidavit. List thereafter. A suggestion has been mooted by Mr. Salve, learned Amicus Curiae in which there is some merit that for every illegal felling of tree in any plantation one hectare of land must be taken away from the plantation owners for the purpose of compulsory afforestation. This aspect will be considered.

I.A. No. 502 (for intervention)

An application has been filed by the learned Amicus Curiae in Court against the illegal encroachment of forest land in various States and Union Territories is taken on board. Let the same be registered and numbered. Issue notice to the respondents returnable after six weeks. There will be an interim order in terms of prayer (a).

Affidavit in reply to the application may be filed. It is suggested by the learned Amicus Curiae that it will be helpful to the Court if an independent survey of Andaman Nicobar Ecology is undertaken especially in regard to the forest cover of that area. He suggests that Professor Shekhar Singh of the Indian Institute of Public Administration, New

Delhi, who is an expert in this area and has worked in Andaman, be requested to give a report to the Court with regard to the State of the forest and to what extent cutting of trees, if any, can be protected and what is required to be done to improve the ecology and the forest cover of the area. The MoEF is directed to appoint Prof. Shekhar Singh as a Commissioner to give a Report on the state of the forest and other allied matters of Andaman & Nicobar Islands. The expense incurred thereto will be borne by the MoEF and Prof. Shekhar Singh may give a Report preferably within a period of six weeks. He will be at liberty to take assistance of such persons as he may deem proper. Apart from the out of pocket expenses which will be entitled to such fee as will be determined by the Court on the next date of hearing after receipt of his report.

Till further orders the Administrator, Andaman & Nicobar Islands is directed to ensure compliance of this court's order dated 10.01.2001, namely, no naturally grown tree will be cut by any one and no saw-mill, veneer or plywood factory shall utilize any naturally grown trees without further orders from this Court.

List of such factories, saw mills and veneer will be filed by the Andaman & Nicobar Administration within two weeks. They will also file an inventory of the material lying in the Government saw mills.

List after six weeks.

I.A. No. 236 (for directions)

Issue notice returnable after six weeks. Dasti service in addition is permitted.

I.A. Nos. 634-635 (for impleadment and directions) and I.A. 697-698 (for directions and exemption from filing OT)

Issue notice to MoEF which will file its reply within three weeks. It will also file Environment Impact of Assessment Report on the basis of the permission granted by the Ministry.

I.A. Nos. 700-701 (for intervention and directions)

Issue notice returnable after six weeks.

I.A. No. 605 (for directions)

The order directing the six police officers to be placed under suspension is hereby withdrawn. The disciplinary proceedings which are stated to have been initiated against them shall be completed within six months from today and report file in the Court. List thereafter.

I.A. Nos. 620 & 621 (for directions and exemption from filing official translation)

A report has been filed by Mr. MK Sharma. Copies of the same be given to the learned Amicus Curiae and to the counsel for the parties who may give their comments on the next date of hearing. List after six weeks.

I.A. Nos. 645 & 695 (for directions)

Issue notice returnable after six weeks. Replies be filed in the meantime.

Rest of the matters

Adjourned.

I.A. No.:	Order Date: 18.02.2002	
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Report dated 16.02.2002 regarding Senior Forest Officer killed in Bihar

The learned Amicus Curiae has brought to our notice a report to the effect that Shri Sanjay Kumar Singh, Divisional Forest Officer of Rohtas had been abducted and shot. As per the report, the suspicion is sought to be cast on Maoist Communist Centre. The report indicates that Shri Singh was taking action against the illegal mining of stones and boulders. If this is so, we are not sure whether the perpetrators of the dastardly crime are only Maoist Communist Centre or someone else and, perhaps, those who may be indulging in the illegal activities which Shri Singh was trying to stop.

We direct the Chief Secretary, State of Bihar to personally see to the investigation of the case and file his own affidavit within eight weeks. Copy of this order be sent by the Registry to the Chief Secretary forthwith for compliance. We direct the Director General of Police to give full assistance and cooperation in the conduct of the inquiry.

I.A. No. 566

On 23.11.2001, orders were passed requiring the MoEF to frame a scheme and place it before the Court within eight weeks. Nearly 11 weeks have elapsed and the scheme has not seen the light of the day, nor the MoEF has had the courtesy of filing any affidavit explaining the delay or asking for more time. The learned Additional Solicitor General states that the scheme will be prepared within three weeks, but we impose Rs.5000/- as costs. Costs be deposited in the Registry.

List after three weeks.

I.A. No. 295

The learned Amicus Curiae has drawn our attention to orders dated 10.12.1998 and 13.04.2000 of this Court with regard to constitution of authorities in each State under Section 3(3) of the Environment (Protection) Act and also an authority at the national level.

On 13.04.2000, the Additional Solicitor General had sought time to seek instructions and inform the Court with respect to the setting up of the said authorities. Many weeks and months and years have passed, but there is no information yet available in this regard. Mr. Mukul Rohtagi, learned Additional Solicitor General states that the Government will file a status report in this connection within eight weeks.

List after eight weeks.

I.A. No. 664

As expected, no reply has so far been filed either by the State of UP or by the Union Government. Last opportunity is granted to file the affidavits within eight weeks. List thereafter.

I.A. No. 677

Counter affidavit on behalf of the Arunachal Pradesh has been filed. Applicant wishes to file a rejoinder. Rejoinder be filed within four weeks. List thereafter.

I.A. No. 424

The learned Amicus Curiae has suggested that in order to encourage the States to increase the forest cover and to prevent the cutting of the natural timber even if the deficient States are unwilling or unable to contribute for the preservation of the hot spots or the forests like in the States of Arunachal Pradesh and MP, the Central Government can and should impose a cess of not less than 5 per cent on the wood and wood products as well as wood pulp which is imported from abroad and the sum so realized can be distributed amongst the forest rich states and also be used as an incentive to other States to increase their forest cover and thereby getting a share from out of the cess. Mr. Mukul Rohtagi, learned Additional Solicitor General states that steps will be taken to consider this suggestion.

The Court feels that there is considerable merit in the suggestion of Mr. Salve, learned Amicus Curiae and as a result thereof without burdening the deficient States, which are already in dire financial straits, money would be available for improving the forest wealth of the country. Mr. Rohtagi states that an affidavit containing the decision of the central Government in this behalf would be filed within four weeks.

List this application on 01.04.2002.

I.A. No. 729

Adjourned. To be taken up along with I.A. 424

I.A. Nos. 669 & 659

Long after orders have been passed, the MoEF have now on 06.02.2002 issued a notification containing draft proposal for notifying Matheran and the surrounding areas as the ecosensitive zone. The notification states that the draft proposal shall be taken up for consideration after the expiry of a period of 60 days. We expect that final notification will be issued within four months from today. Affidavit should be filed within a week thereafter. List thereafter.

The learned Amicus Curiae states that a formal application will be moved, inter alia, to the effect that where notices have been issued for removal of unauthorized construction whether by way of encroachment or excess erection and the notice is not complied with, the perhaps the collector should be appointed as a Receiver to take physical possession of the illegal construction and for the custody to remain with him till the person who has erected the same either demolishes it himself or pays the costs of demolition to the Collector to enable him to do the needful. In this way, it is submitted by the Amicus Curiae, the wrongdoer will not continue to enjoy the benefits of his wrongful act and it will be a disincentive to the people to indulge in such an activity. Such an application will be filed within a week and the same may be listed for hearing on 05.03.2002.

I.A. Nos. 680 & 589

These two IAs are concerned with the use of wooden sleepers by the Railways. By an order passed by this Court,

the Railways had been restrained from using wooden sleepers. In IA 680, it is stated that in certain areas there is no alternative but to use wooden sleepers. The requirement is only 20000 cubic mt. Per annum. In IA 589, the MP Export Corporation states that it has certain wooden sleepers which are ready for delivery, which were manufactured on the orders of the Railways. We permit the MP Export Corporation to sell the same to the Railways. Thereafter, the Railways may use wooden sleepers manufactured only from imported wood from other countries.

These IAs stand disposed of in the aforesaid term.

I.A. 685

The learned Amicus Curiae brings to our notice a letter dated 15.02.2002 written by the HPC to him indicating therein particulars of about 10 cases which have been or are pending in the Gauhati High Court. This is at variance with the communication received from the Registrar of the High Court of Gauhati, wherein pursuant to this Court's order dated 07.09.2001, it has been stated that the only case which was pending was of W.P. 5920/97 entitled Shri Radhey Shyam Sharma vs. Union of India and Others. A copy of this letter dated 15.02.2002 along with the details of the pending cases be filed by the Amicus Curiae and a copy thereof be sent to the Registrar, Gauhati High Court for his comments / explanation. He should be directed to file his response within three weeks of the receipt of the notice from this Court. Copy of the response so received from the Registrar should be given to the learned Amicus Curiae.

In the meantime, we restrain the Gauhati High Court, including any of its Benches, from entertaining any writ petition in connection with any order passed by the HPC if any person has a grievance against the order passed by the HPC, the only course open is to approach this Court. The Registrar of the Gauhati High Court is directed not to register any writ petition so filed.

We also issue notice to the petitioners in the various writ petitions which have been filed, details of which are contained in the Annexure to letter dated 15.02.2002, to show cause why those petitions be not transferred to this Court.

Contempt Petition (C) 193/2001

In pursuance to the order dated 23.11.2001, we direct the Principal Chief Conservator of Forests to conduct a survey of the plantations within the State and to give a report as to the extent of illegal felling of trees which has taken place, the area of land where this illegal felling has been done and the owner of the plantation to whom the land belongs, so that on the next date of hearing appropriate orders can be passed to terms of the suggestion of the learned Amicus Curiae in this Court's order dated 23.11.2001, with regard to compulsory afforestation on the ratio of two hectares of land for every one hectare in which the trees have been felled. The report be furnished by the PCCF within eight weeks.

List on 23.04.2002.

Personal appearance of Respondent No. 2 Vinodh Jaya Kumar is dispensed with until further orders.

I.A. No. 670

List on 05.03.2002.

I.A. Nos. 395, 496 & 497

Adjourned.

I.A. Nos. 652-653

Reply by the State of UP be filed within four weeks. List thereafter.

I.A. No. 636

It is stated by Shri Kailash Vasdev that the saw mills in the State of Tripura have been closed and some orders be passed so as to permit the hut dwellers to obtain wood for the purpose of repairing their huts. In order to ascertain whether the instructions to Shri Vasdev are correct, the MoEF as well as the HPC should ascertain after personal visit by representatives as to whether the saw mills in the State of Tripura have been closed and if so since when. Report be filed within four weeks. List thereafter.

I.A. Nos. 703 & 502

The Chief Secretaries of the State of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, MP, Chhattisgarh and Kerala are directed to file a reply to this IA, in so far as it concerns the said States in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, national parks and sanctuaries, etc. It should also be indicated as to what steps have been taken to clear the encroachments from the forest which have taken place at an earlier point of time. Affidavits be filed by the said States and the Union of India within four weeks.

A copy of the Report of Prof. Shekhar Singh be given to Shri Altaf Ahmed appearing on behalf of the Andaman & Nicobar Administration and a copy be also given to the MoEF. The response to the Report and in particular to the recommendations made should be given within four weeks with copy to the learned Amicus Curiae.

To come up for further hearing on 01.04.2002.

I.A. No. 707

It is clarified that the order of this Court prohibiting the cutting of trees does not apply to bamboos including cane, which really belongs to the grass family, other than those in the national parks and sanctuaries. In other words, no bamboos including cane in national parks and sanctuaries can be cut but the same may be cut elsewhere.

The IA stands disposed of.

I.A. No. 723-724

Union of India and Andaman & Nicobar Administration should give a response to this IA. Additional affidavit is permitted to be filed by the applicant before the next date of hearing.

List on 01.04.2002.

I.A. No. 711

List on 01.04.2002 along with I.A. 723 & 724.

Rest of the IAs.

List on 01.04.2002.

I.A. No.:	Order Date: 01.04.2002	
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I.A. 424 & 729

Mr. Mukul Rohtagi, learned Additional Solicitor General states that the suggestion with regard to imposition of cess has been forwarded to the Government. The same is under active consideration and he requests for four weeks time. It is possible that if the Government chooses not to impose the cess then in order to give financial relief to the forest rich States who are not permitted to allow the cutting of the trees and the forest that the Union of India may be directed to give compensation from its own funds to the said states which would roughly be equivalent to 5 per cent of the value of the wood imported.

List after four weeks.

I.A. No. 703 in IA 502

It is stated that the Union of India has received response from various States with regard to the problem of encroachment in the forest. The said responses are being attended to and a final decision will be taken and directions issued by the Union of India within six weeks. The States which have not filed affidavit should do so within three weeks.

List after six weeks.

I.A. No. 502

Within three weeks from today, we direct the Chief Secretaries of all the States as well as the Secretary, MoEF to file an affidavit giving details of Silviculture or plantations of trees which may be taking place in the States. The affidavit shall specify the districts and the areas where such silviculture /plantation exists so as to enable this Court to ascertain, on physical examination through an appropriate agency, about the states and extent of such silviculture /plantations.

Mr. ADN Rao requests for more time but we see no justification because the particulars which the Court is asking for should be available with the respective State Governments and the Union of India.

In the affidavit filed on behalf of the MoEF (page 368), while dealing with Shekhar Singh's report in regard to encroachments, the Union of India has stated that it agrees with the implementation of the said Report. The Union of India in the affidavit to be filed will indicate what steps it proposes to take for implementing this part of the Report.

List for further hearing on 29.04.2002.

I.A. Nos. 737 in IA 502

This is an application by the Andaman & Nicobar Administration for permission to cut trees pursuant to the

clearances which have been received from the Ministry of Environment. The clearances which have been received are two: one is dated 26.04.2001 for diversion of 0.60 hectares of forest land for the purpose of laying 1 KV transmission line and the second permission is dated 03.10.2001 for clearing trees over 37.12 hectares in the funnel areas forming approach to the Air Force Runway.

In both the permissions which have been granted, there is a requirement of the user agency to transfer to the Forest Department costs for afforestation.

Previously also the MoEF used to grant such clearances but experience has shown that while the trees would be cut plantation to the extent required was hardly ever done. It would be more appropriate to first see that the plantation or afforestation gets underway before any trees are cut. This will ensure compensatory afforestation which is very essential.

If the Andaman and Nicobar Administration starts carrying out compensatory afforestation by itself or through any agency, then the permission sought for in this application will be granted. An affidavit containing the status report with regard to afforestation activity be filed by the next date of hearing.

List on 29.04.2002.

I.A. No. 236

This application essentially challenges the validity of the order dated 08.03.1997 passed by the Deputy Conservator of Forests, Gondia. The contention is that this order is not in accordance with this Court's order dated 12.12.1996.

In our opinion, this Court is not the appropriate forum for challenging the correctness of the order dated 08.03.1997. It is open to the applicant to challenge the same in appropriate forum on the ground that the same is not in accordance with the orders of this Court.

This application is disposed of.

I.A. Nos. 634-635 & 697-698

Reply be filed by the MoEF within two weeks. Rejoinder, if necessary, be filed within one week thereafter. List on 29.04.2002.

I.A. Nos. 700 & 701

The IAs are dismissed.

I.A. Nos. 695 & 706 in I.A. Nos. 695-696

List on 29.04.2002.

I.A. No. 687

Issue notice to the learned Amicus Curiae, the SIT and the respondents returnable on 29.04.2002.

I.A. Nos. 688 & 712

The IAs are dismissed.

I.A. No. 705

Issue notice returnable on 29.04.2002.

I.A. Nos. 647, 648, 651 and 730

The IAs are dismissed as withdrawn. Liberty is granted to file a fresh application.

I.A. Nos. 723-724 & 711 in I.A. No. 502

List on 29.04.2002.

Additional affidavit is permitted to be filed in I.A. No. 711.

I.A. Nos. 738 & 739 in I.A. No. 502

List on 29.04.2002. List W.P.(C) 118/2000 also on 29.04.2002.

I.A. Nos. 578 & 579

Issue notice.

I.A. Nos. 620 & 621 & IA. 725 in 620-621 with I.A. No. 645 in I.A. No. 620 & I.A. No. 726

Further interim report of Shri MK Sharma has been received according to which mining in the reserved forest has come to an end but mining is going on in revenue lands. The State of MP wishes to file an additional affidavit in response to this further interim report. Needful be done within six weeks. List thereafter.

Shri MK Sharma be requested to complete the report with regard to the Damoh area as well as Shivpuri area.

I.A. No. 677

In view of the order dated 09.07.1999 of the DFO, inasmuch as the processing of the timber was not done at the existing location within the stipulated period i.e. before 08.01.2000, the timber in question stood vested in the State Government Therefore, no relief can be granted to the applicant. This IA is dismissed.

I.A. No. 566

List on 29.04.2002.

I.A. Nos. 652-653

Learned counsel for the State of UP states that no action is being taken against the officers concerned.

These IAs are dismissed as infructuous.

I.A. No. 636

IA is allowed as prayed for. The licensed saw mills can operate as per rules and in accordance with the orders passed by this Court.

Notice of contempt is discharged.

I.A. 708, 709 & 710

The I.As are dismissed.

I.A. No.:	Order Date: 29.04.2002	
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I.A. Nos. 502 & 737

Adjourned to 07.05.2002.

I.A. Nos. 634-635 & 697-698

Adjourned to 07.05.2002.

I.A. Nos. 695 & 706

Adjourned to 07.05.2002.

I.A. Nos. 675-676 & 686

Adjourned to August 2002.

I.A. No. 687

As per the report, which has been filed by the HPC, the licence of M/s. Neelam Wood Industries was cancelled and the Unit has not shifted. Furthermore, as per the report, M/s. Neelam Wood Industries was found to be involved in transportation of illegal timber. Pending further orders, we direct the State of Arunachal Pradesh to immediately seal the said unit and take possession thereof including the stock lying there. The State will file a report within two weeks of the action taken pursuant to this order passed today. Mr. Anil Shrivastav, learned counsel for the State of Arunachal Pradesh has taken note of this order.

Rejoinder be filed within eight weeks. List thereafter.

I.A. No. 705

Adjourned to July 2002

I.A. Nos. 723-724 & 711

Adjourned to 07.05.2002.

I.A. No. 566

Adjourned to 07.05.2002.

I.A. Nos. 738 & 739 and W.P.(C) 118/2002

Adjourned to 07.05.2002.

I.A. No. 745 and Report dated 16.02.2002 regarding Senior Forest Officer killed in Bihar

I.A. for intervention is allowed.

It is represented that ex-gratia payment of Rs. 5 lakhs has been paid to the family of late Shri Sanjay Kumar. In our opinion, considering the work, which was being done by late Shri Sanjay Kumar with all the zeal and dedication which resulted in his being killed, the compensation of Rs.5 lakhs does not appear to be adequate. We direct the Union of India to provide a permanent employment to the widow of Shri Sanjay Kumar keeping in view her academic qualifications. The employment should be provided to her in Delhi by relaxing qualifications, if necessary. Along with the appointment, government residential accommodation should be made available to her. Appropriate orders to this effect be passed within four weeks and the Court be informed.

An enquiry Report of the MoEF relating to the killing of Shri Sanjay Kumar has been filed in Court today. Copy of the said report should be sent to the Secretary, Ministry of Home Affairs, Government of India and to the Chief Secretary, Government of Bihar, Patna. The two officers, namely the Home Secretary Government of India and the Chief Secretary, Government of Bihar should file an affidavit within eight weeks as to what action has been or is proposed to be taken not only with regard to the bringing to book the perpetrators of the crime but also with regard to the continuing illegal activity of unauthorized mining and the inaction of the officers concerned in this behalf.

Merely because the CBI is investigating the crime can be no ground for the State of Bihar in showing complete indifference to the point in issue. This is lack of governance, leave alone good governance. It is primarily the responsibility of the State of Bihar to see to the law and order and entrusting the investigation to the CBI is no compliment to the State.

The Home Secretary, Government of India and the Chief Secretary, Government of Bihar will also in the affidavit to be filed dwell on the question of lapses of the police officers in giving adequate protection to late Shri Sanjay Kumar.

Status report be filed by the CBI before the next date of hearing.

Copy of the enquiry report be given to Shri BB Singh, learned counsel for the State of Bihar.

List after summer vacation.

I.A. No. 295

An affidavit of Shri Bivash Ranjan, Assistant Inspector General of Forests, MoEF has been filed in response to this

Court's order dated 13.04.2000 and the earlier orders with regard to the establishment of the Environment Protection Authorities. In the affidavit, it is stated that no authorities under Section 3(3) of the Environment Protection Act for the States other than Arunachal Pradesh have been constituted because the States may not like the establishment of such authorities. In the order dated 04.03.1998, the Additional Solicitor General who had appeared had stated that the authority in Arunachal Pradesh had worked satisfactorily and that is why the Central Government was required to constitute a committee at the national level in the nature of supervisory of appellate authority over the State authorities. There is no response in the affidavit to the setting up of the authority at the national level. As there is no such response, we would request the learned Attorney General to appear in this matter on the next date of hearing.

Mr. Vivek Tankha, the learned Advocate General of MP also states that the Authority which has been constituted has done good work in the State of MP that out of the 39 applications which were referred to the Committee 37 have been disposed of with the cooperation of all & no challenge has been made against the said decisions and the experience has been a good one.

To come up on 07.05.2002.

I.A. No. 664

Our attention has been drawn to the Rules which have been amended by the State of UP on 26.06.1998 permitting saw mills having engine power of 3 HP not to have a licence. This amendment was made after this Court's order dated 04.03.1997 directing closure of all unlicensed saw mills in the State of UP and Maharashtra. It is quite obvious that with a view to circumvent this Court's order dated 04.03.1997, the State of UP has used the device of changing the law. That this was done with a view to help the saw mills, is quite evident from the affidavit of Shri Anup Malik, Forest Utilisation Officer, UP, Lucknow, who in paragraph 4 of the affidavit states that three saw mills, namely M/s. Punjab Sawmill, M/s. Rana Sawmill and M/s. Nur handicraft having sawmills of 15 HP 19 HP and 8 HP respectively within the municipal limits of Saharanpur were sealed pursuant to the orders of this Court dated 04.03.1997. This affidavit further goes on to state that presently these very sawmills are in operation using power less than 3 HP. We refuse to believe that the saw mills which were having 15 HP, 19 HP and 8 HP would today be functioning using less than 3 HP. It is only the State of UP which can be gullible, willingly or unwillingly to accept this. We, therefore, set aside the amendment of the UP Establishment and Regulation of saw mills Rules, 1978, which was effected on 26.06.1998, in so far as it exempted saw mills using mechanical devices with the use of power upto 3 HP from obtaining a licence. As a result of the order passed today, each and every saw mill running in the State of UP would require a licence, whether the saw mill is running the aid of power or otherwise. The rule which provides for deemed licences in the event of the application for the grant of licence not being dealt with contained in the Saw Mills Rules, being Rule 7 is also held to be contrary to the letter and spirit of the Indian Forest Act and the orders of this Court and is accordingly set aside.

As far as the applicants are concerned, we see no reason to issue any directions to the respondents. I.A. stands disposed of.

I.A. No. 685

The High Court should in the cases pending before it, where the HPC or the SIT is a party or its order are being challenged, pass appropriate orders in the light of the directions of this court to the effect that no such order should be challenged in the High Court.

List after summer vacation.

I.A. Nos. 670, 395, 496 & 497

List for directions in the last week of July 2002.

I.A. Nos. 727 & 629

Issue notice returnable after 10 weeks.

I.A. Nos. 173, 751, 414 & 414A

List after summer vacation.

I.A. Nos. 742-743, 746-748

Adjourned to July 2002

I.A. Nos. 752-753

The IAs are dismissed as withdrawn with liberty to file fresh ones.

I.A. No. 421

This IA was mentioned today. List after summer vacation.

I.A. No.:	Order Date: 07.05.2002	
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After hearing the learned Amicus Curiae, counsel for the parties and taking into consideration the affidavit of the Union of India – MoEF in relation to survey of eco-system of Andaman and Nicobar Islands, the learned Amicus Curiae has made certain suggestions.

There does not seem to be any objection to this Court on accepting the Report of Shri Shekhar Singh that some modifications have been suggested. We therefore, in the first instance accept the Report of Shri. Shekhar Singh.

On a query being raised by us, Mr. Altaf Ahmed, learned Additional Solicitor General, appearing for the Union Territory of Andaman & Nicobar Islands on instructions informed the Court that there is no social forestry in Andaman & Nicobar Islands. The wood which is being cut is from the natural forest and plantations of teak etc. has been taken place in the forest, which had been worked and approximating 40,000 cubic meters of wood is cut from the forest annually for the purpose of the small mills the total logging of wood being approximately 1,30,000 cubic meters per year. In the last two years, this figure has come down but the fact remains that instead of resorting to social forestry and thereby providing employment to the people in growing forest at the present moment the natural forests are being cut and the timber sawn.

Andaman and Nicobar Islands is one of the hot spots and is in the eco-fragile area and has, therefore, the ecodiversity thereby has to be preserved. For this, it is essential that the natural forest is protected and re-generation allowed to take place.

We are also informed that the existing saw mills have a subsisting licence valid till 30.03.2003. The saw mills and the other wood based industries in the Andaman & Nicobar Islands are not permitted to cut the trees and

supplied to them are made only by the Government itself or through its Corporation. Some of these saw mills and industries have logs of wood and sawn timber in their stock. It would therefore be iniquitous to deprive them of an opportunity to utilize the stock for which payment has been made to the Government for the purchase of wood. However, it is to be borne in mind that fresh logging of wood must cease immediately. After taking all facts and circumstances into consideration, we issue the following directions.

1. All felling of trees from the forest of little Andaman Islands, the national park and sanctuaries, the tribal reserves and all other areas shall stand suspended.
2. For the areas in which there are working plans, the Government through the Chief Secretary shall disclose on a affidavit –
 - i) the extent of felling and re-generation permitted under these working plans during the last 10 years.
 - ii) The compliance with regeneration / re-plantation / re-forestation targets under the working plans and reasons if any for the shortfall.
3. The working plan of the Andaman & Nicobar Islands should be re-worked on the basis as was applied to the State of MP and others, namely that before any felling of trees, there should first be compulsory afforestation / re-generation, the felling permissions would be based upon the extent of re-generation of forest undertaken and not the other way round.
4. No felling of tree (under the working plan or otherwise) shall be permitted for meeting any raw material requirement of the plywood, veneer, black board, match stick or any other wood based industry.
5. In drawing up the new working plan the Government shall formulate a Committee with one Ecologist who is proficient with the ecology of Andaman.
6. The working plans so formulated shall be placed before this Court within a period of twelve weeks.
7. The trees felled under the working plan in the manner indicated aforesaid should be utilized for the requirement of the local inhabitants.
8. The licences of all the saw-mills and wood based industries shall not be renewed after 31.03.2003. This will not debar the authorities from canceling licences in accordance with law, if there is no breach of the licence committee by the licensees before that date.
9. The ecology of the area does not permit any kind of industrial activity for which the wood is likely to be consumed. Therefore, licences of wood based industries shall stand cancelled but they will be permitted to exhaust the existing stock till 31.03.2003.
10. The Union of India, if it so adopts and thinks appropriate may take steps for re-locating the dislocated wood based industries in the main land area anywhere in India as long as it is not within the vicinity of forest area. Henceforth for meeting the local requirements it is only the Government saw mills which shall operate. No fresh wood or logs shall be given to any of the saw mills or the wood based industries till fresh working plans are prepared and submitted to this Court and the approval obtained.

11. With immediate effect, there will be no movement of logs or timber in any form including sawn timber from Andaman & Nicobar Islands to any part of India or anywhere else.
12. Regulation of encroachments on forest land in any form, including allotment / use of forest land for agricultural or horticultural purposes shall be strictly prohibited.
13. All those families who have identified as having encroachment on forest land prior to 1978 and have not yet shifted to their allotted rehabilitation sites, shall be given one month's notice to vacate their encroachments and shift to the allotted land. Failing this, their allotment shall be cancelled and they shall be forcibly evicted within three months of the deadline being over, without any further claim to land or any other form of rehabilitation. Such notice should be issued within six weeks.
14. Similarly, those among the pre-1978 families that have shifted to their allotted sites but have occupied more land than they were entitled to shall also be give one month's notice to vacate the extra land occupied by them. On the expiry of this notice period, the allotments of those who have not complied with this notice shall be cancelled and they should be forcibly evicted within three months, without any further claim to compensation or land. Such notices should be issued within six weeks.
15. All post 1978 forest encroachments shall be completely removed within three months.
16. For the eviction of encroachments, an effective action plan shall be prepared and implemented under direct supervision, monitoring and control of a Committee under the Chairmanship of the Lt. Governor with Chief Secretary, Principal Chief Conservator of Forests and reputed NGO representatives, its members. The Chief Secretary, Andaman & Nicobar Islands shall file every month an affidavit about progress of eviction of encroachments.
17. The process of issue of identity cards to all the residents shall be completed within a period of six months.
18. The extraction of sand shall be phased out a minimum 20% per year on reducing balance basis to being the sand mining to the level of 33% of the present level of mining within a maximum period of 5 years.
19. The approvals accorded by MoEF under the Forest (Conservation) Act, 1980 shall be reviewed by a Committee consisting of Secretary, Environment & Forests, Director General of Forests and at least one non-official member of the Forest Advisory Committee constituted under the Forest (Conservation) Rules to restrict the approvals to the barest minimum needed to serve emergent public purposes. Felling of trees shall commence only after the process of compensatory afforestation has actually been undertaken on the ground. In future, the proposals shall be considered for approval only after detailed Environmental Impact Assessment has been carried out through an independent agency identified by MoEF.
20. Specific actions shall be undertaken by MoEF / Andaman & Nicobar Administration on the other recommendations of Shri Shekhar Singh Report which are not specifically dealt with in above orders. MoEF and the Andaman & Nicobar Islands Administration shall file an affidavit within three months giving details of action taken by them on each of such recommendations.

Copy of this order be sent by the Registry to the Chief Secretary, Andaman & Nicobar Islands for information and compliance.

I.A. Nos. 502, 737 in 502, 695, 723-724, 711, 738 in 502, 739 in 502, W.P.(C) 118/02, 424, 729 in 424 and Contempt Petition (C) 193/01

List after ensuing summer vacation.

I.A. Nos. 634-635 & 697-698

List on 09.05.2002

I.A. No. 295

Learned Attorney General states that in principle it is necessary and desirable that a National Empowered Committee (NEC) should be constituted. He states that certain modalities have to be worked out before the order in this behalf could be finally passed. In view of the above, to come up on 09.05.2002.

I.A. No. 566

To come up for further orders after the ensuing summer vacation.

I.A. Nos. 754 & 755

Issue notice. Stay of the High Court order in the meanwhile.

I.A. No.:	Order Date: 09.05.2002	
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I.A. No. 756

We direct the Bhure Lal Committee to examine the possibility of development of forest and large tracts of land which have been acquired by the Delhi Administration and the Delhi Development Authority (DDA) and which are still lying undeveloped. Liberty will be give to the DDA and the Delhi Administration to place before the Bhure Lal Committee the status with regard to the utilisation of the said land. Bhure Lal Committee may give is report within twelve weeks from today. Within two weeks from today the DDA and the Delhi Administration will file affidavit with Bhure Lal Committee indicating the land details or the land acquired and which have not been constructed upon or utilized till today.

I.A. No. 757

Counsel for the Union of India states that this application will be placed before the Expert Committee for its consideration. in the meantime, no further building plans or construction shall be sanctioned by any authority. List in August 2002.

I.A. No. 758

List in August 2002

I.A. Nos. 634-635

Place before the Standing Committee of IBWA which will submit is report within twelve weeks. List thereafter.

I.A. No. 759/2002

Taken on board. Issue notice. In the meantime no trees on the Gurudwara Road should be cut.

I.A. No. 295

Disposed of in terms of signed order.

ORDER

After hearing the learned Amicus Curiae, counsel for the parties and taking into consideration the suggestions placed before us by the learned Attorney General, we pass the following order: -

1. It is submitted that till the Central Government constitutes a statutory agency as contemplated by Section 3 of the Environment (Protection) Act, 1986, it is necessary and expedient that an authority be constituted at the national level to be called Central Empowered Committee (CEC) for monitoring the implementation of Hon'ble Court's orders and to place the non-compliance cases before it, including in respect of encroachment removals implementations of working plans, compensatory afforestation, plantations and other conservation issues.
2. The CEC shall comprise of a Chairman to be nominated by MoEF in consultation with the Amicus Curiae. It will have one nominee of the MoEF and two NGOs (also to be nominated in consultation with the Amicus Curiae). Shri MK Jiwrajka will be its member Secretary. The persons so appointed (other than the nominee of the ministry) shall not be removed without leave of the Court.
3. Pending interlocutory applications in these two writ petitions as well as the reports and affidavits filed by the States in response to the orders made by the Court shall be examined by the Committee, and their recommendations will be placed before Hon'ble Court for orders.
4. Any individual having any grievance against any steps taken by the Government or any other authority in purported compliance with the orders passed by this Court will be at liberty to move the Committee for seeking suitable relief. The Committee may dispose of such applications in conformity with the orders passed by this Court. Any application which cannot be appropriately disposed of by the Committee may be referred by it to this Court.
5. The Committee shall have the power to:
 - a) Call for any documents from any person or the Government of the Union or the State or any other official;
 - b) Summon any person and receive evidence from such person on oath either on affidavit or otherwise.
 - c) Seek assistance / presence of any person(s)/Official(s) required by it in relation to its work.
6. The Committee may decide its own procedure for dealing with applications and other issues. Union of India shall provide suitable and adequate office accommodation for the Committee. The expenditure incurred on the working of the Committee including salary / remuneration (to the extent not payable by the Government) to the members and supporting staff, may be met out of income accruing to the Special Investigation Team (SIT). Necessary procedure for this may be formulated by the Committee in consultation

with the SIT.

7. The Committee is empowered to co-opt one or more persons as its members or as special invitees for dealing with specific issues. While dealing with issues pertaining to a particular State, wherever feasible, the Chief Secretary and Principal Chief Conservator of Forests of the State shall be co-opted as special invitees.
8. The Committee shall submit quarterly reports to the Hon'ble Court. It will be at liberty to seek clarifications / modifications needed by it from Hon'ble Court.

I.A. 295 is disposed of in the aforesaid terms.

I.A. No.:	Order Date: 12.08.2002	
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I.A. No. 756

Bhure Lal Committee be reminded to submit a report within three weeks. To come up on 09.09.2002.

I.A. Nos. 778-779

Issue notice to the Amicus Curiae and the Union of India, returnable on 09.09.2002.

Re: Report of Central Empowered Committee

Recommendations of the CEC have been received. The parties may file their response to the Reports / Recommendations within three weeks.

The CEC was set up under orders of this Court. In our opinion, the said CEC should be notified under Section 3 of the Environment (Protection) Act as being a Committee for all the forest areas in the whole of India with power to give directions, hear objections and take decisions so that there is no need to approach this Court from time to time. Mr. A.D.N. Rao states that he will take instructions regarding this and inform the Court on the next date of hearing. We hope that by that date formal notification would be issued.

According to the Report of the CEC, there is large scale encroachment in the forest area, the total area being 7,25,861 hectares. This encroachment is in the area where the forest exists. The other States have much less land area under forest. A question had arisen as to why the States which are deficient in forest should not contribute to a fund to be disbursed amongst the States which have forests, which are prevented from cutting the same or allowing the same to be hebetated. This is one of the main measures in which the forest can be conserved as the forest cover in existence is woefully low. In other words, taking the country as a whole, it should be the duty of the States which are deficient in the forest cover to contribute money in order to prevent deforestation, thereby preserving the ecological balance.

Notice to issue to the Union of India and the various State Governments / U.Ts. who will address arguments on this aspect on the next date of hearing and will also file the written submissions. The Amicus Curiae may also address on this aspect on the next date of hearing. To come up on 09.09.2002.

Compliance report of Andaman & Nicobar is already on record.

Status report in the matter of investigation of CBI in Sanjay Kumar murder case be kept on record. The investigating team, which is not to be changed, shall submit periodic reports of progress.

Pending I.As (I.A. 301 to 382) of saw mill owners be listed for final disposal in accordance with the recommendations of the CEC on the next date of hearing.

Notice of the Reports of the CEC in respect of IA 703 and 301-382 in W.P.(C) 202/95 respectively to go to all the States through the standing counsel and notice of the Report of the CEC in respect of IA 22 in W.P.(C) 171/96 to issue to the State of J&K through the standing counsel.

Rest of the matters:

List on 09.09.2002.

I.A. No.:	Order Date: 02.09.2002	
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I.A. No. 780

NEERI has not given a report, and on the contrary, they want some documents to be supplied to them and Rs.2,50,000/- deposited. The earlier order requiring NEERI to give a report is recalled.

We direct the Secretary, CEC – Mr. Jivrajika and Mr. Mahendra Vyas to go to various locations in Himachal Pradesh and give a report with regard to advertisements which are painted on the rocks in and around the area. The Report be given within ten days to come up on 16.09.2002.

Learned Amicus Curiae draws our attention to a list submitted in Court by Mr. Arun Jaitley which indicates other entities other than Coca-Cola and Pepsi who have also painted their advertisements on the rocks. The list of ten such entities is taken on record and notice is issued to them also returnable on 16.09.2002. Notice be issued by the Registry without payment of process fee.

Mr. Ashok Desai has drawn our attention to an order passed by the State of Himachal Pradesh dated 14th and 21st August 2002 under Section 5 of the Environment Protection Act whereby the Coca-Cola and Pepsi Companies have been directed to remove the advertisements within 15 days. While the advertisements have to be removed the mode or method of removal cannot be left to the sweet will of the wrong doer. It will have to be ensured that the removal of the advertisements does not cause violation or adversely affect the ecology of the area. For this purpose, it is better that the entities to whom such notices have been issued first inform the State Governments and this Court as to the mode and manner in which it proposes to remove the advertisements and it is only after the same is approved by an appropriate authority that the action of removal would be permitted to be undertaken.

The Committee of Mr. Jivrajika & Mr. Mahendra Vyas will be at liberty to take any expert in the first instance to assist them. To meet expenses of the Committee, the Coca-Coal and Pepsi will deposit initially Rs.50,000/- each in this Court within three days from today. The money when deposited will go to meet the expenses of the Committee. The representatives of Coca- Cola and Pepsi will be at liberty to accompany the Committee.

To come up on 16.09.2002.

I.A. No.:	Order Date: 09.09.2002	
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I.A. No. 756

Copy of the Bhure Lal Committee's Report be given to Mr. VB Saharya who will file his response within three weeks. To come up on 22.10.2002.

Report of Central Empowered Committee

[Regarding I.A. 703 and 301 to 382 in W.P.(C) 202/95 and IA 22 in W.P.(C) 171/96]

Adjourned to 22.10.2002. Last opportunity is granted to the States to respond to the recommendations. If no response is submitted, it will be presumed that the recommendations are acceptable to the States concerned. Mr. Anis Suhrawardy, Advocate states that the State of J&K accepts all the recommendations. W.P.(C) 672/98 be also listed on 22.10.2002.

A draft of the proposed notification under Section 3(3) of the Environment (Protection) Act 1986 constituting the CEC has been shown to the Court. According to the draft, the Committee is being constituted for a period of five years. The constitution of the Committee would be: (i) Shri PV Jayakrishnan, Secretary to the Government of India, MoEF as Chairman; (ii) Shri NK Joshi, Additional Director General of Forests, MoEF as member; (iii) Shri Valmik Thapar, Ranthambore Foundation as member; (iv) Shri Mahendra Vyas, Advocate, Supreme Court of India as Member and (v) Shri MK Jiwrajka, Inspector General of Forests, MoEF as Member Secretary. They all are appointed in their personal capacity. A formal notification will be issued within a week. As and when this notification is issued, whatever functions and responsibilities had been given to the CEC will now be exercised by this statutory Committee.

Monitoring Report dated 05.09.2002 (page 121 of the paper book) is received from the CEC. Notice is given to the Union of India and the States concerned.

With reference to the query raised by the CEC as to whether they have to examine IA 434, 435, 469, 470, 475, 476, 490, 765, 766, 767, 768, 769, 770, 771, 772 and 773 in W.P.(C) 202/95, the CEC will examine these IAs, notwithstanding the fact that Shri MK Jiwrajka is a Member of the previous committee.

In IA 745 regarding murder of Sanjay Singh, it is stated that the widow of late Shri Sanjay Singh has been provided with an accommodation and the job will be given to her within two weeks. To come up for reporting this on 22.10.2002.

I.A. No. 778

Issue Notice. Mr. Salve, learned Amicus Curiae accepts notice.

After hearing the counsel, we clarify that the claims for payment of subsidy received from various wood based industries in respect of transport carried out prior to the date of this Court's order dated 07.05.2002 can be paid.

I.A. is disposed of.

Rest of the matters

Adjourned to 22.10.2002

Kudremukh matter (IA 670) be listed on 23.09.2002.

I.A. No.:	Order Date: 16.09.2002	
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I.A. No. 780

Report has been submitted by the Committee which was appointed by this Court. Copies of the Report be given to the counsel for the parties.

It is imperative to find out at the very earliest as to the modalities which have to be employed in order to remedy the situation and remove the damage. Mr. Salve, the learned Amicus Curiae states that it will be possible to find out globally as to which is the best way to repair the damage and to identify the people and the experts who can do so. According to the Report, one of the methods which has been suggested is to use lasers. This is an option, which can be considered. The extent of damage is stated to be very extensive. In order to try and fully appreciate the extent of damage, it will be necessary to have a video film taken which will indicate, at least proximately, as to who were the organisations or persons responsible for the damage, the extent of the damage and the quantum of work required to be done. It is quite clear that the work has to be completed expeditiously and in any case before the winter sets in.

On the last date of hearing, notices had been issued to nine organisations out of which seven had commercial advertisements. This is in addition to Coca-Cola and Pepsi. The Report indicates that Grasim Ltd. (Birla White Cement) and Sleepwell mattresses are also the organisations who have painted the rocks by way of advertisements. Notice to issue to Grasim Ltd. and Sleepwell Mattresses returnable on 23.09.2002.

In the meantime, in order that the Committee, which had been appointed, carries out the remaining work of video filming and ascertaining globally as to the manner in which the damage can be repaired, costs will have to incur. We direct MBD Book, State Bank of India, Fena Pvt. Ltd., Nestle India Ltd., Jugal's Sidharth Dining and Annapurna Restaurant to deposit in this Court within the next 48 hours Rs. 1 lakh each by way of costs. We direct Coca Cola and Pepsi to deposit in this Court within the next 48 hours Rs.2 lakhs each by way of costs. This money will be utilized, subject to the directions of the Registrar General, for the purpose of meeting the costs.

The action, which is being taken by this Court, is independent of any action which may competent authority may take in accordance with law, including the criminal prosecution.

In the meantime, no party is allowed to remove any paint or damage, which has been done so far, and the State Government will ensure this.

I.A. No.:	Order Date: 23.09.2002	
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I.A. No. 670

Response to the Report of the Committee be given within 10 days. In the meantime, Mr. Valmiki Thapar is requested to give a further report along with photographs in support of his note of dissent. In order to enable him to do so the Company will, initially, defray his experiences. Till further orders, mining may continue.

To come up on 22.10.2002.

I.A. No. 780

Copy of the Report of the CEC is taken on record. Learned Amicus Curiae will inform the Court on the next date of hearing as to how the expenses which may come up to Rs.5 crores are to be met by deposits by different persons who were responsible for defacing the rocks and had put up unauthorized hoardings. In addition, the learned Amicus Curiae will indicate the quantum of punitive damages, which have to be imposed.

It is unfortunate that such large-scale vandalism has taken place with the State Government taking no action so as to check the same. In the realm of public trust it was the duty of the State Government to protect the environment and for the dereliction of its duty Rs. One crore will be deposited by the State of Himachal Pradesh in the Registry which will go towards meeting the expenses necessary for restoration of ecology.

From the Report, it appears that on National Highway IV outside Bangalore similar advertisements have been painted on the rocks. The companies responsible in respect thereof are including others ACC, Coromandal King, Rasna, Fertilizer Chemicals-Travancore, Alpine, Indo-tex and Indo-Chem. Notice to issue to these companies as well as to the State of Karnataka. Notice is accepted by the learned Advocate General for the State of Karnataka who is present in court, who may give his response for the State within three days. Copies of the Report be supplied to such other counsel who may desire to see the report and they may also give their responses within three days.

MoEF will also give a report to this Court on the next date of hearing based on information to be gathered from different States through the Principal Chief Conservator of Forests or through any other authority as to whether such vandalism is prevalent in other States also and if so, to what extent.

List on 26.09.2002 at 2.00 pm

I.A. Nos. 801 & 802

Dismissed.

I.A. No.:	Order Date: 26.09.2002	
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I.A. No. 780

Delay condoned in depositing the amount of Rs.1 lakh by Ms. Manjula Gupta, Advocate on behalf of Judgal's.

A further report has been received from the Committee of M/s. Jivarajika and Mahendra Vyas. It appears that apart from the persons and companies mentioned in page 2 of the report there are a large number of small and big advertisers who have painted / damaged the rocks. In the third report of the CEC the advertisers identified are Malhotra Book Depots, Coca-Cola, Pepsi, Grasim, Fena, SBI, Sleepwell and Amaron. Apart from these, there are 34 others advertisements which have been put under the category of 'others / miscellaneous'. In addition thereto there are 168 advertisements which because of unclear materials cannot be identified.

It will be necessary to require payment from all advertisers to the extent identifiable and not merely from 8 mentioned hereinabove.

At this stage, therefore, till further identification taken place, only an interim order will be passed requiring payment of some amount out of rupees five crores which was estimated in this Court's order dated 23.09.2002 as being the likely expense for restoring the damage which has been done.

It is the suggestion of Mr. Salve, learned Solicitor General, that the work of restoration should be undertaken by

responsible organisation. CEC headed by Shri PV Jai Krishnan, who is at present Secretary in MoEF has been established under Section 3 of the Environment (Protection) Act, 1986. In our opinion it will be appropriate for this Committee to take the responsibility of over-seeing repairing work of the damage, which has been done. It will be open to this Committee to associate such individuals or organisations, which can assist or do the needful. In the report of M/s. Jivarajika and Mahendra Vyas Committee it has been mentioned that INTACH is an organisation, which will be able to carry out the work in association with its collaborator ICCI which works under Dr. OP Agarwal. This is a suggestion which can be considered by the Jai Krishnan committee (CEC) who will thereupon go into the matter, identify other advertisers and determine as to what should be the percentage of expense to be contributed by them. The contribution towards the expense would, appropriately, be on the basis of the size of the total advertisements of the Companies. Till this exercise is completed, we direct rupees two crores out of the estimated amount of rupees five crores to be deposited with the CEC within ten days from today of which Rupees one crore will be deposited by the State of Himachal Pradesh, and the balance of Rupees one crore will be deposited as follows:

MBD – 30 lakhs; Coca-Cola – 30 lakhs; Pepsi – 15 lakhs, Grasim – 10 lakhs; Fena-10 lakhs; SBI – 1.25 lakhs; Sleepwel – 1.25 lakhs and Amaron 2.5 lakhs.

These organisation are directed to make the deposit as aforesaid within ten days from today and report compliance. This is in modification of the earlier order where the deposit was to be made by State of Himachal Pradesh with the Registrar of this Court, and the deposit has not to b made with CEC.

It will be open t the parties or organisations to give information to the CEC within ten days from today, names of such other advertisers whose advertisements are there on the face of the rocks in this region of Manali.

Further order with regard to the deposit of the balance amount of Rs. 3 crores towards cost will be passed on the next date of hearing. Notice is also given to the concerned organisations and advertisers to show cause as to why punitive/damages should not be levied on them if the court comes to conclusion that punitive/exemplary damages are called for in order to determine, what should be the amount of damages, it will be of assistance to get some further information from these organisations. Keeping in mind the fact that the rocks have been defaced with the idea of advertising the products it shall be considered as to what shall be the measure of determining the punitive / exemplary damages. It shall be necessary to find out as to what is the expense on the advertisements of the organisations concerned. Yet another principle which has been followed by the courts in India is to levy damages of a certain percentage of the total turnover or of the revenue income. What the measure should be determined after hearing the parties, but all the parties to whom notices have been issued shall file affidavits before the next date of hearing informing the court as to the extent of their expense on advertisements in India and also the gross turnover and the revenue income with regard to the operations in India for the last three years. These affidavits should be filed on or before 11.10.2002 and the case to come up for hearing on 22.10.2002.

Out of the money which has already been deposited in Court, rupees three lakhs shall be given to CEC against the bill given by them.

A letter dated 10.09.2002 signed by Santosh Bharti and given in court is taken on record and be treated as IA filed by Mr. Salve, learned Solicitor General of India, Amicus Curiae. Issue notice to the State of MP returnable on 22.10.2002.

I.A. No.:	Order Date: 22.10.2002	
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I.A. Nos. 756, 634-635, 276 with 413, 437, 453 and 454

List on 23.10.2002.

I.A. No. 22

By order dated 09.05.2000, this Court had directed, while permitting the sale of excess quantity of timber by the Jammu and Kashmir State Forest Corporation, that 50 per cent of the sale proceedings after excluding the transportation charges shall be kept in a separate bank account to be utilized for afforestation purposes. Thereafter, the Ministry of Environment and Forests had submitted a Scheme along with an affidavit dated 30.07.2002 before the Central Empowered Committee. The Scheme inter alia, provides for establishment of Forest. Development Agency at district level for undertaking afforestation. The Scheme, as proposed, was agreed to by the State Forest Department of the State of Jammu and Kashmir and the recommendations filed in this Court by the Central Empowered Committee after its hearing of 30.07.2002. It has been stated that at present a sum of about Rs.13 crores lying in a bank account with an additional Rs. 2 to 3 crores, is likely to be made available from the sale of balance timber. It is further stated that each of the Forest Development Agencies would require Rs. 2.5 crores for afforestation and maintenance works in undertaking plantation of 1300-1400 hectares of land during the next five years. It could, thus, be possible to undertake afforestation work in the districts of Jammu, Udhampur, Nowhere, Sindh, J.V. Division, Shopian and Leh. The Committee unanimously made the following recommendations:

- (a) The funds available for afforestation in pursuance to the Hon'ble Court's order dated 09.05.2000 may be allowed to be utilized as per "National Afforestation Program" scheme prepared by the Ministry of Environment and Forests in Jammu, Udhampur, Nowhere, Sindh, J.V. Division, Shopian and Leh.
- (b) Additional funds required, if any, required for undertaking afforestation as per the scheme in these districts shall be provided by the Ministry of Environment and Forests to bridge the shortfall, if any.
- (c) The amounts required for afforestation shall be released through a separate bank account maintained for this purpose on the basis of physical and financial sanctions issued by the Ministry of Environment & Forests from time to time.
- (d) The Ministry of Environment and Forests will closely monitor the implementation of the scheme through an independent agency to ensure proper utilisation of funds and also other aspects such as survival rate of the plantation

We accept the aforesaid recommendations with this addition that the monitoring of the implementation of the Scheme as referred to in clause (d) above, shall be done by the Central Empowered Committee, which has been duly constituted under Section 3 of the Environment (Protection) Act and is headed by Mr. P.V. Jaykrishnan as its Chairman. The Committee will exercise all powers which are vested in it for ensuring the afforestation as proposed by it and in case of any difficulty it has the liberty to apply to this Court for appropriate orders or directions.

I.A. is disposed of.

I.A. Nos. 301 to 382

These applications filed by sawmills had been forwarded to the Central Empowered Committee for consideration. The plea of the applicants was that they were owners of the sawmills and they were entitled to license after giving hearing to each of the applicants, the Central Empowered Committee has filed a Report in this Court. As

per the Report, the Committee examined the claims of the applicants on the basis as to whether they had a valid license on 04.03.1997, for the reason that on 04.03.1997 this Court had ordered the closure of all licensed saw-mills, veneer and plywood industries, inter alia, in the State of U.P. The Committee accordingly, examined whether the applicants had a valid license as on 04.03.1997. In the Report, which has now been filed, it has been stated that none of the applicants had a valid license for running sawmill as on 04.03.1997 and, therefore, each one of them was required to close down pursuant to this Court's order dated 04.03.1997. The Committee has recommended dismissal of IA Nos. 301 to 382 and has further stated that the Principal Chief Conservator of Forests, State of U.P., should file an affidavit within one month giving the details as to whether the said sawmills who are applicants in IA Nos. 301 to 382 and others have been closed down or not. If they have not been closed down, the reason for their non-closure should be stated therein. The recommendations contained in paragraph 8 of the Report of the Central Empowered Committee are accepted. Direction is issued to the Principal Chief Conservator of Forests, State of U.P. to file an affidavit within one month indicating as to which of the saw-mills have been closed down and dismantled; if not, the reason why appropriate action has not been taken. The affidavit of the Principal Chief Conservator of Forests to come up for consideration after two months. I.A. Nos. 301 to 382 are dismissed. Reports of the Central Empowered Committee may be marked as Interlocutory Applications.

I.A. No. 566.

List on 24.10.2002.

I.A. No. 670

Heard in part.

Rest of the I.A.s

Not reached.

I.A. No.:	Order Date: 29.10.2002	
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Report of the CEC regarding transfer of funds and related issues

Further report of the CEC regarding transfer of funds and related issued has been filed. Copy of the same is being given to Mr. A.D.N. Rao. To come up for appropriate orders on 01.11.2002.

I.A. No. 756

To be listed for hearing after three weeks before a Bench of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members.

I.A. No. 276 with I.A. Nos. 413, 437, 453 and 454

Mr. Kapil Sibal, learned senior counsel commenced his arguments at 2.45 pm and was on his legs when the Court rose for the day leaving the matter as part-heard.

I.A. No.:	Order Date: 30.10.2002	
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I.A. No. 276 with I.A. 413, 437, 453 and 454

Mr. Kapil Sibal resumed his arguments at 10.35 AM and concluded at 11.15 AM. Thereafter Mr. GL Sanghi and Mr. Ranjit Kumar made their submissions for 15 minutes each. Mr. Salve, learned Amicus Curiae made his submission from 11.45 AM to 12.05 PM. Arguments concluded. The court then made the following order:

Order

We are here concerned with the alleged encroachment into the Tatkola Forest in the State of Karnataka.

On 29.07.1998 this court directed the State of Karnataka to indicate the extent of encroachment in the forestland in the State. With regard to Tatkola Reserve forest there were allegations regarding large-scale deforestation. Shri RMN Sahay, Conservator of Forests was appointed as the Commissioner of this Court and directed to go to Tatkola Reserve Forest and to give a report about the present state of affairs in that forest.

Subsequently, on 07.05.1999 this Court passed another order on the receipt of the Report of Shri Sahay. In the said Report Mr. Sahay had stated that there were large scale encroachments and the State of Karnataka was required to give its response to the position indicated in the said Report. What is, however, important is that this court took note of the fact that survey was being conducted in Chickmagalur area by the Survey of India and this Court by its order dated 07.05.1999 directed the Survey of India to continue with the survey operations and to give a report regarding encroachment in the Chikmagalure area of the forest.

The Survey of India then submitted its Report which has been placed on record here. The said Report describes the manner in which the actual survey of the Reserved Forest was carried out and along with the Report, a map of the area has been filed indicating the boundaries of the forest as well as the land therein which has been encroached upon. A list of the encroachers has also been included.

IA 453 filed by Mr. BL Shankar was that he was the owner of a Coffee Estate in Survey No.3 and that land was not part of the Reserve Forest.

This application along with the other applications were forwarded to the CEC for consideration and report.

After hearing the applications in I.A. 413, 437, 453 & 454 on 12.07.2002 and 05.09.2002, the CEC submitted its Report on 05.09.2002. The CEC accepted the survey and the Report of the Survey of India and came to the conclusion that as per the said Report as well as the Report of Shri Sahay, 611.23 acres of forest land had been encroached upon and came to the following conclusions:

- 1) the report given by the Survey of India about boundaries of Tatkola Reserve Forest and the extent of encroachment inside it should be accepted as the final report as the Survey of India is the apex survey organisation on survey matters in the country. The survey has been done by it using the latest equipments in a scientific manner. The authenticity and reliability of the survey report cannot be challenged.
- 2) As reported by the Court Commissioner and confirmed by Survey of India report, 611.23 acres of forest land has been encroached inside Tatkola Reserve Forest. Out of this, 556.04 acres has been encroached for coffee cultivation and 55.19 acres for other purposes.
- 3) The encroachments which have taken place inside Tatkola Reserve Forest need to be immediately evicted

specially as these encroachments are for commercial gains.

- 4) Adequate steps have not been taken by the State Government for removal of encroachments in the past. In spite of appointment of Court Commissioner and deep concern shown by this Court in the matter, the encroachments have been allowed to continue on one pretext or another such as pendency of joint survey report, Survey of India's report and pendency of the cases filed in various courts.
- 5) After removal of encroachments, it is necessary to rehabilitate the encroached area by afforestation and other conservation measures; and
- 6) Compensation for environmental losses caused due to encroachment should be recovered from the encroachers specially as these encroachments are for commercial gains. Similarly, compensation should also be recovered from the State Government if it does not take effective steps immediately for removal of encroachments.

The CEC then made the following recommendations:

- a) Shri RMN Sahay, Court Commissioner's Report about the forest area under encroachment in Tatkola Reserve Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith.
- b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number / survey number and the Forest Range from where the encroachments are to be removed in compliance of this order.
- c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that police protection and help needed for removal of encroachments is provided as and when required.
- d) Compensation for environmental losses caused due to encroachments which have taken place in the instant case for commercial purposes, shall be recovered from the encroachers identified by the Court Commissioner @ Rs. 5 lakhs per hectare as an exemplary punishment. For any encroachments not removed by the State Government for any reason whatsoever within three months, compensation for continued environment losses shall also be paid by the State Government @ Rs.10,000/- per hectare per month. The money so recovered shall be kept in a separate account and shall be used exclusively for forest protection and rehabilitation of encroached area with the concurrence of the CEC.
- e) The Action Taken Report shall be filed by the Chief Secretary, Karnataka before the CEC every month till the encroachments are completely removed and all the compensation payable by the encroachers / State Government are recovered / deposited; and
- f) The earlier order made in the matter shall be read, modified wherever necessary to this extent. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any Court (including High court) or Tribunal.

On behalf of Shri Shankar it was contended by Mr. Kapil Sibal that he was the owner of 32 acres and 26 guntas

of land, which is a part of Survey No. 3 which was not a part of the Reserved Forest. He draw our attention to a Government notification issued by the Maharajah of Mysore dated 25.04.1936 whereby Tatkola block was created. The boundaries of the forest were set out in the enclosure to the said notification and the schedule described the boundaries in greater detail. The said notification also mentioned that the land mentioned in the enclosure Nos. I, II, III and IV were not to form part of the forest. The case of Mr. Shankar was that Enclosure No. III clearly stipulated that Survey No.3 of Kanchegowda Coffee Estate was not to be regarded as a part of the forest. Mr. Kapil Sibal submitted that Mr. Shankar is entitled to retain 32 acres and 26 guntas of land in Survey No. 3 and the Report of the Survey of India does not indicate this area of land which belongs to him. Grievance was also sought to be made that his client had not been heard.

What has been done by the Survey of India is to identify the boundaries of Tatkola Reserve Forest. These boundaries have been identified in accordance with the terms of the notification of 1936. The said notification provided that in the north the supporting point of the boundary was from the south west corner of Survey No. 181 of Kundur village of Chikmagalure taluk. Report of the Survey of India states that it was not possible to identify this point at the time when the work of demarcation was commenced. It then describes the manner in which it commenced the work from the nearest available Survey of India geographical control point. This point was identified and on the basis it proceeded to determine the said southwest corner of Survey No. 181 of Kundur village, the starting point of the Tatkola village boundary. The report indicates that when this point was determined, embedded stone at that place was found. The correctness of this point was crosschecked and when it tallied the Survey of India then also found old pillars indicating the boundary of the forest. Some new pillars were also erected by the Survey of India and on this basis the boundary lines were drawn out, the encroachers identified and a plan was drawn up which has not been placed on record in this Court.

According to this plan of the Survey of India, Survey No. 3 is clearly shown as not being included in the Tatkola Reserved Forest, but what this plan does indicate is that certain area of Survey No.4 which forms part of the Reserved Forest has been encroached upon along with the boundary of Survey No. 4 and Survey No. 3. This seems to indicate that persons in possession of land in Survey No. 3 could be those who have encroached into the adjoining area forming part of Survey no.4 which is included in the Tatkola forest.

In our opinion, Report of Survey of India and the map darwn by it is not open to challenge. The State of Karnataka has in its affidavit stated that it accepts the correctness of the Report. Survey of India is an organisation (the apex one) whose duty is to prepare the plans after carrying out such surveys. I is on the basis of the aforesaid Survey of India Report that the CEC recommended that the encroachers should be removed from the forest. Keeping this Report in mind, the State of Karnataka in its affidavit of Smt. SR Vatsala dated 18.10.2002 has stated that the Survey Report of the Survey of India has been accepted and action has been initiated to evict the encroachments in the Tatkola Forest.

It is stated by Mr. G.L. Sanghi on behalf of the State of Karnataka that according to Section 64A of the Karnataka Forest Act, 1963 summary procedure can be adopted for evicting the encroachers. The said Section of the Act, inter alia, provides that any person who has unauthorisedly grabbed land in the Reserved Forest may b summarily evicted by the Forest Reserve officer but before evicting the person under this sub-section has to be given a reasonable opportunity of being heard.

There can be no manner of doubt that any land which forms part of the Tatkola Reserve Forest could only belong to the Government. Once the forest was established in the year 1936, all other rights there in came to an end. the Survey Nos. of the forest are indicated in the plan prepared by the Survey of India and there is no dispute that Survey No. 4 forms part of the said forest. It has not been contended by any one that Survey No. 3 was part of the forest and therefore, any person who owns land which forms part of Survey No. 3 as identified by the Survey

of India would be entitled to enjoy the same and that land did not form part of the Reserve Forest. What the Survey of India had to do was really to demarcate the boundary of the Reserved Forest and to indicate which portion of land fell in Survey No. 4 and which portion of the land in that area fell outside the said Reserved Forest including Survey No. 3. In the plan filed, this has been indicated and according to the said plan portions of Survey No. 4 have been shown to be encroachers in the said forest is stated to be more than 611.2309 acres. It may also be noticed that though in the notification of 1936 it was stated that the total area of the forest area was 2312 acres and 38 guntas, but as per the Report of the Survey of India the survey which was conducted with the help of the latest scientific instruments show that the correct area of the forest was 2269.198 acres. This area of land stands identified in the plan now drawn up by the Survey of India.

From the aforesaid, it is quite clear that all encroachers into the Tatkola forest have to be evicted. It is no doubt true that according to Section 64A show cause notice has to be issued. But that can only be with a view to enable the person to whom notice is issued to show that his land does not fall within the boundaries of the forest as drawn up by the Survey of India. If the land is identified as falling within the Survey of India boundary then there could be no other defence open to the person concerned and the State would be under an obligation and duty to evict the encroacher, by force if necessary.

Mr. Ranit Kumar, the learned senior counsel appearing on behalf of Mr. Seshagowda submitted that his client is the owner of the land which formed part of Enclosure No II and that was also excluded from the forest. As we have already indicated, the determination of the forest boundaries by the Survey of India is final and binding on all. An area which falls within the said forest is forest land and cannot be encroached upon. If the area which is in physical occupation of Seshagowda falls within that forest then the same has to be vacated by him and he has to be evicted.

We accept the Report of the CEC of September 2002. Result of this is that the Report of Shri Sahay regarding encroachment in Tatkola Reserve Forest as confirmed by the Survey of India Report shall be treated as final and all encroachments reported therein shall be removed.

In conclusion:

- a) Shri RMN Sahay, Court Commissioner's Report about the forest area under encroachment in Tatkola Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith.
- b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachments is undertaken specifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number / survey number and the Forest Range from where the encroachments are to be removed in compliance of this order.
- c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that police protection and help needed for removal of encroachment is provided as and when required.
- d) The encroachers are liable to compensate for the losses caused due to the encroachments especially when the land encroached upon has been utilized for commercial purposes. We, however, take a lenient view and direct that if the encroachers voluntarily vacated the encroached land and hand over the same to the Chief Conservator of Forest within three months from today, i.e. on or before 31.01.2003, they will not be liable to pay any compensation but if they continue to remain in occupation then they will have to pay Rs. 5

lakhs per hectare per month to the State Government Money so recovered shall be kept in a separate account and shall be used exclusively for forest protection and rehabilitation of the encroached area with the concurrence of the CEC.

- e) Action Taken Report shall be filed by the Chief Secretary, Karnataka before the CEC every month till the encroachments are completely removed and all the compensation payable by the encroachers has been deposited. Copy of the Action Taken Report also be filed in this Court.

Liberty is given to the CEC to seek further directions.

The Court records its appreciation of the commendable work done by Shri RMN Sahay, present the Chief Conservator of Forests, Karnataka.

This order will not prevent the Survey of India from carrying out any other survey as may be necessary.

IAs are accordingly disposed of.

I.A. No. 703

List after four weeks before a Bench of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members.

I.A. No. 780

Learned Amicus Curiae has submitted a Fourth Report of the CEC. As per this Report 31 additional advertisements have been found to be painted on the rocks in the Kullu-Manali area. Details of this are contained in an annexure to the Report. Let notice be issued to the concerns specified in the column 2 of the said Annexure-A requiring them to show cause why they should not be liable to pay damages as well as costs, returnable in the last week of November 2002. List it before a Bench of of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members.

I.A. No. 566

On 23.11.2001 Mr. Kirit N Raval, the learned Additional Solicitor General during the hearing of the I.A. No. 419 and 420 had placed on record a statement showing the position of the cases approved for diverting forest area for non-forest purposes, compensatory afforestation stipulated and what was actually done, funds to be received and were actually received and utilized. This Court then issued notices to the defaulting States which had recorded poor progress in utilisation of the said funds and had not submitted quarterly progress reports.

The order of 23.11.2001 envisaged a scheme being formulated by the MoEF inter alia, for ensuring proper utilisation of the funds for compensatory afforestation in respect of permission granted for user-agency of forest land.

The CEC examined this question while dealing with I.A. 566 and after notice of all State Governments and hearing the learned counsel has submitted a Report dated 05.09.2002. The Report, inter alia, provides that there should be change in the manner in which the funds are released by the State Governments relating to compensatory afforestation. It has, therefore, been observed in this Report by the CEC that it is desirable to create a separate fund for compensatory afforestation wherein all the monies received from the user-agencies are to be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from

a particular state would be utilized in the same State.

There was also consensus amongst the States and the Union Territories that the funds for compensatory afforestation which were to be recovered from the user-agencies as well as the unutilized funds lying with the States should be transferred to such a fund. This fund will not be part of general revenues of the Union, of the States or part of the Consolidated Funds of India.

The said Report of CEC contemplates the involvement of user agencies for compensatory afforestation. The Report also refers to the permissible activities under compensatory afforestation, adequate compensation to be received for loss of forest land and funds for catchments area treatment plant. The Committee has also made eight recommendations. Copy of the Report of September 2002 of the CEC was given to the counsel for the parties. An affidavit on behalf of Union of India in response to the said Report has been filed. In paragraph 5 of the same, it is being submitted by the MoEF that it accepts the recommendations of the CEC in principle. It is, further, mentioned in the affidavit that major institutional reorganization of the present mechanism has to be undertaken and that it was proposed that comprehensive rules would be framed which will inter alia also relate to the procedure and compensation. It is also proposed that there will be a body for the management of the Compensatory Afforestation Funds (CAF). The proposal in this affidavit of the Union of India is that the said body of the management would be composed of a Director General of Forest and Special Secretary who will be the ex-officio Chairman and Inspector General of Forest who will be the ex-officio Member Secretary. Comprehensive rules etc. will be placed before this court for examination.

No other State has filed any response to the said Report of the CEC. It is therefore, presumed that the State Governments are not opposed to the said Report and like Union of India, they have accepted the same.

We have examined the said Report and are of the opinion that it merits acceptance by us as well. As recommended by the CEC we direct as follows:

- a) The Union of India shall within eight weeks from today frame comprehensive rules with regard to the Constitution of a body and management of the CAF in concurrence with the CEC. These rules shall be filed in this Court within eight weeks from today. Necessary notification constituting this body will be issued simultaneously.
- b) CAF which have not yet been realized as well as the unspent funds already realized by the States shall be transferred to the said body within six months of its constitution by the respective states and the user-agencies.
- c) In addition to above, while according transfer under Forest Conservation Act, 1980 for change in user agency from all non-forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs.5 lakhs per hectare to Rs.9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the MoEF in conclusion with CEC as and when necessary.
- d) A CAF shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchments Area Treatment Plan Funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the CAF shall be finalised by the MoEF with the concurrence of CEC within one month.

- e) The funds received from the user agencies in cases where forest land diverted falls within Protected Area i.e. area notified under Section 18, 26A or 35 of the Wildlife (Protection) Act, 1972, for undertaking activities related to protection of bio-diversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States / Union Territories.
- f) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States / Union Territories or any amount that is yet to be recovered from the user agencies shall also be deposited in this Fund.
- g) Besides artificial regeneration (plantations), the fund shall also be utilized for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site-specific plans should be prepared and implemented in a time bound manner.
- h) The user agencies especially the large public sector undertaking such as Power Grid Corporation, NTPC, etc. which frequently require forest land for the projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the MoEF with the concurrence of the CEC.
- i) Plantation must use local and indigenous species since exotics have long term negative impacts on the environment.
- j) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the CAF to ensure effective and proper utilisation of funds.

Place it before a Bench of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members for examination of the rules.

I.A. Nos. 634-635, 697 & 698

I.A. 697 & 698 are taken on board.

These applications have been filed for permission to erect transmission lines by Power Grind Corporation, which lines are to pass through the Rajaji National Park.

Since the filing of these applications lot of discussion has taken place, ground situation examined and now it is reported by the learned counsel for the applicant that through the proposed corridor where the transmission lines will be erected 14,739 trees will have to be cut. Permission for erecting the lines through the Rajaji National Park and cutting these trees had been accorded by the Union of India as well as the State of Uttaranchal. Permission was not made operative because of the earlier orders of this Court.

Taking all circumstances into consideration, these applications are allowed. Permission is granted to the Power Grid Corporation to erect the transmission lines through the Rajaji National Park. Aforesaid 14,739 trees will be cut by the Forest Department of the State of Uttaranchal under the supervision of the CEC. Trees so cut shall be sold by the Forest Department under the supervision of CEC by public auction. The amount so realized as well as the sums payable by Power Grind Corporation for afforestation etc. will be kept by the CEC in a fixed deposit initially for a period of three months and with the constitution of the body for the management of the CFA, the

principal amount so realized by the CEC shall be transferred to the said body. This permission, which is granted, will be operational on Rs.50 crores being deposited with the CEC who shall deposit the same in fixed deposit and after twelve weeks transfer the same to the body constituted for the purpose of managing the CAF.

Monitoring Report (First) of the CEC

We have perused the First Monitoring Report of the CEC. Three suggestions have been made in the said Report. First is that the ban with regard to issue of license for establishment of new saw-mills or establishment of new wood based industries in the north eastern states should be extended by a further period of five years. The second prayer is that the HPC may be allowed to dispose of all the assets of the defaulting units who have not paid the penalty imposed by the said Committee on the wood based units in North Eastern States. It is stated that only a small fraction of the penalty imposed has so far been realized. The other recommendation is that the ban on issuing further permission or licence to all unlicensed saw mills, veneer and plywood industries now imposed in the State of Maharashtra and in the State of UP should be extended to all other States in India.

Despite notice, there is no opposition to this Report. Affidavit has been filed by the Union of India accepting this Report. We accordingly direct as follows:

- 1) The ban imposed with regard to the opening of the new saw mills and other wood based industries by this Court's order dated 15.01.1998 in the State of Nagaland is extended by a further period of five years.
- 2) The HPC is allowed to dispose of the assets on such defaulting units, including plants, machinery, land, shed, timber and timber products who have not paid the penalty imposed by the HPC of the wood based units of North Eastern States. This will be subject to such orders, which may be passed by the CEC.

No State or Union Territory shall permit any unlicensed saw mills, Veneer, plywood industry to operate and they are directed to close all such unlicensed units forthwith. No State or Union Territory shall permit any unlicensed saw mills, veneer, plywood industry to operate and they are directed to close all such unlicensed units forthwith. No State Government or Union Territory will permit the opening of any saw mills, veneer or plywood industry without prior permission of the CEC⁵. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of license without previous concurrence of the CEC.

It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences.

With respect to files received in original from Damoh and inspection report submitted by Mr. NK Sharma, Additional Director General of Forests and Enquiry Officer.

21 files referred to in the office report of 10.10.2002 as per item No. 8 at page 16 be sent to the CEC.

Illegal Mining in Aravalli Hills

Second Monitoring Report of the CEC dated 28.10.2002 has been received from the CEC. This Report deals with the mining, which is termed as illegal in the Aravalli hills. It is stated in this Report that the members of the CEC visited the affected areas on 27.10.2002, namely, the forest area in the Aravalli Hills – Kote and Alampur Village. Report states that mining operations are being carried out in this area, which is a forest area, which was being

recreated by plantations under the Aravalli Mining Programme funded by the Japanese Government in the early 90s. We prohibit and ban all mining activity in the entire Aravalli Hills. This ban is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Dholpur⁵³¹ to Rajasthan. The Chief Secretary, State of Haryana and Chief Secretary, State of Rajasthan are directed to ensure that no mining activity in the Aravalli Hills is carried out, especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act.

I.A. Nos. 776, 791, 792 & 800

Issue notice returnable after four weeks. List before a Bench of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members.

Second Report of the CEC

Second Report of the CEC for the State of MP constituted by this Court's order dated 12.05.2001 has been submitted. The same is taken on record.

The court records its appreciation to the members of the Committee comprising of:

1. R. Rajamani – Chairman
2. R.D. Sharma – Member
3. Mahendra Vyas – Member
4. Dr. Ram Prasad – Member
5. A.R. Chadha – Member

for the good work done.

Rest of the I.As

Adjourned. List after four weeks before a Bench of which Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members.

I.A. No.:	Order Date: 31.10.2002	
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I.A. No. 788

Issue notice to the State of Sikkim returnable after two weeks. Dasti service, in addition, is permitted.

In the meantime, it will be open to the applicant to make fresh application to the State to construct the road in question and the State will decide that application uninfluenced by the order of this Court because Mr. Mukul Rohtagi contends that construction of road is in the national interest and for the security of the country and the applicant undertakes to carry out special compensatory afforestation, as directed to it by this Court. The MoEF will communicate on the next date of hearing as to the compensatory afforestation.

To come up for orders on 18.11.2002 before a bench of which Hon'ble Mr. Justice YK Sabharwal is a Member.

Any application filed in W.P.(C) 202/95 will be listed before a bench of which Hon'ble Mr. Justice YK Sabharwal is a Member.

⁵³¹ The word 'Dholpur' would be read as 'Haryana' as amended in order 18.11.2002

I.A. No.:	Order Date: 01.11.2002	
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Re: Report of CEC regarding transfer of funds and related issued with office report

The Report dated 28.10.2002 of the CEC has been filed. The same is taken on record. With regard to the formation of the Society and the residential accommodation for the Chairman which is referred to in the said Report. Mr. Mukul Rohtagi wants some time to consider the same and he states that in the meantime the accommodation in occupation of Mr. PV Jayakrishnan may continue to be occupied by him.

To come up on 16.10.2002 before a Bench of which Hon'ble Mr. Justice YK Sabharwal is a member.

I.A. No.:	Order Date: 18.11.2002	
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I.A. No. 788 – (Illegal mining in Aravalli)

Mr. Salve, the learned senior counsel points out that there appears to be some typographical error in the record of proceedings dated 29/30.10.2002 at page 36 while dealing with the illegal mining in the Aravalli Hills. The sentence where error seems to have erupted is "This ban is not limited only to the hills encircling Kote and Alampur villages but extends to the entire hill range of Aravalli from Dholpur to Rajasthan". It appears that the word 'Dholpur' should have been Haryana. Now the word 'Dholpur' would be read as 'Haryana'.

I.A. Nos. 819-821 in W.P.(C) 202/95

Let Power Grid Corporation – Respondent No. 6 respond to the point raised in the application by filing an affidavit within a period of four weeks. Let copy of the applications be sent to CEC and the Committee may give a report after hearing the applicant and the Power Grid Corporation. List after the report of the CEC is received.

I.A. No. 788

List after four weeks. Affidavit may be filed in the meantime by the Union of India.

I.A. No.:	Order Date: 09.12.2002	
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I.A. No. 756

Despite the last two orders, DDA has not filed response to this application. We grant last opportunity and direct DDA to file its response within four weeks. List thereafter.

C.P. 193

To come up on 16.12.2002

I.A. No. 773

From the submission made by the learned counsel it appears that the order has been worked out, the IA is disposed of.

I.A. No. 774

Let copy of the application be sent to CEC. List after receipt of response from the said Committee.

I.A. No. 775

On request of Mr. Mukul Rohtagi learned ASG, the IA is adjourned for three weeks. List after reopening in the year 2003.

I.A. No. 421

The submission of learned counsel for the applicant is that pursuant to and in compliance with the order dated 01.05.2000 passed in IA 565 of W.P.(C) 202/95, a representation for reconsideration was filed with the HPC. However, by an order dated 07.06.2001 that representation has not been considered for want of deposit of 50% of the penalty. The said order, inter alia, state that the unit should deposit 50% of the penalty within 60 days. Subsequent order for deposit of 100% penalty was passed on 1/4.3.2002. We are of the view that the representation of the petitioner deserves to be considered without insisting upon deposit of any part of penalty amount. Let it be now considered by HPC. We hope, the representation would be decided within a period of 8 weeks. Accordingly IA is adjourned.

I.A. No. 777 in 754-755

The respondents 1 and 2 are represented. Let notice issue to respondents 3 to 14 returnable after four weeks. On application of Mr. Panjwani, we also implead as parties the saw Mills mentioned in Annexure R-I to the application for vacation of stay filed by M/s. Lingaraj Saw Mill. Notice shall issue to them as well. Mr. Panjwani will find amended cause title within one week. Interim order dated 07.05.2002 would also operate against the Saw Mills impleaded in terms of this order. List the IA after four weeks.

I.A. No. 779

For the reasons stated in the application the stock of veneer and plywood with the plywood industries functioning in the Andaman & Nicobar Islands as mentioned in the affidavit dated 21.10.2002 is permitted to be moved. The stipulation regarding movement in the order dated 07.05.2002 would not apply to the said stock. IA is disposed of accordingly.

I.A. No. 788

Request of adjournment is made on behalf of the State of Sikkim. List the IA after four weeks.

I.A. Nos. 789 & 790 in I.A. No. 757

On request of Mr. Rohtagi, Learned ASG, list the IAs after four weeks. We hope that within that period, the report will be finalised.

I.A. No. 824

Some of the States and Union Territories have still not responded. As a last opportunity, they are granted four

weeks time for the said purpose. List for hearing on 17.01.2003 at 2.00 pm. Hearing will continue on Monday the 20.01.2003 and if necessary thereafter from day to day.

I.A. No. 833

By order dated 29.10.2002, the Chief Secretaries of State of Haryana and Rajasthan were directed to ensure that no mining activity in the Aravalli Hills is carried out especially, in that part which has been regarded as forest area or protected under the Environment (Protection) Act. The said order prohibited and banned all mining activities in the entire Aravalli Hills. The Chief Secretaries have not filed the compliance report. We direct that same to be filed within three days. List the application on 16.12.2002. In the meanwhile, CEC may respond to the application. The application is permitted to amend the application.

I.A. Nos. 834-835, 837-840

All the IAs to come up on 16.12.2002

I.A. No.:	Order Date: 16.12.2002	
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These matters were listed under the impression that these cases are required to be heard by a Three Judge Bench, but after hearing all the parties concerned it transpires that these can be heard and disposed of by the Two Judge Bench. In view of the earlier order directing that the matters should be placed before the Bench constituted of Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat and the said Bench has been constituted today, these matters will come before them at the end of the Board.

I.A. No.:	Order Date: 08.01.2003	
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List before the Bench of which Hon'ble the Chief Justice, Hon'ble Mr. Justice YK Sabharwal and Hon'ble Mr. Justice Arijit Pasayat are members, on 31.01.2003 at the end of the Board.

I.A. No.:	Order Date: 10.03.2003	
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List on 17.04.2003.

In the meantime, the parties may exchange affidavits.

The FDR which is reported to have matured on 07.03.2003 be get renewed for a further period of six months.

I.A. No.:	Order Date: 17.04.2003	
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I.A. No. 827

Learned solicitor General seeks adjournment in this matter. List this I.A. on 02.05.2003.

I.A. Nos. 780 & 818

It is reported that the work is in progress. List these I.As after summer vacation.

I.A. Nos. 775 in I.A. Nos. 669 & 659

Let this matter be referred to the CEC for its response. List this I.A. after summer vacation.

I.A. Nos. 824, 841, 829, 830-832, 899, 907 & 918

Learned Amicus Curiae states that the modalities are being worked out for implementation of the orders of this Court and therefore, these IAs may be adjourned. List them after summer vacation.

I.A. No. 756

Learned counsel appearing on behalf of the DDA states that the interim report submitted by the Bhure Lal Committee is being examined and the matter may come up after three months. By that time, the Bhure Lal Committee shall submit its final report. The DDA is permitted to file such other material which may be available with it before the said committee. This matter is adjourned for three months.

I.A. No. 884 & 705

Learned counsel appearing on behalf of the State of Karnataka prays for and is allowed two weeks time to obtain instructions in the matter as well as to file response to the recommendations made by the CEC. List these IAs on 02.05.2003.

I.A. No. 885 (Recommendation of CEC in I.A. 434, 435, 475, 476, 490, 765 to 770)

I.A. Nos. 434, 435, 475, 476, 490, 765 to 770 were filed for grant / renewal of licence to run come forest based industries. These IAs were directed to be considered by the HPC set up under the orders of this Court. This Court specifically directed that only those applications which may be filed by 15.01.1998 would be considered. The Committee found that some of the applications did not file the applications by 15.01.1998 and some other violated the orders of this Court dated 12.12.1996 as well as 07.05.1997. In that view of the matter, the CEC has recommended for rejection of those applications.

We have perused the recommendations of the CEC. We are of the view that the recommendations of the CEC are just and correct. We, accordingly, reject IA 434, 435, 475, 476, 490, 765 to 770. IA 885 stands disposed of.

C.A. 6336/98, 6337/98 and 6338/98

Delink.

Rest of the matters

List 25 matters each day commencing from 02.05.2003. Statement of such matters shall be made available by the learned Amicus Curiae.

I.A. No.:	Order Date: 06.05.2003	
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I.A. Nos. 887 & 906

Learned counsel appearing for the State of Maharashtra prays for and is allowed four weeks time to file a reply to the recommendations made by the CEC. List after summer vacation. List on a date give by the Registry.

I.A. No. 888

In view of the recommendations of CEC, I.A. 583 is rejected.

I.A. No. 888 stands disposed of.

I.A. No. 827

List after summer vacation on a date to be given by the Registry.

I.A. No. 822 and I.A. No. 919

Issue notice. The CEC may respond to both these IAs.

I.A. No. 804

The CEC may enquire into this matter and submit its report.

List after summer vacation on a date to be given by the Registry.

I.A. No. 851

IA is dismissed as infructuous.

I.A. 754-755 & 777

Await the report of the CEC. In the meantime, the Chief Secretary, State of Orissa shall file his response in respect of closure of saw mills in the State. List after summer vacation on a date to be given by the Registry.

I.A. 921, 782-784 (with I.A 842, 843 & 843A), 793-795 (with IA 844, 845 & 845A) and 813-815

We direct the State of Bihar to file its response to the recommendations made by the CEC within a period of six weeks. List these IAs after summer vacation on a date to be given by the Registry.

I.A. No. 786

The MoEF is granted further six weeks time to file its response. List this matter after summer vacation on a date to be given by the Registry.

I.A. No. 896-898

Let these applications of the Power Grid Corporation be considered by the Standing Committee of Indian Board of Wildlife. The Board shall give a personal hearing to the applicant and after giving that opportunity shall submit its report to this Court within a period of eight weeks. List thereafter.

I.A. No. 909 & 914-915

Issue notice. Let the CEC submit its report on these IAs within a period of eight weeks. List thereafter.

I.A. No. 60

Let I.A. 60 be transferred to the CEC. The question of dissolution of Empowered Committee, Chhattisgarh will be considered after the counsel for the State of Chhattisgarh is heard. List on this aspect of the matter after summer vacation.

I.A. No. 884

None appears on behalf of the State of Karnataka.

List after summer vacation.

I.A. No. 924

In view of the recommendations of the CEC and Standing Committee of Indian Board of Wildlife, let the matter be placed before the Central Government. The Central Government shall consider the said recommendations in the light of paragraph 7 of the report of CEC, within a period of six weeks. However, the money for compensatory afforestation shall be deposited with the CEC.

This I.A. stands disposed of.

I.A. No. 886

I.A. 395 is dismissed as being rendered infructuous. In view of the earlier order dated 29.04.2002 of this court, I.A. 496 & 497 stand disposed of.

I.A. 886 stands disposed of.

I.A. No. 889

I.A. 5 & 5A are dismissed as not pressed.

I.A. 33, 34, 84-87, 144, 145, 217, 218, 432, 456-457, 460 & 771 are dismissed as withdrawn. However, we clarify that it would be open to the applicants to move an IA as and when any fresh cause of action arises.

In I.A. 122, 128, 141, 142 & 174 none appeared. These I.As are, accordingly rejected.

In view of the recommendations of the CEC, I.A. 176 is dismissed.

I.A. 889 stands disposed of.

I.A. No. 890

In view of the recommendations of the CEC, I.A. 129-132, 135-139, 175, 178, 447-452, 461 and 464 are dismissed. I.A. 890 stands disposed of.

I.A. No. 788

In view of the affidavit filed by the State of Sikkim, we direct the Central Government and the State Government to

sit together for resolution of the subject matter of this I.A., within a period of six weeks. I.A. stands disposed of.

I.A. Nos. 789 & 790

Let the MoEF file its views by responding of the court after summer vacation. List after summer vacation on a date to be given by the Registry.

I.A. Nos. 860 to 862

List after summer vacation on a date to be given by the Registry. I.A. 863, which is stated to be listed on 7.5.2003, may also be listed along with these I.A.s after summer vacation.

I.A. No.:	Order Date: 07.05.2003	
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I.A. Nos. 848-849

Learned counsel appearing for the applicant states that these IAs are rendered infructuous. They are, accordingly, dismissed as such.

I.A. Nos. 828, 833-835, 837-840, 846-847, 850, 853-856, 866-882, 891-894, 900, 901-905, 910-913 & 916-917

List after summer vacation on a date to be given by the Registry.

I.A. No. 800

Let the CEC give its response to the recommendations of the State Empowered Committee. List after summer vacation on a date to be given by the Registry.

I.A. Nos. 791 & 792

Let the MoEF file a response to I.A. 791. List both these IAs after summer vacation on a date to be given by the Registry.

Contempt Petition (C) 555/2002

Let this petition be treated at the instance of learned Amicus Curiae.

Issue notice to the concerned State Government and other respondents arrayed in the petition. Personal appearance of the alleged contemnors is dispensed with for the present.

I.A. Nos. 301-382

An affidavit has been filed by PCCF, UP. Let a response thereto be filed by the CEC within eight weeks. List these I.As after summer vacation on a date to be given by the Registry.

I.A. No. 798

The CEC is granted eight weeks time to decide the matter pertaining to establishment of additional industrial estate in the State of Tripura. The State Government and the Central Government would appear before the CEC for identification of the place where additional industrial estate is to be established. After the matter is decided by the CEC, this IA would be placed before this Court. IA 594, 433 & 515 shall also be considered by the CEC.

I.A. Nos. 745 & 926

Issue notice to the State of Bihar.

List after summer vacation on a date to be given by the Registry.

In the meantime, CBI shall file Status Report.

I.A. No. 799

One further opportunity is given to the Union of India to file its response. List after summer vacation on a date to be given by the Registry.

Contempt Petition (C) 479/2002

Issue notice to the State of UP.

List after summer vacation on a date to be given by the Registry.

I.A. Nos. 836 & 895

Let these I.As be delinked from the batch of these I.As. List these I.As separately before this Bench.

I.A. No. 883

Mr. A.D.N. Rao may obtain instructions from the Railways also from the HPC. List after summer vacation on a date to be given by the Registry.

Contempt Petition (C) 193/2001 and IA 925

Issue notice to the persons identified by the CEC for having committed contempt of court, as well as for fixing the appropriate compensation for causing damage to the forests. List of such persons is to be filed by the learned Amicus Curiae. List after the alleged contemnors are served. Personal appearance of the alleged contemnors is dispensed with for the present.

I.A. Nos. 908 & 922

An IA has been filed in Court on behalf of the Administrator, Raj Niwas, Andaman & Nicobar Islands & others. Let the working plan prepared by the Union Territory of Andaman & Nicobar Islands be placed before the MoEF for consideration within six weeks and in case it is cleared by MoEF the same shall be placed before the CEC for consideration within six weeks, thereafter. List this IA along with IA 908 & 922 listed today after 12 weeks.

I.A. No. 923

Let the recommendations of CEC for disposal of seized goods by public auction be carried out by the Committee comprising of District Magistrate, Mirzapur, the Divisional Forest Officer and District Mining Officer. The Sale Proceeds shall be deposited in a separate bank account for use for the purpose of forest protection. Necessary report be sent to this Court within two months. List thereafter.

I.A. No. 776

To come up after summer vacation on a date to be given by the Registry.

I.A. No. 826

Mr. A.D.N. Rao states that the matter is under consideration before the Finance Ministry and this matter may come up after summer vacation. List after summer vacation on a date to be given by the Registry. The FDR which is to expire on 17.05.2003 be renewed for a further period of three months. In the meantime, the CEC may give its proposal as to how there can be best utilisation of money for upliftment of Rajaji Park.

I.A. No. 859

To come up along with IA 826.

I.A. Nos. 857 & 858

Let these IAs be transferred to the CEC.

I.A. Nos. 864-865

At request, adjourned. List after summer vacation on a date to be given by the Registry.

I.A. No.:	Order Date: 14.07.2003	
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I.A. No. 887 (Recommendations of CEC in I.A. Nos. 414, 414A, 173, 423 & 751) and I.A. No. 906

Heard counsel for the parties.

The recommendations of the CEC dated 27.12.2002 are accepted. The State of Maharashtra is directed to act according to and abide by the aforesaid recommendations. Further, so far as 64 saw mills, which are claimed to be actually eligible for grant of licenses as per notification dated 16.07.1981 are concerned, their cases may be examined by the State Government within a period of two months and if they are found eligible, their applications may be sent to the CEC which may submit a report to this Court.

I.A. stands disposed of.

I.A. No. 827

List this matter after eight weeks. In the meantime, the learned counsel appearing for the Central Government will obtain complete instructions. Let Rs. 7.44 lakhs out of the sale proceeds of confiscated timber be paid as

award / honorarium. List for further orders after eight weeks.

I.A. No. 804

Await the report of CEC.

I.A. No. 777 in I.A. Nos. 754-755 and I.A. No. 941

As prayed, let an affidavit by the Chief Secretary, Government of Orissa be filed within four weeks indicating therein the serial distance between the saw mills and the forest. List on a date to be given by the Registry.

I.A. No. 921 in I.A. Nos. 782-784, 793-795 and 813-815 (with I.A. No. 842, 843 & 843A in 782-784 and I.A. Nos. 844, 845 & 845A in 793-795)

Learned counsel appearing for the State of Bihar prays for and is allowed four weeks time to file a reply to the recommendations made by CEC. List thereafter.

I.A. No. 786

Further four weeks time is allowed to the MoEF to file its response. List thereafter.

I.A. No. 896-898

Await the report of the Standing Committee of Indian Board of Wildlife.

The Central Government is directed to file an affidavit within four weeks indicating therein the constitution of the Standing Committee of Indian Board of Wildlife, the names of new members and their credentials.

I.A. No. 60

Learned counsel appearing for the State of Chhattisgarh prays for and is allowed four weeks time to file response in regard to the letter sent by the Empowered Committee, Chhattisgarh. List after four weeks.

I.A. No. 884 (Recommendations in I.A. No. 705)

Learned counsel appearing for the State of Karnataka states that the recommendations of CEC in I.A. 705 are acceptable to the State. A sum of Rupees 15 crores and other sums, which are payable by the Project Authorities shall be deposited with the CEC which in turn shall invest the same in a short term fixed deposit. I.A. stands disposed of.

I.A. No. 789-790

Await response of the MoEF.

I.A. No. 860

Heard counsel.

This Court on 29.10.2002 passed an order for removal of encroachments after examining the report of Shri RMN Sahay, Court Commissioner, report of the survey of India who carried out detailed survey, report of CEC and arguments of the learned counsel. We do not find any fresh ground to review the said order. The I.A. is rejected. On 29.10.2002 this court directed the Chief Secretary, Government of Karnataka to submit monthly report as regards the possession taken in pursuance of ejection of encroachers. Grievance is made that no such report has yet been filed before the CEC. The Chief Secretary, Government of Karnataka is directed to file an affidavit within four weeks as regards the actual possession, if any, taken after removing the encroachment.

I.A. No. 861-862

I.A. No. is rejected.

I.A. No. 863

I.A. is rejected.

Mr. V Laxminarayanan, learned counsel appearing for BL Shankar states that possession of the land was handed over on 30.01.2003 and an affidavit to the effect will be filed within two weeks. The Chief Secretary, Government of Karnataka is directed to verify whether actual physical possession has been taken and shall file an affidavit in that respect within four weeks.

I.A. No. 864 & 865

Let these IA be forwarded to the CEC which shall send its recommendations to this Court within a period of eight weeks.

I.A. No. 931

Since similar permission was granted to the State of Uttaranchal in the year 2002, this application is allowed. The applicant state of Uttaranchal is permitted to fell the trees as prayed, in terms of the order dated 24.04.2000, which run as follows:

".... This exercise will be undertaken by the State under the supervision of the Scientists of Entomology Division of the Forest Research Institute, Dehradun. The exercise be completed within a period of four months and the report be then submitted by the State as well as the Forest Research Institute. List thereafter"

I.A. No. 421

Adjourned for four weeks.

I.A. No.:	Order Date: 21.07.2003	
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I.A. No. 780 & 818

It is brought to our notice that the work is still in progress and likely to be over within four months. In that view of the matter, list these IAs after four months.

I.A. No. 930 in I.A. No. 669, 659, 775

Learned counsel for Union of India prays for and is granted four weeks time to file response to the IA.

I.A. No. 775

The order dated 12.07.2001 is clarified to the extent that one ambulance and one fire engine shall be permitted in addition to one each as standby. The proposed notification may be issued in conformity with this order. So far as the order recommendations are concerned, the Union of India may file response within four weeks. The State of Maharashtra may also file response within four weeks. List thereafter.

I.A. Nos. 824, 841, 829, 830-832, 892 and 927-928

List after three months.

I.A. Nos. 907, 918 and 920

I.A. 907 – Time to comply with the order 07.05.2002 is extended by three weeks.

I.A. 918 – Adjourned for three months.

I.A. 920 – Learned counsel appearing for Union of India, State of West Bengal, MoEF, may file their response within four weeks. List there after.

I.A. No. 756

Await the comments on Bhure Lal Committee Report by DDA. List after three months.

I.A. No. 942 in I.A. Nos. 822 & 919 and 937 in 211-214, 216, 455, 468, 140, 150-157, 507-508, 179-182

Let a copy of CEC recommendation be given to learned counsel for the parties, who may file their response within two weeks.

I.A. Nos. 943 in 914, 915 & 909

Learned counsel prays for and is allowed four weeks time to file response to the recommendation of CEC.

I.A. Nos. 745 and 926 in I.A. No. 745

I.A. 745 - List after four weeks.

I.A. 926 – Mr. PB Singh, learned counsel prays for and is granted four weeks time to file response. List after four weeks.

I.A. No. 932 in 819-821

Let a copy of the CEC recommendation be given to the learned counsel for the State of Uttaranchal and the learned counsel for the Power Grid Corporation. Reply to be filed within two weeks. List thereafter.

I.A. No. 938 in 774

Recommendation of CEC is accepted. I.A. 938 is disposed of accordingly. Hence, IA 774 is rejected.

I.A. No. 939 in I.A. Nos. 430, 469, 470 & 517

None appears. Recommendation of CEC is accepted. IA 939 is disposed of accordingly. Hence, IAs 430, 469, 470 & 517 are rejected.

I.A. No. 940 in I.A. Nos. 466, 467, 26, 27, 35, 36, 52, 54, 116, 55-59, 82, 61-66, 69, 71-74, 88, 89, 91, 93-95, 109, 110, 593, 114 and 584

None appears for the applicants before the CEC except for IAs 466-467, 55-56 and 110. Recommendation of CEC is accepted. IA 940 is disposed of accordingly. Hence IAs 466, 467, 26, 27, 35, 36, 52, 54, 116, 55-59, 82, 61-66, 69, 71-74, 88, 89, 91, 93-95, 109, 110, 593, 114 and 584 are rejected.

Contempt Petition 555

Mr. Anis Suhrawardhy, learned counsel prays for and is allowed three weeks time to file counter affidavit. List thereafter. Personal presence of Chief Secretary, J&K is dispensed with.

Contempt Petition 479

The presence of Chief Secretary, UP and other officer against whom notices were issued is dispensed with unless and until they are required by this Court. It is stated that they have also filed their counter affidavit. Learned counsel appearing for the alleged contemnors is directed to give a copy of the counter affidavit to the party concerned during the course of the day.

Learned counsel for the applicant may also take steps for service of notice on Mr. KN Singh, the then PCCF, UP.

I.A. No. 925 in Contempt Petition 193

Learned counsel prays for and is granted two weeks time to file rejoinder affidavit. Let 642 alleged contemnors be served through the District Judge, Nilgiri, who may get the service effected through the respective SHOs. The District Judge is requested to send his report regarding service within six weeks.

I.A. No.:	Order Date: 01.08.2003	
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I.A. No. 933 to 936 and 910 to 913

I.A. 933 to 936 for withdrawal of IA 910-913 are allowed. IA 910 to 913 are, accordingly permitted to be withdrawn.

I.A. Nos. 828, 833, 834-835, 837-838, 839, 840, 846, 847, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 893-894, 900, 916-917, 901-902, 903-904, 905

List these IAs after the judgment is pronounced in MC Mehta case (I.A. 1785 in W.P.(C) 4677/85). The Registry shall categories the IA relating to Rajasthan an Haryana separately.

I.A. Nos. 944 and 800

Seen the recommendations of the CEC. In view of the report, the State Government is at liberty to approach the Central Government for seeking approval under Section 2 of the Forest (Conservation) Act, 1930 (for short 'the Act'). As and when such an application is received, the Central Government may, after examining the same in accordance with the Act, Rules framed thereunder, guidelines issued for implementation of the Act and within the overall ambit of the National Forest Policy, 1988, take appropriate decisions. These IAs stand disposed of accordingly.

I.A. Nos. 791 and 792

Heard learned Advocate General for the State of MP. The State Empowered Committee has expressed the view that the bade Jhad Ka Jungle and Chhote Jhad Ka Jungle constitute forest. That being so, it must be held that such lands are forests within the definition of 'forest'. The IAs are accordingly, dismissed. However, it is open to the State of MP to approach the Central Government for their exclusion from the purview of the definition of 'forest' under the provision of the Act.

I.A. Nos. 946 & 301-382

Seen the recommendations of CEC. Accordingly, we direct that the PCCF, UP shall file a fresh affidavit giving district-wise and sawmill-wise details of (i) closed sawmills along with date of closure, date of electricity disconnection, date of dismantling of the machinery and the officer(s) who carried out / supervised the above exercise, and (ii) the sawmills which were not closed along with the reasons thereof. The said affidavit should be filed within six weeks before the CEC. In case CEC requires any other material, the State of UP shall furnish the same also. List these IAs after report is received from CEC.

I.A. Nos. 798, 947, 433, 515 & 594

Seen the recommendations of CEC and we approve the same. Accordingly, we direct that within eight weeks the MoEF in consultation with the State of Tripura, will review number of HPC cleared wood based industries vis-à-vis total area available in the approved industrial estates to decide if additional industrial estates are needed at Agartala, Tripura. These IAs stand disposed of accordingly. In view of this order, contempt case (C) 27/2002 pending before the Gauhati High Court does not survive.

I.A. No. 799

Let a response be filed by the Union of India within four weeks. After the response of Union of India is received, this IA along with the response will be transmitted to CEC, which shall dispose of the same within six weeks from the date of its receipt.

I.A. Nos. 945 & 693

Two weeks time is granted to file a reply. List thereafter.

I.A. Nos. 908 & 922

List after the report regard to removal of encroachments is received.

I.A. No. 929

From the interim report of CEC, it transpires that the question of approval of working plans prepared by Andaman & Nicobar Islands would take some time and as such the CEC has recommended that as a temporary measure, the Administration be permitted to fell 110000 ballies and 17000 posts annually. Let the feasibility and expedience of adopting such a course be considered by CEC within four weeks. List after the report is received from CEC.

I.A. Nos. 923 & 392

Mr. S. Wedim A Qadri, learned counsel appearing for the State of UP prays for and is allowed four weeks time to obtain instructions in the matters. The matters are adjourned for four weeks.

I.A. Nos. 776

Let this I.A. be transmitted to CEC which will examine the same and submit a report within a period of eight weeks. List after the report is received.

I.A. 477 : Let this IA be examined by CEC.

I.A. No. 826 & 859

At the request of Mr. A.D.N. Rao, learned counsel appearing for MoEF, the matters are adjourned for four weeks. In the meantime, no approval shall be granted without imposing the condition indicated in this Court's order dated 30.10.2002 relating to the payment of net present value of the forest land.

I.A. No.:	Order Date: 18.08.2003	
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Mr. Sidhartha Chaudhary, Advocate is also appointed as Amicus Curiae in this matter.

I.A. No. 777 in I.A. 754-755 & 941

Heard learned counsel for the parties.

The order dated 7.5.2002 in I.A. 754-755 shall remain operative till the disposal of the concerned writ petitions pending before the Orissa High Court. The writ petitions shall be disposed of on merit keeping in view the orders passed by this Court. When the writ petitions are disposed of, copy of the judgment in each case shall be sent by the Registry of the High Court to this Court and shall be placed before the Bench.

We have looked into the affidavit filed by Sri Pratip Kumar Mohanty, Chief Secretary, State of Orissa and have also looked into the recommendations made by the CEC. We are of the view that Shri Pravakar Behera, DFO Puri Division, Khurda, Orissa, while issuing licences, has acted contrary to the orders passed by this Court and, therefore, he is guilty of contempt of Court.

Issue notice to Shri Pravakar Behera, DFO, Puri Division, Khurda, Orissa. He shall remain present in the Court on the next date of hearing i.e. 09.10.2003.

Issue notice also the 17 owners of the saw mills (details given in Annexure VI of the affidavit dated 05.08.2003 of Sri Pratip Kumar Mohanty) to whom licences have been granted. They shall file their reply by the next date of hearing. The owners of the saw mills will be served through the agency of PCCF, Orissa.

At this stage, we may clarify that the High Court of Orissa and the Civil Judges in the District Courts shall pass orders on the matters pending before them in terms of the orders passed by this Court, as the case may be.

We further direct that notwithstanding any orders passed by the high Court or by any Civil Judge, the owners of sawmills to whom the licences have been issued (as detailed in Annexure VI to the affidavit dated 5.8.2003) shall close their units.

I.A. No. 921 in 782-784, 793-795 & 813-815 (with I.A. 842, 843 & 843A in 782-783, 844, 845 & 845A in 793-795)

Heard learned counsel for the parties and perused the counter affidavit filed on behalf of the State of Bihar as well as the recommendations of CEC in I. .782-784, 793-795 & 813-815 (with IA 842, 843 & 843A in 782-783, 844, 845 & 845A in 793-795).

When this matter was taken up, learned counsel appearing for the State of Bihar stated that the State Government has not objection in accepting the recommendations of CEC with the modification that instead of number of wood based units to be allowed at the State level, they should be allowed at the district level and further an appeal against the decision of the District Committee or the PCCF be preferred to the District Judge of competent jurisdiction.

We feel that the recommendations made by CEC with the aforesaid modification, are required to be accepted. We, therefore, accept the recommendations and direct the State of Bihar to implement the said recommendations forthwith.

I.A. stand disposed of.

Contempt Petition (C) 292 of 2003 in I.A. 813-815 & 921

Contempt petition is dismissed.

I.A. Nos. 951-953

I.As are rejected.

I.A. No. 959

I.A. is rejected.

I.A. No. 786

Mr. A.D.N. Rao, learned counsel appearing for the MoEF prays for and is allowed two weeks time to file a response to this IA filed by the State of J&K. List thereafter.

I.A. No. 896-898

Mr. A.D.N. Rao, learned counsel for MoEF undertakes to file a response during the course of the day. List one the date to be given by the Registry.

I.A. No. 60

Learned counsel appearing for the State of Chhattisgarh prays for and is allowed four weeks time to file affidavit. List thereafter.

I.A. No. 421

It is stated that learned counsel for the applicant is not well. This IA is adjourned.

I.A. No. 860 in I.A. No. 276 and I.A. No. 863 in I.A. No. 453 in 276

Let these I.As be transferred to the CEC which shall hear the parties and make recommendations to this Court within a period of two months. List after the report is received.

I.A. No.:	Order Date: 25.08.2003	
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I.A. 942 (Recommendations of CEC in I.A. 822 & 919) and IA 987 (Recommendations of CEC in I.A. 211-214, 216, 455, 468, 140, 153, 505-508 and 179-183)

This Court by an order dated 04.03.1997 directed closure of all unlicensed saw mills in the State of UP and Maharashtra. Subsequently on 26.06.1998 the State of UP made amendment in UP Establishment and Regulation of Sawmills Rules 1978 by permitting sawmills having engine power of 3 HP not to have licence. This amendment came up for consideration before this Court and on 29.04.2002 the same was struck down. Subsequently, some of the licensees filed applications for modification / clarification of the order dated 29.04.2002 on the premise that they are engaged in domestic carpentry and they are covered by Rule 12 and, therefore, they should be held to be not covered by order dated 29th April 2002. All these IAs were transmitted to the CEC for its views. The applicants in all those matters were heard by CEC which has recommended that those IAs should be rejected, inter alia, on the ground that the exemption provided under Rule 12 does not entitle the applicants to use powered saws, which are nothing but saw mills, for sawing of timber irrespective of their claim that this to be used only for carpentry purposes and not for commercial purpose.

Having heard learned counsel, we do not find any merit in IA 822, 919, 211-214, 216, 455, 468, 140, 150-153, 505-508 and 179-183. We, accordingly, accepting the recommendations of CEC reject all these applications.

I.A. 943 and 937 stand disposed of.

I.A. No. 930 (Recommendations of CEC in I.A. 669 & 659) with I.A. 775 (Re: Encroachment upon the forest land in Matheran)

This matter shall be given a separate IA number by the Registry. Issue notice to Shri Ajay Sawant, President Matheran Municipal Corporation; Shri Kashinath Laxman Sawant; Shri Vivek Chaudhari, Councilor and ex-president, Matheran Municipal Corporation; and Mrs. Vidhya vivek Chaudhari. Learned counsel appearing for the state of Maharashtra undertakes to serve notice on these persons. Notice shall indicate that the addressee may file his/her response/reply within four weeks from the receipt of notice.

List the matter after four weeks. The State of Maharashtra shall also file a supplementary counter affidavit indicating therein the date of filing of the complaint annexing therewith a true copy of the complaint.

Re: Main Matter

Two weeks time is granted to the Union of India to file a copy of the notification. It shall also file copies of the objections, if any, filed against the draft notification regarding the boundary of Matheran and the final notification issued thereafter explaining as to how the area originally indicating as 498 sq. km was reduced to 214 sq. km. List after four weeks.

I.A. No. 920

A report of CEC dated 02/04.12.2002 is placed before us.

Learned counsel appearing for the Union of India and the State of West Bengal pray for and are allowed four weeks time to file their response. List thereafter.

In the meantime, we direct that no drawler or mechanized boat shall enter the water adjoining Jumbudwip Island until further orders.

I.A. No. 943 (Recommendations of CEC in I.A. 914-915) and I.A. 909

The applications were found having made excess production and, therefore, a show cause notice was issued to explain the excess production. The HPC after inquiring into the matter and hearing the applications, imposed penalty. Subsequently, the HPC reconfirmed the penalty. The applicants by IA 914-915 challenged the order imposing penalty. These IAs were transmitted to CEC, which after examining the matter has recommended dismissal of these IAs.

We have heard learned counsel for the applicants and looked into the records. We are not inclined to take a different view than what has been taken by CEC. IA 914-915 are, accordingly rejected. IA 943 stands disposed of.

I.A. No. 909: Await recommendations of CEC.

I.A. No. 745 and 926

When these IAs were taken up, it was brought to our notice by the learned counsel appearing for the State of Bihar that Supritendent of Police, Sasaram, District magistrate and Deputy Inspector General have been transferred. It is also brought to our notice that charge sheet has been filed against 23 persons who are alleged to have committed the offence. Out of 23, two have been arrested and 21 are absconding. There is nothing on record to suggest that continuing efforts are being made to arrest the remaining 21 persons. We, therefore, allow four weeks time to the CBI as well as to the State of Bihar to file their Status Reports showing the details as regards the efforts made by them to arrest the remaining 21 absconders. List thereafter.

I.A. No. 932 (Recommendations of CEC in I.A. No. 819-821) and I.A. No. 954

Let a response be filed by the State of Uttaranchal within four weeks. List thereafter. MoEF may also file its response to the recommendations of CEC.

I.A. No. 780

Let the FDR which is going to mature on 07.09.2003 be renewed for a further period of six months.

I.A. No. 945 (Recommendations of CEC in I.A. No. 883)

Seen the recommendations of CEC, which are accepted. In that view of the matter, IA 883 is rejected. IA 945 stands disposed of.

I.A. Nos. 948-948A, 949 and 950

Issue notice to the Union of India. These IAs be transmitted to CEC for its recommendations.

I.A. Nos. 956

Issue notice to the State of Tamil Nadu.

I.A. (filed in Court by learned Amicus Curiae – in regard to Dr. Lalit Mohan Nath) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application . This is as per the order of the Supreme Court.)*

Issue notice to the Union of India.

Re: order in IA 860 in I.A. 276 and I.A. 863 in I.A. 453 in I.A. 276

We have heard learned Amicus Curiae. It is directed that the order-dated 18.08.2003 in these IAs substituted by the following order:

“Let the response filed by the Chief Secretary of the State of Karnataka be transmitted to the CEC which shall send its recommendations to this Court within a period of two months. List after the report is received”.

I.A. No.:	Order Date: 01.09.2003	
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I.A No. 836

When the matter is taken up for hearing, it is agreed between the parties that these IAs may be sent to the CEC. We order accordingly. The CEC is requested to send its view within eight weeks. List thereafter.

I.A. No.:	Order Date: 08.09.2003	
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I.A No. 923

Learned counsel appearing for the State of UP prays for and is allowed further four weeks time to file the report. List thereafter.

I.A No. 826

List after four weeks.

I.A Nos. 955 & 958

List after four weeks along with IA 826.

I.A. (filed on behalf of Federation of Indian Mineral Industry by M/s. Laywers Knit & Co., Adv.) *(This is an*

unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)

Taken on board. List after four weeks along with IA 826. In the meantime, the applicants may remove the defects pointed out by the Registry.

I.A No. 957

Let IA be transmitted forthwith to the CEC for its recommendations, to be heard along with IA 675-676 filed by the State of MP. List after the report is received.

I.A No. 864-865

Since recommendations have been made by CEC, learned counsel appearing for the Municipal Corporation, Bhopal prays for and is allowed two weeks time to file its response. List thereafter.

I.A No. 786

List after two weeks.

I.A No. 896-898

When these IAs were taken up for hearing, it was brought to our notice that the National Board for Wildlife has been constituted. At this stage, learned Amicus Curiae stated that the two eminent persons, namely, Mr. Bitto Sehgal and Mr. Valmik Thapar who are conversant with the matter and were earlier in various bodies may be included in the Board. For that purpose, learned Attorney General prays for and is allowed two weeks time to convey the suggestions for their inclusion in the Board. The Board thereafter would consider the question of constituting the standing Committee. After the Standing Committee is constituted, it is expected that the Committee would consider compliance of the orders passed by this Court, at the earliest. List these IAs in the second week of November, 2003.

I.A No. 421

This IA has already disposed of on 01.05.2000. The additional affidavit filed by the applicant does not survive and calls for no further action.

Contempt petition 479/02

No IA (including any contempt petition) shall be entertained by the Registry directly. All IAs other than those filed by a State Government / Union Territory or the Union of India, should come through learned Amicus Curiae. Since this contempt petition has not come through learned Amicus Curiae, the Registry is directed to furnish a copy of the same to the learned Amicus Curiae, who after examining the same would make his comments. List after comments of the learned Amicus Curiae are received.

Respondent No. 4 is present in person. His personal appearance is dispensed with until further orders.

Contempt Petition No. 555/02

When the matter was taken up for hearing, Mr. Anis Suhrawardy, learned counsel appearing for Contemnor No. 2 stated that the sawmill has been dismantled. At this state, Mr. Vivek Sharma, learned counsel appearing for

contemnor No. 1 prays for and is allowed four weeks time to file a counter affidavit and to obtain instructions as regards the statement made by the counsel on behalf of Contemnor No. 2. Rejoinder may be filed in another three weeks. List after seven weeks.

Contempt Petition 280/03

Let this IA be transmitted to CEC forthwith. CEC may submit its view within two weeks after receipt of the IA. List after the reply is received.

I.A No. 799

Await the recommendations of CEC.

I.A. 789 & 790

Recommendations of CEC have been received. Issue notice to the Union of India as well as to the State of Rajasthan. In the meantime, the MoEF shall file its response within a period of two weeks. List after Dussehra holidays.

I.A No. 859

This I.A. stands disposed of as having become infructuous.

I.A. No.:	Order Date: 03.11.2003	
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Re: Recommendations of CEC in IA 836 & 895

List on 10.11.2003.

I.A. No.:	Order Date: 24.11.2003	
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I.A. 896-898

Learned Amicus Curiae is granted two weeks time to file a response to the affidavit filed by the Union of India. List thereafter.

I.A No. 965

The report of CEC is filed in Court. Let the same is taken on record. A copy of the report be given to the counsel for the State of Uttaranchal.

Learned Addl. Solicitor General prays for and is allowed four weeks time to obtain necessary instructions. List this matter after four weeks.

I.A No. 941

Learned counsel appearing for the State of Orissa prays for and is allowed further six weeks time to submit a Scheme in terms of the order of this Court dated 09.10.2003 in the matter of rehabilitation of the uprooted saw

mills. List thereafter.

Suo Moto Contempt Petition (C) 301/03

Mr. Pravakar Behera, DFO, Puri Division, Khurda, Orissa is present in compliance of the order of the Court. Heard counsel for the parties. Orders reserved.

I.A. 971 (Recommendations in I.A. 864-865)

IA 864-865 are on behalf of the Municipal Corporation, Bhopal seeking use of 9.872 hectares of forest land falling inside the Ratapani Wildlife Sanctuary in Raisen and Bhopal Districts of MP for Kolar Water supply augmentation project.

A report by the CEC was called for, which has suggested for imposing certain conditions while granting approval for sue of the said forest land. We have heard learned counsel for the parties.

The Corporation is permitted to use the said forest land subject to deposit at present of 5 per cent of estimated cost of the Project, i.e. Rs.45.35 crores, towards the compensatory afforestation fund for protection and conservation of Sanctuary. Further, the Scheme proposed shall be in the same terms as was proposed for Rajaji National Park by the CEC for use of Rs.5 crores deposited by the Power Grid Corporation. The responsibility for violation of the Act and earlier orders of this Court i.e. 12.12.1996 and 14.2.2000 should be fixed and action taken against the erring officials in a time bound manner. Subject to this condition, IA. 864-865 are allowed. The question of further deposit of money either by the Municipal Corporation or by the State over and above what is to be deposited by the Corporation will be considered at appropriate time. Formal mandatory statutory clearances under the Forest Conservation Act and other relevant Statutes shall be obtained.

I.A. 971 stands disposed of.

I.A. 989, 997 & 998

Let the report of CEC be taken on record. Shri RK Jain, learned senior counsel appearing for Deepak Agarwal prays for and is allowed three weeks time to file a response. In case response is filed, M/s. Maruti Clean Coal and Power Ltd. may file its reply thereto within another two weeks. List these IAs on a date to be given by the Registry.

I.A No. 979

Let the report of CEC be taken on board. Learned counsel appearing for the State of UP prays for and is allowed four weeks time to file a response.

List on a date to be given by the Registry.

I.A No. 991

Let the report of CEC be taken on record.

Mr. Rakesh Dwivedi, learned senior counsel appearing for Pooran Singh Bundela, MLA prays for and is allowed four weeks time to file a response. Shri Dwivedi has also given an undertaking that no mining activity shall be

carried out by Shri Pooran Singh Bundela until further orders. List this matter after four weeks. In the meantime, the District Magistrate along with the DFO, Lalitpur shall visit the site and submit a report as to whether any mining activity is being carried out on the site and also shall prepare an inventory in regard thereto.

I.A. Nos. 920 & 988

An affidavit has been filed in Court on behalf of the Union of India. Let the same be taken on record. A reply to the said affidavit be filed within two weeks. List this matter on a date to be given by the Registry.

I.A. Nos. 982-984 and I.A. No. 1000

Let the report of CEC be taken on record. Learned Additional Solicitor General prays for and is allowed four weeks time to file a response. The private parties may also file their response within that period. List these IAs on a date to be given by the Registry.

I.A. No. 995 and 999

Let the CEC furnish its views to the petitions. List for hearing on a date to be given by the Registry.

I.A. No. 993

List this IA independently of the connected matters on a date to be given by the Registry.

SLP(C) 6266/2000

Adjourned. List on a date to be given by the Registry.

SLP(C) 18030/2003

Issue notice to the respondents and also to CEC.

Let a copy of this petition be sent to CEC for examining the matter. The CEC shall submit a report within a period of eight weeks. List this petition after the report is received from CEC.

I.A. No.:	Order Date: 18.12.2003	
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I.A. No. 1012

List along with I.A. 966. In the meantime, the Union of India and the learned Amicus Curiae may file response to the IA.

I.A. No. 1008 & 1009

Taken on board. Issue notice. The CEC may file its response within two weeks.

I.A. No.:	Order Date: 07.01.2004	
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I.A. No. 1020

List along with other IAs which are coming up for hearing on 30.01.2004.

I.A. No.:	Order Date: 30.01.2004	
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I.A. No. 1035 and 776 in I.A. 424

Learned counsel appearing for the State of MP prays for and is allowed two weeks time to file response as regards recommendations of the CEC.

I.A. No. 930 (in I.A. 669 & 659), I.A. 775 & 967

Learned counsel appearing for MoEF prays for and is allowed two weeks time to file a copy of the Notification along with an affidavit along with complete details regarding constitution of the Committee.

I.A. No. 920 in I.A. 703 and I.A. 988 in I.A. 920

Learned counsel appearing for the State of West Bengal prays for and is allowed four weeks time to file an affidavit by the Chief Secretary of the State.

I.A. No. 932 (in IAs 819-821)

At the suggestion of learned Attorney General, let these IAs be adjourned for three weeks. In the meantime, the parties may sort out the objections, if any. list these IAs after four weeks.

I.A. No. 60 with I.A. 968

CEC report filed in Court be taken on record. Learned counsel appearing for MoEF prays for and is allowed three weeks time to the file response to the recommendations of CEC.

I.A. No. 1007 in I.A. 60

Learned counsel appearing for the applicant states that this IA is not pressed. I.A. is, accordingly, dismissed as not pressed.

I.A. No. 966 in I.A. 548 and I.A. 1012 in I.A. 966

List on 23.02.2004. In the meantime, reply be filed by MoEF.

I.A. No. 990 (in I.A. 860 and 863 in I.A. 276

Learned counsel appearing for the State of Karnataka prays for and is allowed four weeks time to file response to the recommendations of CEC.

I.A. No. 756

Learned counsel appearing for the DDA prays for and is allowed four weeks time to file response to the recommendations of Bhure Lal Committee.

I.A. No. 908 in IA 724, I.A. No. 922 in I.A. No. 908, I.A. No. 1025 in I.A. No. 929, I.A. No. 1023 in I.A. Nos. 922 & 908 and I.A. No. 502

List these IAs on 23.02.2004 along with other similar IAs.

I.A. No. 973

At present we do not think appropriate to pass any order on this IA. It is accordingly rejected.

I.A. No. 1010 in I.A. No. 670

Let this application be referred to CEC which may submit its report within six weeks, if possible. List this IA after the report is received.

I.A. Nos. 1008-1009 and I.A. No. 1037

Learned counsel appearing for the applicants prays for and is allowed four weeks time to file response to the recommendations of CEC.

I.A. Nos. 826, I.A. 955, I.A. 958, I.A. 985, I.A. 1001-1001A, I.A. 1013-1014, I.A. 1016-1018 and I.A. 1019 (All in I.A. 566)

Learned counsel appearing for MoEF prays for and is allowed two weeks time to intimate steps taken to constitute the Committee. The Committee, if any, constituted shall be with the concurrence of CEC and subject to approval by this Court. Details of composition of the Committee shall be furnished to this Court. List these IAs after two weeks. In the meantime, let a copy of the recommendations of CEC may be furnished to Karun Johri.

I.A. Nos. 972, 962, 986, 987, 1042-1045, 1038-1041 (All in I.A. 757) with I.A. 789-790

Learned counsel appearing for the State of Rajasthan prays for and is allowed four weeks time to file a response to these IAs. In the meantime, the State of Rajasthan may also send its proposal of MoEF.

I.A. Nos. 896-898

Learned counsel appearing for MoEF shall produce the records relating to constitution of National Board of Wildlife on the next date of hearing i.e. 23.02.2004. The order dated 16.01.2004 passed by the Government of India, MoEF is taken on record. These IAs be referred to CEC for its recommendations. In the meantime, the State of Uttaranchal may file its reply to these IAs before this Court as also before CEC. It may be clarified that the question of constitution of Committee is not referred to CEC.

I.A. No. 976 (in I.A. 727)

At request, not taken up today.

I.A. No. 1011

List after service is complete.

I.A. 941 (in I.A. 754-755) with I.A. 777, I.A. 1036 in I.A. 777, 754-755 & 941 and Suo Moto Contempt Petition (C) 301/03

Learned counsel appearing for the State of Orissa is allowed six weeks time, as a lost opportunity, to file an affidavit indicating therein the steps taken for proposed rehabilitation.

Let the amount deposited by Mr. Pravakar Behera, DFO be remitted to Orissa State Legal Services Authority. This order be communicated by the Registry to the said authority.

I.A. No. 1034 (in I.A. 995 & 999) with I.A. 997, 998 & 1002

List these I.As on 23.02.2004. In the meantime, the parties may exchange affidavit.

W.P.(C) 589/03

None appears on behalf of the petitioner. Adjourned.

W.P.(C) D23533/03

Learned counsel appearing for the petitioner states that the petitioner wants to withdraw this petition with liberty to approach CEC. Ordered as prayed for.

SLP (C) 6266/2000

List this petition before this Bench on 23.02.2004 as first item.

I.A. No.:	Order Date: 23.02.2004	
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I.A. No. 966 in I.A. 548 and I.A. 1012 in I.A. 966

Learned Solicitor General prays that these I.As may be adjourned for two weeks. Order as prayed.

I.A.in I.A. 703 (filed in Court by Learned Amicus Curiae) for directions (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on board. Let this IA be registered and numbered. Issue notice. Notice on behalf of the Union of India is accepted by Mr. A.D.N. Rao, Advocate. He prays for and is allowed four weeks time to file a reply. List thereafter. In the meantime, Annexures P-1, P-2, P-3, P-4 and P-5 dated 05.02.2004, 03.02.2004, 07.10.2003, 06.02.2004 and 13.01.2004 respectively, to the IA, shall not be implemented.

SLP(C) 6266/2000

Delink. List on a date to be given by the Registry before this Bench.

I.A. No. 923 (in 392)

Let the sale proceeds be invested in a fixed deposit in a nationalized bank for a period of six months. Further orders in this matter shall be made after receipt of a comprehensive report by the State of UP.

I.A. No. 786

Heard counsel for the parties.

The order dated 12.12.1996 is clarified to the extent that it would be open to the State of Jammu & Kashmir to export and transport the finished products of timber outside the State except those finished products of timber which have not be permitted by the MoEF, namely mentioned at Sl. Nos. 12 and 14 in the latter dated 25.10.1997 enclosed with the IA. In case any further finished products are to be included, the State shall seek permission of this Court. This IA stands disposed of.

SLP (C) 20070/1998

Issue fresh notice to respondent No. 4 Kashmir Veneer Industries.

Notice be also issued to the 11 units mentioned in Para 4 in the report of the CEC (pages 60-61 of the paper books). Notice to these parties be served through the Department of Forests, J&K.

Contempt Petition (C) 555/2002

Let this petition be forwarded to CEC for its recommendations. It may clarify whether 'band-saw' can be equated with a 'sawmill'.

Contempt Petition (C) 193/2001

Let response to the recommendations of CEC be filed by the State of Tamil Nadu and other parties within four weeks. List thereafter.

Letter dated 31.01.2004 of one CN Premsagar, Nilgiris (submitted by learned Amicus Curiae in Court)

Let this letter be taken on record, registered and numbered as an IA. List after four weeks. In the meantime, the State of Tamil Nadu shall file its response to the same.

I.A. Nos. 780 and 818

Adjourned for eight weeks. Let the FDR for Rs.8,30,678, which is going to mature on 07.03.2004, be renewed for a further period of six months.

I.A. No. 827

Adjourned. In the meantime, the Member Secretary and the Chairman of CEC shall continue to occupy the premises which they are occupying at present on the same rate as presently charged till any alternative accommodation is offered or given to them by the Government.

I.A. No. 1122

List after SIT decides the matter.

I.A. 824 (in I.A. 703 in 502), 841, 829, 830-832, 899, 918, 927-928, 961, 1024 and I.A.....in I.A. 502 (on behalf of Ranchi Association (Regd.)) (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Tag these I.As with IA filed today in Court by the learned Amicus Curiae. Response be filed to the I.A. filed on behalf of Ranchi Association (Regd.).

I.A. 908, 922 & 1023

These IAs be transmitted to CEC for its recommendations. List after a report is submitted by the CEC. The Government of Andaman & Nicobar Islands shall submit a report as regard report of Shekhar Singh Committee to the CEC within three weeks.

I..A. Nos. 929 & 1025 (in I.A. 929)

We have looked into the recommendations of CEC. IA 929 is disposed of in terms of recommendations of CEC. IA 1025 stands disposed of.

I.A. No. 745 & 926

The effort to arrest the accused who are at large shall continue. Status report in this regard shall be submitted by the CBI within a period of six weeks. In the meantime, we direct the State of Bihar, Jharkhand and UP to extend all cooperation and help to the CBI in the mater of arrest of the remaining accused. List after six weeks.

I.A. No. 1003 (in I.A. 965)

Four weeks time is granted to the State of Uttaranchal and the Union of India to file a response. List thereafter.

I.A. No. 979 (in I.A. 442-446)

Mr. Pramod Dayal, learned counsel appearing for the State of UP prays for and is granted four weeks time to file a response. List thereafter.

I.A. No. 991

Issue notice to the State of UP and the Union of India. Mr. A.D.N. Rao, Advocate, accepts notice on behalf of Union of India and Mr. Pramod Dayal, Advocate on behalf of the State of UP. They pray for and are allowed six weeks time to file response. List thereafter.

I.A.Nos. 982-984 & 1000

The MoEF is granted two weeks time to file a response. The State of Rajasthan may file its response within two weeks thereafter. List after four weeks.

I.A. Nos. 1026-1028 & 1123-1124

Issue notice. The Union of India may file its response within two weeks and the State of Rajasthan within two weeks thereafter.

List these I.A. after four weeks.

I.A. No. 1035 (in I.A. 776 in 424)

Four weeks time is granted to the State of MP to file its response. No further time shall be granted. List after four weeks.

I.A. No. 930 (in 669 & 659) with I.A. 775

Adjourned.

I.A. No. 967

We direct the Divisional Commissioner, Konkan Division, to get the denotified areas under various notifications, demarcated within a period of four months and action taken report in this regard may be submitted within one month thereafter.

CEC shall monitor the demarcation work to be undertaken.

Rest of the matters

Adjourned. List on a date to be given by the Registry.

I.A. No.:	Order Date: 08.03.2004	
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Learned counsel appearing for the Union of India prays for and is allowed three weeks time to file a reply. List thereafter.

I.A. No.:	Order Date: 19.04.2004	
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I.A. No. 1035 in 776

Despite the order of this Court the state of MP has not filed its response. We are in agreement with the recommendations of the CEC. IA 776 in IA 424 is accordingly dismissed. It appears that several States are not following the recommendations of the CEC and the order dated 22.09.2000. We, therefore, direct that since the matter has already been decided all the States including the State of Chhattisgarh shall abide by the order dated 22.09.2000. IA 1035 is disposed of.

I.A. 1000 with I.A. 982-984, 1123-1124 & 1026-1028

Let response be filed by the Union of India within a week. List this matter on 03.05.2004 before a Bench consisting of Hon'ble Mr. Justice YK Sabharwal, Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice SH Kapadia.

I.A. No. 1048 in 60

Mr. A.D.N. Rao, the learned counsel appearing for the MoEF prays for and is granted two weeks time to file response.

I.A. No. 990 in 860 & 863

We have gone through the CEC report dated 28.08.2003 and find that many of the earlier directions have not been complied with by the State of Karnataka in as much as many encroachments have not been removed. We, therefore, direct the Chief Secretary, Government of Karnataka to file status report along with an affidavit within a period of eight weeks giving details of encroachments in Sargod and Maskali reserved forest within Chikmagalur District along with action plan for removal of such encroachments in time bound manner.

I.A. 826 in 566 with IA 985, 1016-1018 & 1046

Mr. A.D.N. Rao, the learned counsel appearing for the Union of India states that within a period of one week a Notification constituting an authority known as Compensatory Afforestation Fund Management & Planning Agency for the management of money toward compensatory afforestation will be issued in pursuance of the order dated 30.10.2002 passed in IA 566 in W.P.(C) 202/95. So far as the composition of the authority is concerned, that will be worked out with the consultation of the learned Amicus Curiae. This exercise may be done within a period of four weeks.

List this matter summer vacation before a Bench comprising Hon'ble Mr. Justice YK Sabharwal, Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice SH Kapadia.

I.A. 827 List after summer vacation.

I.A. No. 896-898

List after summer vacation. In the meantime, the CEC may also submit its report.

Item No. 8 & 8(i) in IA 996 & 1012

Parties are agreed that the project proposed by the National Hydroelectric Power Corporation Ltd. may be permitted by the MoEF subject to fulfilling the following conditions: -

- i) The legal status of the sanctuary land i.e. 42 hectares will remain unchanged and will continue to be a part of the Sanctuary.
- ii) The Reserve Forest area that forms part of the catchment of the Lower Subanari including the reservoir should be declared as a National Park / Sanctuary. NHPC will provide funds for the Survey and demarcation of the same.
- iii) The extent of area to be declared, as National Park / Sanctuary will be decided by the State Government in consultation with the MoEF and associating reputed forestry and Wildlife Experts.
- iv) The National Park / sanctuary will be under the control of the Chief Wild Life Warden, Government of Arunachal Pradesh, to be managed by an officer of the rank of the deputy Conservator of Forests and above.
- v) The National Hydroelectric Power Corporation (NHPC) will provide funds for the relocation and resettlement of the people, if any residing inside the proposed National Park/Sanctuary at (ii) above, at sites outside the protected area on land earmarked for the purpose by the State Government in advance.

- vi) NHPC will make adequate arrangements for supply of fuel to the staff and workers engaged in the construction. Under no circumstances, fuel wood will be removed from the sanctuary or forest area.
- vii) There would be no construction of dam upstream of the Subanari river in future.
- viii) The State Government will provide dedicated field staff for the management and protection of the National Park/Sanctuary, which will include adequate number of ACFs, RFOs, Foresters, Guards and Watchmen etc. Requisite infrastructure, communication, equipments and other facilities will be provided to the staff and the officials. The entire cost i.e. recurring and non-recurring expenditure will be borne by NHPC for a period of ten years. The State Government will prepare and approve the management Plan for the National Park / Sanctuary for a period of ten years and submit to the NHPC for funding support.
- ix) The NHPC will also ensure that there is no siltation down the Subhanari river during the construction phase. The spillage and diversion channels will be maintained as fish ladder.
- x) Under no circumstances, the excavated material will be dumped either in the river or any other part of the National Park / Sanctuary or the surrounding forests.

NHPC will also provide complete funds for reforestation of the degraded sites with indigenous species within the National Park / Sanctuary and ensure that there is no siltation down the Subhanari river during construction phase.

In this view of the matter, the IA stands disposed of.

I.A. 972 in 757 with IA 789-790, 962, 986, 1038-1041

We have heard learned counsel for the parties. Till the Notification is issued, we direct the State Government of Rajasthan to constitute a committee comprising of three members in consultation with CEC for the purpose of grant of permission for carrying out repairs or renovation of the existing structures within the municipal limit. The State Government may constitute such a committee within a period of one month.

I.A. No. 987

Ministry of Tourism, Department of Culture is permitted to construct tourist facilities at Dilwara Jain Temple at Mount Abu. I.A. is disposed of.

I.A. No. 1042-45

We have heard learned counsel and the learned amicus curiae. The applicant apprehends that in case notification is issued there would be complete ban on the raising of constructions within the area and therefore a prayer is made that before issuance of Notification the objections raised by the applicant may be considered by this Court. We do not find any merit in this submission, in view of the fact that before final notification is issued by the Government, first a draft notification is to be issued inviting objections from the people who would be aggrieved by the notification. In that situation, the applicant may also file objections, if any, which the Government would consider. Further, if any final notification is issued, it will be open to the applicant to challenge the same in accordance with law.

I.A. 989 in I.A. 857-858 with 997, 998 & 1128

Let the reply be filed by South Eastern Coalfields Ltd. within a week. List this matter on 03.05.2004

I.A. No. 1003 in 965

Ms. Rachna Srivastava, the learned counsel prays for and is granted four weeks time to obtain instructions. List this matter after summer vacation.

I.A. No. 976 in 727

List after summer vacation.

I.A. No. 920 in 703 with 988, 1129 & 1151

List this matter for hearing in the month of July 2004 on the date to be given by the Registry.

I.A. No. 1150 in 1010

Learned counsel prays for and is granted four weeks time to file reply.

I.A. No. 1011

Matter be referred to the Standing Committee of IBWL for its consideration.

W.P.(C) 498/2003

The Andhra Pradesh Tourism Development Corporation Ltd. has filed this petition for construction of serial ropeway to transport pilgrims from Tirupati to Tirumala passing through the Sri Venkateswara Wild Life Sanctuary. The CEC has made the following recommendations:

"The CEC is of the view that the Ropeway is an eco-friendly mode for transportation of visitors in any eco fragile area. It will be noiseless, pollution free, efficient, time saving and a novel way or hand transportation by road involves vehicular emissions and pollution and wastage of fuel / energy. It also disturbs the habitat and wildlife and also causes accidental death of wild animals. The location of 32 of 39 pillars of the Ropeways is at the edge of the Sri Venkateswara Wildlife Sanctuary within a large enclosure where Tirumala Temple complex and facilities are situated. For the construction of the remaining seven pillars forest land measuring 1.44 hectares would be required whereas the actual construction will take place in an area of 0.1 hectares. The CEC is of the view that the Ropeway project is in public interest, the area required is the minimum possible and the pillars will be erected in a rocky degraded area. Besides, it will involve felling of 24 small trees. No alternative site is possible. The disturbance and the impact upon the habitat and wildlife due to the Ropeway project will be minimal and will also be fully containable. In view of the reasons given above the Committee recommends that this Court may consider permitting the use of 1.44 hectares of forest land for the construction of seven pillars required for the Ropeway project subject to the following conditions and to any other condition(s) that may be stipulated by the MoEF while according approval under the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972:

- 1) before commencing the work, five per cent of the project cost of that part of the project which falls within

the Sri Venkateswara Wildlife Sanctuary will have to be deposited by the project proponents in the Compensatory Afforestation Fund to be used for the protection and better management of the Sanctuary.

- 2) The net present value of the forest land diverted for the project will have to be deposited in the Compensatory Afforestation Fund as per this Court's order dated 30.10.2002 passed in IA 566.

We are in agreement with the recommendations made by CEC. We accordingly accord permission to the applicant for construction of ropeway subject to fulfilling the conditions as pointed out by the CEC in its letter-dated 7.4.2004. The amount may be deposited in two equal installments. First installment shall be deposited within one month and the other within six months thereafter. After the first installment is deposited, the permission would be operative.

The matter to be listed before a Bench comprising of Hon'ble Mr. Justice YK Sabharwal, Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice SH Kapadia.

I.A. No.:	Order Date: 13.08.2004	
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I.A. 989 in I.A. 857-858 with I.A. 997, 998

We are told that Mr. Uday Lalit, Adv. (AC) has been designated as a senior advocate. Mr. Salve, the learned senior advocate (AC) states that since Mr. Sidhartha Chaudhary, Advocate has become Advocate on Record and has been assisting the Court throughout, he may please be appointed as Advocate on Record to assist Mr. UU Lalit in this Court. Ordered accordingly.

I.A. No. 989

Mr. Salve, learned Amicus Curiae has invited our attention to a document which in turn refers to Gazette Notification no. 3228-3283/2845-XI dated 17.10.1949. The State Government of Chhattisgarh shall trace those Notifications and other notifications issued by the Forest Department in the month of October 1949 and place the same before the CEC. Mr. Arun Jaitley, the learned senior counsel appearing for M/s. Maruti Clean Coal and Power Ltd. (Maruti) states that his client has got several notifications of dated 10.10.1949 which have considerable bearing on the question whether the land which is subject-matter of these proceedings is forest or not within the meaning of Forest Conservation Act, 1980. let the said notifications be also placed before CEC. Other parties may file such additional documents before the CEC as they may deem fit. Parties are granted three weeks time to place the documents before CEC who after hearing the parties will examine the matter in detail and file a report with its recommendations within a period of six weeks.

The State of MP is directed to render full assistance to the State Government of Chhattisgarh to place the relevant record / notifications.

List after eight weeks.

I.A. No. 1166

Having regard to the facts of the present case and also considering the fact that out of total length of transmission line 33.54 Kms will pass through the Askot Wildlife Sanctuary, the recommendations of CEC that PGCIL will deposit 5 percent of the total project cost of Rs.150.53 crores. In the compensatory and afforestation fund for undertaking conservation and protection of Askot Wildlife Sanctuary cannot be termed as unreasonable. We

accept the recommendation of the CEC in that regard.

Mr. Mohan Parasaran, the learned Additional Solicitor General appearing for MoEF prays for adjournment to look into the aspect of constitution / re-constitution of the National Board of Wildlife.

Post this I.A. after four weeks.

I.A. No. 1000

We have perused the detailed report of CEC dated 20.11.2003 regarding mining in Jamuna Ramgarh Wild Life Sanctuary, Jaipur in violation of the Forest Conservation Act, 1980, The Wildlife (Protection) Act, 1972 and orders passed by this Court from time to time. We have also perused the affidavit of Mr. Anurag Bajpai, Assistant Inspector General of Forests, MoEF, Government of India dated 29.04.2004. To say the least, the affidavit is highly unsatisfactory. Most of the aspects highlighted in the report of CEC which prima facie show illegal mining in the aforesaid wild life sanctuary have not been adverted to in the affidavit of Mr. Bajpai. We direct that a detailed affidavit shall be filed by the MoEF, Government of India within a period of four weeks. If Indian Board of Wildlife has fixed any buffer zone for activity outside sanctuary / forest, that shall also be stated in the affidavit of MoEF. The concerned files shall be produced in Court. Before production of the said files in Court, the files shall be shown to Mr. Salve, the learned senior counsel (AC) for his inspection.

List this I.A. after five weeks.

Remaining matter on board to be listed after two weeks.

I.A. No.:	Order Date: 17.09.2004	
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SLP(C) 18030/2003

Four weeks time is granted to file counter. Rejoinder if any, within two weeks thereafter.

I.A. /2004 in W.P.(C) 202/95 (This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)

Taken on board. The concerned officer, Mrs. Anitha S. Arekal, Deputy Conservator of Forest, Kudremukh Wildlife Division, Karkala, Karnataka, who has issued notice dated 23.09.2004 is impleaded as respondent No. 3. Issue notice to respondents returnable after four weeks.

We direct respondent No. 3 to file affidavit in reply within four weeks. In the meanwhile, we stay the operation of the notices dated 03.09.2004 issued to the Chairman, Member Secretary and Members of CEC.

I.A. No. 1205 & 1164

Having heard Mr. Dutta, learned ASG for the applicant and Mr. Uday Lalit, learned Amicus Curiae, subject to the applicant complying with all other conditions as stipulated in the order dated 19.04.2004 and, for present, depositing in the Registry of this Court a sum of Rs.300 crores within four weeks toward net present value of Forest land sought to be converted into non-forest use and further, subject to the final decision on the question of net present value to be determined in IA 1164 of 2004 and the applicant undertaking deposit the balance

amount, if any, in terms of the directions of this Court, the requisite permission / clearance for Subansiri lower Project as sought for in prayer (a) of IA 1205 of 2004 shall be granted. It would be subject to further orders that may be passed by this Court.

The amount shall be invested by the Registry in a nationalized bank for a period of one year for the present.

I.A. 1205 is disposed of accordingly. IA 1164 is adjourned.

I.A. No. 826 & 1046

We have perused the Notification dated 23.04.2003 constituting Compensatory Afforestation Fund Management and Planning Authority (CAMPA). Certain suggestions have been put forth. At first instance, let both amicus curiae Mr. Salve and Mr. Lalit sit with the Solicitor General and other concerned persons to examine grey areas, if any, and make an attempt to place before the Court a joint note, keeping in view that it is not an adversarial litigation, and suggest appropriate steps to be taken for proper and efficient management and disbursal of the funds.

The aspects arising out of IA 1046 may also be discussed in the above light. The State Government who filed connected applications in respect of the NPV may give their suggestions to the learned Solicitor General and learned Amicus Curiae.

I.A. No. 1137

Reply to the affidavit be filed by the Government of India. Response thereto may also be filed by CEC on the legal issue.

We request the learned Amicus Curiae to assist the Court. The application is adjourned.

I.A. 955, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 1180-1181, 1182-1183, 1194-1195 & 1196

Adjourned, to be taken up after the compliance of the aforesaid order in IA 826.

I.A. No. 1003

We have perused the observations and recommendations of CEC dated 21.11.2003 in relation to construction of Ghatiabagarh – Lipulkeh Road leading to China Border under the Border Road Development Board Project for mobilization of troops and to carry out day-to-day operational maintenance of the troops deployed on the border running along the China and Nepal Border. The Ministry of Defence, through Lt. Col. PK Bhattacharya, has filed an affidavit accepting option No. 1 which is contained in para 9(i) and 9(ii) of the recommendations of CEC. We have also perused paras 10, 11 and 12 of the CEC report which deal with the aspect of shifting of ammunition dump as well of restoration of Elephant Corridor. Recommendation, as given in para 12, seeks resolve these two problems as well. Before we finally consider the issue, we think it would be proper and appropriate that officers of Ministry of Defence who are competent to take decision shall discuss this matter with senior officers of the State of Uttaranchal and MoEF so that a resolution could also be found for restoration of Elephant Corridor. Ordered accordingly. The Chief Wildlife Warden and Chief Conservator of Forests shall also be associated with the discussions. The meeting shall consider the feasibility of accepting the recommendations as given in para 12.

Call the matter after three weeks.

I.A. No. 1029

On request of Mr. A.D.N. Rao, learned counsel, the case is adjourned.

I.A. No. 1154

The application is referred to CEC for its recommendation. The MoEF may also respond to the application.

I.A. No. 920

Pursuant to the last order of this Court, an affidavit dated 14.09.2004 has been filed by MoEF. On behalf of the State Government, Mr. Altaf Ahmed, learned senior counsel, prays for two weeks time to respond. Ordered accordingly. Other parties, if so wish, may also respond within the same time. Adjourned.

I.A. Nos. 988, 1129, 1151

Adjourned, to be taken up with the main matter.

Rest of the matters

Adjourned.

I.A. No.:	Order Date: 03.12.2004	
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I.A. Nos. 1130 & 1152

List after receipt of the recommendations from CEC.

I.A. No. 1147

Mr. A.D.N. Rao, learned counsel shall obtain a report from the Chief Conservator of Forests, Shillong and file response to the application, within four weeks.

I.A. No. 1153

Let the applicant approach the appropriate forum. The IA is dismissed.

I.A. No. 1226

The State Government and MoEF shall file an affidavit, within six weeks, stating whether any facility of snacks etc. has been made and how it is proposed to be regulated.

I.A. 826, 566, 955, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 1137, 1180-1181, 1182-1183, 1194-1195, 1196, 1208-1209, 1222-23, 1224-25, 1229

List in the first sitting of the Bench in the month of January 2005.

I.A. No. 828, 833, 834-835, 837-840, 846-847, 850, 853-856, 866-882, 891-894, 900-905 & CP(C) 412/04 in IA 833 in 828

Learned counsel for the State of Haryana, State of Rajasthan and MoEF accept notice. We direct them to file response to the Report. In addition, response to the report to the Monitoring Committee shall also be filed by the Ministry of Mines. Mr. Rao inform the Ministry about the directions given. The responses shall be filed within a period of six weeks.

I.A. No. 969-970, 1126 in 703

The Ministry is directed to take a final decision within two weeks.

List the matter for hearing in the month of January 2005

I.A. No. 976 in 727

Adjourned.

I.A. 979 in I.A. 442-448 & I.A. 1204

We have perused the affidavit dated 08.09.2004 filed by NK Janoo, Divisional Director, Social Forestry Division, Lalitpur, UP inter alia seeking time till 30.11.2004 to implement the recommendations of the CEC dated 10.09.2003. We hope that the process of identification must have been over by 21.10.2004, as stated in the affidavit. Since 30.11.2004 is already gone, we direct the State of Up to file its report within a period of two weeks. The guidelines stated to have been issued on 16.04.2004 should also be placed on record. A copy of the guidelines as also the report shall be handed over to CEC forthwith, in any case, not later than two weeks from today. The CEC shall respond to it within four weeks thereafter. – Adjourned.

I.A. No.:	Order Date: 10.12.2004	
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I.A. No. 1157

MoEF, State of Uttaranchal and State of UP shall file response within four weeks.

List after four weeks.

I.A. 1160, 1161, 1162 & 1163

Issue notice to Ram Shankar Tiwari and Shyam Behari. Recommendations of the Lok Ayukt are stayed, in the meanwhile.

I.A. No. 1165

IA is disposed of as having become infructuous.

I.A. No. 1230

MoEF shall respond to the application within four weeks. List on the first sitting of the Bench after winter vacation.

I.A. 990 in 860 & 863

The affidavit of Shri KK Mishra, Chief Secretary of Government of Karnataka, is not satisfactory; it is utterly vague on the requisite aspects. We direct fresh filing of affidavit within four weeks with Map and details also stating therein the steps taken and intended to be taken.

I.A. No. 991

List the matter on the next sitting of the Bench.

I.A. No. 992

Referred to CEC for its report.

I.A. 1000, 982-984, 1026-1028 & 1123-1124

On request of Mr. Rao, we direct MoEF to file its response to the Report of CEC within four weeks also indicating whether temporary permissions / permits are being granted in other areas and details thereof in the last two years. The original file shall be brought to Court on the next date of hearing.

I.A. No. 1210-1211

Issue notice.

Mr. Aurneshwar Gupta, learned counsel appearing for the State of Rajasthan accepts notice. Response to be filed within four weeks.

I.A. No.:	Order Date: 13.01.2005	
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I.A Nos. 1238-1239

List on 28.01.2005.

I.A. No.:	Order Date: 28.01.2005	
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I.A. No. 1230

Diversion of the land in question i.e. 29.942 ha. Of forest land for laying of 220KV transmission land from Pykara Ultimate stage Hydro Electric Project Switchyard to Arasur 220 KV Sub Station in Tamil Nadu is permitted in terms of the approval under Section 2 of the Forest (Conservation) Act, 1980 granted by Government of India as per order dated 07/11.05.2004 subject to the applicant strictly adhering to all the condition and ensuring that tree felling is kept at minimum number and the diversion of the forest land is done under over all supervision of Regional Chief Conservator of Forests. The application is allowed.

I.A. No.1155

The application is dismissed.

I.A. No. 1156

List this application along with I.A. No.1192 in W.P.(C)No.202/1995 in the next sitting.

I.A. Nos. 1168 in I.A. No.118, 219-220, 240, 472-473 & 762 (Recommendations of CEC in I.A. Nos. 118, 219-220, 240,472-473 and 762)

118, 219-220 accepting the recommendations of Central Empowered Committee, these applications are dismissed. 240 Since substantive matter is being examined the application is dismissed as withdrawn Counsel seeks permission to withdraw these applications. The applications are dismissed as withdrawn. 762 Accepting the recommendation of CEC the application is dismissed with liberty to the applicant to file fresh application in case need be at the appropriate stage before the appropriate forum.

I.A. Nos. 1169 in I.A. No.949-950

The applicants seek some time to respond to the report of CEC. Let their response be filed within four weeks

I.A. Nos. 826 in 566, I.A. No.955, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046-1047, 1135-1136, 1137, 1164, 1180-1181 & 1182-1183, 1194-1195, 1196, 1208-1209, 1222-1223, 1224-1225, 1229 & 1233 in W.P.(C) No.202/1995

In respect of Net Present Value, learned amicus curiae may file a note of suggestions within a period of three weeks. Response thereto may be filed by the learned Additional Solicitor General within three weeks thereafter. List these matters on 01.04.2005.

1194-1195 As an interim measure on undertaking given on behalf of the applicant that the amount determined to be paid as NPV would be paid within the time stipulated by this Court, the applicant, for the present, is exempted from depositing NPV.

I.A. No. 930 in I.A. No.669, 659 & 775 & 967

Mr. A.D.N. Rao, learned counsel appearing for Ministry of Environment and Forests to check up whether final notification has been issued by the MoEF, and file the same within two weeks. 967 Last opportunity is granted and the State Government is directed to file within one week the report and the affidavit in terms of the order dated 15.10.2004.

I.A. Nos. 969-970 in I.A. No.729 in I.A. No. 424

Adjourned for two weeks.

I.A. No. 1126 in I.A. No.703

I.A. Nos. 989 & 1221 in I.A. No. 857-858 with 997, 998, 1128 & 1187

Objections, if any, to the recommendations of CEC may be filed within one week. Replies be filed within one week thereafter. List after two weeks.

I.A. Nos. 991, 1004, 1185

Adjourned for two weeks

I.A. No. 1238-1239/2004

Ministry of Environment and Forests and CEC may file their response to the applications within three weeks

I.A. No. 1240.

I.A. No...../2005 in I.A. No.1240 in W.P.(C)No.202/2005 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on board. CEC may respond to the application within two weeks. List thereafter.

I.A. No. 1243-1244

The applicant does not even state as to what has been the difficulty in implementing the order passed nearly four years back. In this view the applications are dismissed with liberty to the applicant to file an appropriate application.

I.A. No.1265 in I.A. Nos. 1256-1259 and I.A. Nos. 1260-1263

Having heard learned amicus curiae, Mr. Rohtagi and Mr. Dholakia, learned senior counsel, we are of the view that Central Empowered Committee shall hear the applicant and the State Government and submit a report on these applications before 04.02.2005. The applicant and the representative of the State Government shall appear before CEC on 01.02.2005 at 3 p.m.. The parties are given liberty to file affidavits and documents before CEC. We direct that a responsible officer from the State Government with complete records and instructions shall appear before CEC. The State Government would also explain before CEC the basis on which the statements were made about closure in 1999 and the stand now taken which led to the report by CEC leading to closure of these units. List these applications on 04.02.2005.

I.A. No.:	Order Date: 04.02.2005	
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I.A. No. 1265 in I.A. Nos. 1256-1259 and I.A. Nos. 1260-1263

We direct the State of Maharashtra to file its response, within three weeks, to the report of the C.E.C. dated 04.02.2005. The MoEF shall also file its response within the same time. The applicants are also permitted to file response within three weeks. The State Government would keep all relevant files available in Court. List after four weeks.

I.A. Nos. 756, 1192 & 1156

It is unfortunate that despite grant of time, the Delhi Development Authority (DDA) has still not filed its response to the report of the C.E.C dated 30.07.2004. While granting final opportunity, we direct the said Authority to file its response within three weeks. Mr. Sharan, learned Additional Solicitor General appearing for DDA, states that no construction activity is going on on 223 hectares of land. If it is otherwise, the applicant may approach the C.E.C. which will look into the matter. The report of C.E.C. states that in 92 hectares out of 315 hectares of land, this Court, by order dated 19.08.1997, permitted the DDA and others to carry out construction and allied activities subject to compliance of environmental laws and requisite approvals. In the response directed to be filed, the DDA will state as to whether requisite approvals have been taken and environmental laws complied with

in respect of the construction which is going on. List after four weeks.

I.A. No. 993 in W.P.(C) No. 202/1995

No objections have been filed to the report of the C.E.C. dated 28.10.2003. The recommendations of the C.E.C. are as under:

- “(i) the MoEF’s order dated 20.08.2002 allowing mining leases inside the Valmiki Wild Life Sanctuary may be set aside;
- (ii) the State of Bihar may be directed to ensure immediate closure of all mining activities inside National Parks and Wild Life Sanctuaries including within the safety zone around the boundaries of the National parks and Sanctuaries;
- (iii) the MoEF may be directed to ensure that no mining lease inside any National Park or Wild Life Sanctuary is approved under the F.C. Act without obtaining specific permission from this Hon’ble Court in view of the order dated 14.02.2000 passed in I.A. No. 548;” Mr. B.B.Singh, learned counsel appearing for the State of Bihar also submits that the report be accepted. Having regard to the facts and circumstances, we accept the recommendations made in the report and direct the State of Bihar and MoEF to file compliance report within a period of eight weeks. List thereafter.

I.A. No.:	Order Date: 11.02.2005	
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I.A. Nos. 969-970 in I.A. No.729 in I.A. No.424

I.A. No. 1126 in I.A. No. 703

At request, Mr. Mohan Parasaran, learned Additional Solicitor General appearing for the Ministry of Environment and Forest in I.A. No. 1126 in I.A. No. 703 in Writ Petition (C) No. 202 of 1995, is granted one week’s time to file affidavit stating the cut-off date for regularisation of encroachment on the forest land. It is stated that a policy decision has been taken that the cut-off date would be 25.10.1980 and not 31.12.1993.

I.A. Nos. 991, 1004, 1185

The affidavit directed to be filed by Mr. Pooran Singh Bundela in I.A. No.991 may be filed within three days.

I.A. No.:	Order Date: 18.02.2005	
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I.A. No. 1170 in I.A. Nos. 948-948A

Applicant may file additional affidavit within four weeks setting out the distance between the places where he wants his unit to be shifted and the forest.

I.A. No. 1173 in I.A. Nos. 77, 78, 83 , 92

Issue notice to Nelliampathy Planters Association, Kerala and State of Kerala.

I.A. No.1174 in I.A. No.804

Response to the report of the CEC be filed by State of Madhya Pradesh through its Chief Secretary. Contempt Petition(C)No. 280 of 2003 in W.P. (C)No. 202/1995 Copies of petition be supplied to learned amicus curiae who

may look into it and assist the Court in the matter.

I.A. No.1037 in I.A. Nos.1008-1009 .

Seen the adjournment letter. Adjourned.

I.A. No. 824 & 1126

Further time is sought on behalf of MoEF to file affidavit in terms of the order dated 11.02.2005. Let the same be filed within one week.

I.A. No. 1252.

MoEF and CEC may respond to the application within four weeks.

I.A. No. 918

As prayed, the applicant is granted six weeks' time to file additional affidavit.

I.A. No.1134

The Administration of Andaman & Nicobar may file response within six weeks.

I.A. No. 1171

An order similar to the one passed on 07.05.2003 on application of Andaman & Nicobar Island is sought in respect of the working plan of Middle Andaman Forest Division. Let the working plan be placed with MoEF for consideration within six weeks and in case it is cleared, the same shall be placed before CEC for consideration within six weeks thereafter. Adjourned.

I.A. No. 1255.

CEC may file response to it within four weeks.

I.A. Nos. 841, 829, 830-832, 899, 927-928, 961, 1024, 1134 & 1264..

List with I.A. No. 824 & 1126 after the filing of the affidavit by MoEF.

I.A. No. 1127

Adjourned.

I.A. Nos. 745 & 926

After August 2004, no progress/status report has been filed. Let it be filed within two weeks. List this matter after three weeks.

I.A. No. 27 with I.A. Nos. 1122 and 1216

Mr. Lalit states that report of CAG has now been received. Let the same be filed along with follow-up action within eight weeks. On the report of SIT dated 26.10.2004, notice (in I.A. No. 1122) shall issue to State of Arunachal Pradesh. The State Government is directed to file latest status report.

I.A. No.:	Order Date: 25.02.2005	
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I.A. No. 1188-1189

At this stage, the applications seeking modification of the order dated 04.03.1997, cannot be entertained. Hence, the I.As are dismissed. If so advised, the applicant-State of U.P. may first approach the Central Empowered Committee (CEC), with relevant material and data.

I.A. Nos. 1197-1199

These IAs to be listed along with I.A. No. 1000.

I.A. No. 1202

To be listed along with I.A. No. 1206.

I.A. No. 1207

Learned counsel for the applicant states that he will file an appeal against the order of SIT dated 19.05.2004 and in this view presently this application may be disposed of. Ordered accordingly.

I.A. Nos. 1212-1213

Learned counsel for the applicant states that the application-Corporation is agreeable to abide by all the conditions stipulated by the Standing Committee of National Board for Wildlife. Let the CEC respond to the applications within three weeks.

I.A. Nos. 1214-1215.

Issue notice to the respondent. Mr. A. D. N. Rao, Advocate accepts notice on behalf of respondent No. 2. CEC shall also respond to the applications within three weeks.

I.A. Nos. 1227-1228

Issue notice. CEC to respond to the I.As within three weeks.

I.A. No. 1234.

Issue notice to the Principal Chief Conservator of Forests, U.P..

I.A. Nos. 1235-1237

Issue notice.

I.A. Nos. 1241-1242

Delay condoned. The order dated 29.10.2004, passed by this Court in I.A. Nos. 956/03 & 1121/04, dismissing the said applications for non-appearance of the applicants, is recalled. Fresh notices in these applications may be issued. Standing counsel for the State of Tamil Nadu and CEC shall also respond to the I.As.

I.A. Nos. 1227-1228

Issue notice. CEC to respond to the I.As. Within three weeks.

I.A. No. 1234

Issue notice to the Principal Chief Conservator of Forests, U.P..

I.A. Nos. 1241-1242

Delay condoned. The order dated 29.10.2004, passed by this Court in I.A. Nos. 956/03 & 1121/04, dismissing the said applications for non-appearance of the applicants, is recalled. Fresh notices in these applications may be issued. Standing counsel for the State of Tamil Nadu and CEC shall also respond to the I.As

I.A. No.:	Order Date: 04.03.2005	
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I.A No. 1246-1247

Issue notice. Mr. A.D.N. Rao, learned counsel, accepts notice on behalf of Ministry of Environment & Forests and Mr. Satish K. Agnihotri, learned counsel, accepts notice on behalf of respondent nos.2 to 7. Response to the application may be filed within four weeks.

The CEC may also file its response to the application.

I.A. No. 1250-1251

To be taken up along with I.A. No.1000

I.A. No. 1254

Referred to CEC along with connected matters which are stated to be fixed before CEC on 09.03.2005.

I.A. No. 1267-1268

Issue notice to respondents. Mr. Rajiv Mehta, learned counsel, accepts notice on behalf of respondent nos. 2 and 4. Mr. J. R. Luwang, learned counsel appearing for M/s. Corporate Law Group, accepts notice on behalf of respondent no.3. They may file reply affidavit within six weeks. The CEC may also examine and file its comments before the next date.

On application of learned counsel, M/s. Hill Trades Agency is impleaded as a party respondent. Amended Memo of Parties shall be filed giving the address of the said party.

I.A. No. 1270

Issue notice to State. The application is referred to CEC for examination and recommendation.

I.A. Nos. 1274-1275

Adjourned for two weeks.

I.A. Nos. 1276-1277

Issue notice. To be taken up along with I.A. No. 828.

I.A. No. 1278

This I.A. is dismissed.

I.A. No. 1279

Learned counsel seeks leave to file additional affidavit in support of the application. Let it be filed within four weeks.

I.A. No. 32

The application is referred to CEC for examination and making recommendation.

I.A. No. 1011/2003 in 1246-1247.

List the interlocutory application on 01.04.2005

I.A. No.:	Order Date: 30.03.2005	
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I.A. No. 1287

List the application on 01.04.2005.

I.A. No.:	Order Date: 01.04.2005	
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I.A. No. 1175

The report submitted by the Member Secretary, Central Empowered Committee 16.07.2004 regarding use of forest land falling within the Sanjay Gandhi National Park IIIA Mumbai Water Supply Project without obtaining approval of this Court is accepted. In respect of the recommendation as contained in para 13 (i) of the said report, we direct the BMC to deposit a sum of Rs. 1 crore, within a period of 4 weeks. The said amount will be utilized in the manner recommended in para 13 (ii) of the report. We hope that henceforth MoEF would not grant any approval under the Barest Consersatiom Act and/or the wildlife (Protection) Act, 1972 for use of the forest land falling within the National Parks and Sanctuaries without complying with the directions of this court.

The I.A. is disposed of.

I.A. No.:	Order Date: 04.04.2005	
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I.A. No. 281

List the application on 8th April, 2005.

I.A. No.:	Order Date: 08.04.2005	
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I.A. No

Concerned by depletion of population of tigers and other important animals in National Parks and Sanctuaries, this application has been filed by learned Amicus Curiae for seeking directions, inter alia, for constitution of an authority of persons named by National Board of Wild Life (after obtaining leave of the Court) under Section 3(3) of the Environment Protection Act to oversee and supervise the functioning of the National Parks/Sanctuaries listed in Annexure '1' to the application. The said list contains 25 National Parks and Sanctuaries. One of the prayers is that the State Governments be directed to cooperate with the authority in deployment of staff manning these Parks and Sanctuaries so as to check the menace of poaching. Learned amicus curiae has brought to our notice a photograph showing skins of leopards. It is stated that as per reports, 43 such skins were seized recently and they appear to be of recent and original. Certain other directions have also been sought such as funding and the steps to be taken by the State Governments. Having regard to the enormous problem, we direct the parties to respond to the application within two weeks. List on 03.05.2005, if the Bench is available, otherwise on 06.05.2005.

I.A. No. 1265

List the application on 15.04.2005.

I.A. No. 33-34 in W.P.(C) No.171/1996

The matter is referred to CEC for its examination and recommendation

I.A. No. 1300 in I.A. 281

List on 15.04.2005 along with I.A. No.1297

I.A. No.1011

The MoEF shall place on record the minutes/report of the Standing Committee of IBWL, within two weeks.

I.A. No. 1178 in I.A. 620-621

The State of Madhya Pradesh is granted four weeks' time to file its response to the report of CEC. The report shows that rampant illegal mining had been going on in Shivpuri District prior to the intervention of this Court. This conclusion has been reached by the CEC after going through the submissions made by the applicant, the State Government, the MoEF and the site inspection reports of Shri M.K.Sharma, Additional D.G., Forests, MoEF. In the opinion of the CEC, such rampant illegal mining could not have happened without the connivance of the officials/officers of the concerned department and the interested parties. One of the recommendations is for taking stern action against the officers and officials of the Revenue Department and Mines Department, who had directly or indirectly caused large scale illegal mining in this area. Before we consider the suggestion of referring the matter to C.B.I., in our view, it would be expedient if the Chief Secretary of the State Government is requested to independently examine the record in his capacity as an officer of the Court and send to this

Court his report in a sealed cover giving his opinion as to the persons, prima facie, responsible for such illegal activity. Ordered accordingly. The report shall be filed within four weeks. Contempt Petition (C) No. 499/2004: The petition is dismissed with liberty to file a fresh petition with more particulars. Contempt Petition (C) No. 412/2004 in IA 833 in IA 828: This petition has been filed for taking contempt action against the respondents, namely, Chief Secretary, Government of State of Rajasthan, Additional Director Mines, Department of Mines and Geology, and Director, Directorate Mines & Geology Department, Government of Rajasthan. At present, we are of the view that instead of initiating any contempt action, it would serve the ends of justice if the petition is treated as an interlocutory application seeking directions so as to check illegal mining, particularly, in forest area in the State of Rajasthan. The contempt petition shall, therefore, be treated and numbered as an interlocutory application. Mr. Aruneshwar Gupta, learned counsel, accepts notice on behalf of the respondents. Reply shall be filed within four weeks. Pending further directions, we restrain any kind of mining in forest area. Further, we restrain mining in any area in Aravali Hills falling in the State of Rajasthan, where permission may have been accorded after 16th December, 2002. The respondents, in their reply, shall give particulars where permission/sanctions for mining of one hectare or less area has been granted and the details of the area so that it would be possible to know the contiguous areas in respect whereof such permission may have been granted.

I.A. No. 920 in I.A. 703 & I.A. 988 & I.A. 1129 & I.A. 1151

The parties are permitted to file affidavits within two weeks.

I.A. No. 923 in I.A. 392

The report shall be filed by the State Government within two months. The amount referred to in the order dated 23.02.2004 shall be reinvested for 366 days in a Nationalised Bank.

I.A. No. 930 in I.As 659 & 669 with I.As. 775 & 967

Learned counsel for the State of Maharashtra states that the final report has already been filed along with I.A. No. 1285. The matter is adjourned. The MoEF shall place on record the final notification, in the meanwhile.

I.A. No. 932 in I.As. 819-821

In case, the Forest Department of the State Government does not cooperate in the lopping of the trees, the Power Grid Corporation is granted liberty to approach the CEC, who will issue necessary directions. List along with the NPV matters.

I.A. No. 932 in I.As. 819-821.

In case, the Forest Department of the State Government does not cooperate in the lopping of the trees, the Power Grid Corporation is granted liberty to approach the CEC, who will issue necessary directions. List along with the NPV matters.

I.A. No.:	Order Date: 27.04.2005	
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I.A. No. 1317

List the I.A. on 03.05.2005.

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

I.A. No.	Order Date: 03.05.2005	
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(Filed by Mr. Harish N. Salve, Sr. Adv. (A.C.). Taken on Board. Let the interlocutory application be registered. Liberty to mention at the appropriate time).

List the interlocutory application on 05.05.2005

I.A..No.	Order Date: 05.05.2005	
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Mr. Harish N. Salve, learned amicus curiae, commenced his submissions at 10.40 a.m. and was on his legs when the court rose for the day the matters remained part-heard Mr. Harish H. Salve, learned Amicus Curiae, resumed his submissions at 10.35 a.m. and concluded at 3.35 p.m. Thereafter, Mr. G.E.Vahanvati, learned Solicitor General appearing for the Ministry of Environment and Forests, made his submissions till 3.55 p.m. Mr. B Datta, learned Additional Solicitor General appearing for the National Hydro-Electric Power Corporation Limited, Ministry of Power, made his submissions in I.A. No.1164 for few minutes. The matters remained part heard. Mr. B. Datta, learned Additional Solicitor General, resumed his submissions at 11.20 a.m. and concluded at 12.20 p.m. Thereafter, Mr. Anoop G. Chaudhari, learned senior counsel appearing for the State of Assam, made his submissions for five minutes. Mr. K. K. Venugopal, learned senior counsel appearing for the State of Kerala, made his submissions till 3.05 p.m. Mr. Harish H. Salve, learned Amicus Curiae, thereafter rejoins and made submissions till 3.15 p.m. The learned Solicitor General thereafter made his submissions for five minutes. Mr. Vivek Tankha, learned senior counsel, appearing for the State of Madhya Pradesh, thereafter made his submissions till 3.35 p.m. Thereafter, Mr. A.Sharan, learned Additional Solicitor General, Dr. A. M. Singhvi, learned senior counsel, and Ms. Rachna Srivastava, learned counsel, made submissions for few minutes. Submissions have been made on the aspect of N.P.V. and P.V.as also on the notification dated 23.04.2004. Parties are given liberty to file written synopsis within one week. The amount of Rupees five thousand lying with the Registry shall be given to the Supreme Court Legal Services Committee.Hearing concluded.Orders reserved.

I.A. No..... in I.A. No. 1310 in W.P. (C) No. 202/1995 (Filed by Ms. Shobha, Advocate) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

Taken on Board. Let it be registered. Issue notice to the State of Rajasthan. Mr. Aruneshwar Gupta, learned counsel, accepts notice. In the meanwhile, Central Empowered Committee shall inspect

I.A. No...../2005 (Filed by Mr. Prashant Kumar, Advocate)

Taken on Board. Let it be registered. Issue notice to the State of Uttar Pradesh.

I.A..No.	Order Date: 20.07.2005	
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I.A. No. 756, 1156 & 1192

List the applications on 22.07.2005, if possible.

I.A..No.	Order Date: 26.07.2005	
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I.A. No 029 and 1154

List the applications on 29.07.2005.

I.A. No.:	Order Date: 03.08.2005	
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I.A No...../2005 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

List the application whenever the Bench dealing with the forest matter sits.

I.A. No.:	Order Date: 25.08.2005	
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I.A. Nos. 989, 1221 & 1311 in 857-858, 997 & 998, 1002, 1128, 1187, 1282, 1283, 1284, 1295, 1296, 1305, 1320-1321, 1335 and 1376-1377

The hearing of these matters is likely to take considerable time. We there-fore direct that these matters shall be listed on a non-miscellaneous day. The parties are directed to file a brief note of submissions/synopsis. At first instance, such a note shall be filed on behalf of C.E.C. by learned Amicus curiae within a period of two weeks. Other parties are directed to file their synopsis within two weeks thereafter. The matters to be listed after four weeks.

The record of SLP(C) No.22531/2003 shall be sent along with when these matters are taken up for hearing. The Ministry of Coal is directed to file affidavit in I.A. No.1335 within one week.

I.A. No.1011

On request of learned Additional Solicitor General, further three weeks' time is granted to the Government of India to file its response.I.A. No.1373The Standing Committee of National Board of Wildlife (NBWL) has conveyed its approval for use of 12.675 hectare of forest land in Periyar Tiger Reserve infavour of Travancore Devaswom Board (TDB) for development of Sabrimala Temple in Pathanamthitta district of Kerala, as stated in the communication dated 20.05.2005 of MoEF to the Principal Secretary, Forest & Wildlife Department, Government of Kerala. We have examined the matter and heard view point of CEC regarding the comment of CEC filed in Court today. The applicant-Board may respond thereto with-in four weeks, but, in the meanwhile, as prayed in the application, the Government of India is permitted to issue orders for diversion of the aforesaid land.Put up this application after the Board has responded to the comments of CEC.

I.A. No. 990 in 860 and 818

Mr. K.K. Misra, working as Chief Secretary to Government of Karnataka has filed affidavit dated 30.06.2005, incorporating therein the revised tentative programme for survey and removal of encroachments in Sargod and Maskali Reserve Forest.This affidavit states that insofar as Sargod Reserve Forest is concerned, the proceedings for removal of encroachments are likely to be completed by 30.09.2005, rehabilitation package is expected to be completed by 31.12.2005 and removal of encroachments by 31.03.2006. Dates in respect of Maskali Reserve Forest are also mentioned in the affidavit. We direct the Chief Secretary to file an affidavit after the proceedings for removal of encroachments in respect of Sargod Reserve Forest are complete. Since they are likely to be completed by 30.09.2005, the affidavit shall be filed by 15.10.2005. The affidavit, besides giving details about the completion of proceedings, shall also state as to which of the encroachments have been removed and physical possession taken, giving survey numbers, etc.

I.A. No.1290 in 780 with 818

Notice shall issue to State of Bank of India (SBI) and M/s. Fena requiring them to show cause why appropriate steps be not taken for recovery of Rs.1.25 lakhs and Rs.1 lakh respectively from them since M/s. Fena, as against Rs.10 lakhs, has de-positd Rs.9 lakhs and SBI has not deposited the amount aforesaid.Regarding amounts lying after the work of cleaning of rocks has been completed, learned Amicus Curiae states that he will file an application giving suggestions for utilization of that amount.The FDR maturing on 07.09.2005 shall be got renewed for another period of one year.

I.A. No.31 in I.A. No.30 W.P.(C) No.171/1996

The recommendations of CEC, as contained in para 6 of report dated 11.09.2003 are accepted. The said recommendations read as:

"The CEC, therefore, recommends that the unspent balance amount of Rs.1.55 crores lying with the State of J&K,out of the funds released by the Central Government under the Centrally Sponsored Schemes, may be allowed to be assimilated for the afforestation work to be undertaken as per this Hon'ble Court's order dated 22.10.2002 in I.A. No.22 in Writ Petition (Civil) No.171/96."I.A. Nos.30 & 31 are disposed of accordingly.

I.A. No. 1333

This application is referred to CEC.

I.A. Nos. 1338-1340

Learned counsel for the applicants seeks to withdraw these applications so as to have recourse before the appropriate authority. These applications are dismissed as withdrawn.

I.A. Nos.1342-1343

State of Uttaranchal and CEC may file response to the application within four weeks.

I.A. No.:	Order Date: 09.09.2005	
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I.A. No. 1336 in I.A. 1254

To the recommendation of C.E.C., the State of Rajasthan and the MoEF shall file the response within four weeks. List thereafter.

I.A. No. 1345 in I.A. 1252 in I.A. 703

None is present on behalf of the the State of Orissa in support of I.A. No.1252 although the C.E.C. has filed its response.Issue notice to the State.

I.A. No. 1346 in I.As 1227-1228

The applicant in I.As.1227-1228 may file his response to the recommendation of the C.E.C. within four weeks.I.A. No.1347 in I.A.1255. In response to I.A. No.1255, the recommendation of the C.E.C. as contained in para 8 reads as under:

"It is recommended that this Hon'ble Court's orders dated 07.05.2003 and 18.02.2005 by which the Working

Plans for South Andaman Forest Division and Middle Andaman Forest Divisions, respectively were referred to the MoEF and the CEC for giving appropriate clearance, may be extended to the Working Plans for the Mayabunder Forest Division that has already been filed before this Hon'ble Court. The said order may also be extended to the Working Plans for Baratang, Diglipur, Little Andaman and the Nicobar Forest Division which are yet to be prepared. No order in respect of Working Plans of the Middle Andaman Forest Division is required because it is already covered by order dated 18.02.2005 referred to above. The aforesaid recommendation is accepted and I.A. No.1255 is disposed of accordingly.

I.A. No. 1347 in I.A.1255

In response to I.A. No. 1255, the recommendation of the C.E.C. as contained in Para 8 reads as under:

It is recommended that this Hon'ble Court's orders dated 07.05.2003 and 18.02.2005 by which the Working Plans for South Andaman Forest Division and Middle Andaman Forest Divisions, respectively were referred to the MoEF and the CEC for giving appropriate clearance, may be extended to the Working Plans for the Mayabunder Forest Division which has already been filed before this Hon'ble Court. The said order may also be extended to the Working Plans for Baratang, Diglipur, Little Andaman and the Nicobar Forest Division which are yet to be prepared. No order in respect of Working Plans of the Middle Andaman Forest Division is required because it is already covered by order dated 18.02.2005 referred to above. "The aforesaid recommendation is accepted and I.A. No. 1255 is disposed of accordingly.

I.A. No. 1348 in I.A. 1036

Response to the recommendation of C.E.C. may be filed within four weeks.

I.A. No. 941

In report dated 10.07.2003, in paragraph 20(iv), the C.E.C. has, inter alia, recommended that the State Government should consider the case of saw mills sympathetically and provide a suitable rehabilitation package for shifting the saw mills in identified industrial estates or other suitable areas beyond 10 km from the forest in a time bound manner. The State Government is directed to file, within four weeks, an affidavit placing on record the steps taken in terms of the suggestions contained in the recommendation of C.E.C. Meanwhile, parties may respond to the report of the C.E.C.

I.A. No. 1341 with I.As 1382, 1240, 1266 & 1299

Perused the letter circulated by learned counsel for the Administration of Andaman and Nicobar Islands in I.A. Nos.1341 & 1382.the applications are adjourned.

I.A. No. 1354 in I.A. No. 1154

The Ministry of Defence is granted further four weeks' time to file response to the recommendations of the C.E.C.

I.A. No. 1381

It is represented on behalf of the State Government that application for vacation of stay was filed in the High

Court on 02.09.2005 and time is sought to place on record a copy of the said application. We hope the High Court would expeditiously consider that application in accordance with law and pass appropriate orders. Meanwhile, as prayed by the private respondents, three weeks' time is granted to file response to the interlocutory application.

I.A. No. 972 in I.A. 757 with I.A. Nos. 789, 790, 962, 986, 1038-1041, 1042-1045 & 1217-1219

In terms of the order dated 19.04.2004, this Court directed the State Government of Rajasthan to constitute a committee comprising of three members in consultation with C.E.C. For the purpose of grant of permission for carrying out repairs or renovation of the existing structures within the municipal limits. The said committee was constituted on 23.02.2005. The committee should dispose of the pending applications preferably within a period of eight weeks. Issue notice to the respondents in I.A. No. 986. Response shall be filed within four weeks. The applicant in I.A. No. 1038-1041 is permitted to place on record a copy of the order passed by the committee within two weeks.

I.A. No. 976 in I.A. No. 727

We have perused the report of the C.E.C. dated 10.09.2003, the communication dated 04.07.2000 from the Financial Commissioner and Secretary, Department of Forests and Wildlife Preservation, Government of Punjab, seeking approval of the Central Government for exclusion of the land for cultivation and habitation from the category of forest and the communication dated 10.11.2000 sent by the Ministry of Environment and Forests to the Financial Commissioner & Secretary (Forests), Government of Punjab. We direct the Ministry of Environment & Forests to consider the proposal of the State of Punjab, as contained in communication dated 4th July, 2000, in accordance with the rules, procedure and guidelines laid down under the Forest Conservation Act, within eight weeks. The lands to be considered would be such lands, which are under bona fide agricultural use. List after eight weeks.

I.A. No. 1350 in I.A. Nos. 1190-1191

Counsel for the State of Orissa, as prayed, is permitted to file response to the recommendations of C.E.C. that applicant may be permitted to sell their stock of timber and get it sawn from any licenced saw mill, within four weeks. List thereafter I.A. NO.1351 IN I.A. NOS.1212-1213 IN W.P.(C)NO. 202/1995. The applicant Karnataka Power Corporation Limited is permitted to use the land in question for laying 220 KV double circuit transmission line, subject to complying with the conditions contained in the report of C.E.C. dated 16.07.2005 which read as :

i) Approval under the Forest (Conservation) Act, 1980 for use of forest land falling within the Banerghatta National Park will be obtained;

ii) An amount of Rs. One crore will be deposited by the Karnataka Power Transmission Corporation Limited in the Compensatory Afforestation Fund for conservation and protection of Bannerghatta National Park;

iii) The Karnataka Power Transmission Corporation Limited will comply with various conditions stipulated by the Ministry of Environment and Forests while granting approval under the Forest (Conservation) Act, 1980 and the conditions on which the Standing Committee of the NBWL has recommended the proposal." In addition to above, the applicant corporation shall give an undertaking to pay additional NPY as and when determined by this Court. The said undertaking shall be filed before C.E.C. within eight weeks.

I.A. No. 1355 in I.A. No. 548

MoEF may file response to the application within three weeks. Counsel for the applicant is permitted to make corrections in the application. List this application along with I.A. No. 703.

I.A. No. 1358 in I.A. No. 992 in W.P.(C) No. 202/1995

The applicant may file response to the recommendations within four weeks.

I.A. No. 1164 in I.A. No. 566

The FDR shall be renewed for a period of one year.

I.A. No.:	Order Date: 14.09.2005	
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I.A. No. 1316/2005 in I.A. No. 566/2002

List the application in the next sitting of Bench dealing the forest matter.

I.A. No.:	Order Date: 16.09.2005	
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I.A. No. 1349 in I.A. Nos. 1246-1247 & 1378-1380

The response to the report of C.E.C. dated 30.06.2005 shall be filed by the State of Madhya Pradesh, who is represented before us by the learned counsel, within four weeks. Copy of the report has been supplied. In so far as MoEF is concerned, it supports the conclusions and observations made by C.E.C. In the report. Pending further orders, no mining activity shall be carried out on the land said to have been handed over by the Forest Department to the Revenue Department of the State Government. Notice shall also issue to three lessees mentioned in the report of C.E.C.

I.A. No. 979 in I.A. Nos. 442-446, 1204, 1245 & 1357 I.A. Nos. 991, 1004, 1185

As prayed, counsel for the State of U.P. is permitted to file response to the recommendations of C.E.C. within four weeks. M/s. Fox Mandal & Co. is permitted to withdraw their vakalatnama filed on behalf of the applicant. Mr. John Mathew, learned counsel is permitted to file vakalatnama and also an additional affidavit on behalf of the applicant within four weeks.

I.A. No. 993 in I.A. Nos. 836-895 and 1281

List these applications on next Friday, the 23.09.2005

I.A. No. 1000 with 982-984, 1026-1028, 1123-1124

We have perused the affidavit-dated 14.09.2005 filed by Mr. Anurag Bajpai on behalf of MoEF and the statement showing the grant of Temporary Working Permit in the last two years, i.e., from 01.01.2003 to 31.12.2004 in the National Parks, Sanctuaries and forest area. This is despite the order passed by this Court restraining the mining activities in these areas. Learned Amicus Curiae submits that the inspection of the Government record shows a dismal picture and he would shortly file an application for taking appropriate action against the concerned persons. Pending filing of the said application and further orders, we again reiterate that without compliance of the environmental laws, in particular the permission under Forest (Conservation) Act, 1980, no Temporary Working Permission or Temporary Permit or any other permission

by whatever name called shall be granted for mining activities in the aforesaid areas. We further direct that no mining activity would continue under any Temporary Working Permit or Permission, which may have been granted. It appears from the chart filed with the affidavit of Mr. Anurag Bajpai that no Temporary Working Permission is operation as of today. If it is otherwise, an affidavit to that effect shall be filed within two weeks giving the particulars of such Permission.

I.A. Nos. 1197-1199 and 1210-1211

Response to these applications shall be filed by the State of Rajasthan and MoEF within three weeks. The MoEF is directed to place on record within three weeks its view point on the question of area of buffer zone and other related matters such as Should it be universal or place specific. This should be done after also obtaining the view point of National Board of Wildlife.

I.A. Nos. 1250-1251

Response by respondents shall be filed within three weeks.

I.A. Nos. 1315-1316 in I.A. No. 566

Counsel seeks passing of similar order that was passed on 12.05.2005 in I.A. Nos.1301-1302. Let MoEF and C.E.C. respond by next date. List these applications on next Friday.

I.A. No. 361 and I.A. No. 363 in W.P.(C) No. 3727/1985

The C.E.C. shall look into it and file its response within four weeks.

I.A. No.	Order Date: 26.09.2005	
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I.A. No. 826 in I.A. No. 566 with I.A. No. 932 in 819-821, 955, 958, 985, 1001-1001a, 1018-1014, 1016-1018, 1019, 1046, 1047, 1135-1136, 1137, 1164, 1180-1181 and 1182-1183, 1196, 1208-1209, 1222-1223, 1224-1225, 1229, 1233, 1248-1249, 1253, 1301-1302, 1303-1304, 1312, 1313, 1314, 1315-1316, 1318 and 1319

Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.

In tile present case, the question is about conservation, preservation and protection of forests and the ecology. When forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology, is the main question under consideration.

Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environment and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development

and environmental protection. Both have to go hand in hand. In ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long lasting. Such development would be counter productive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non forest use.

The point in issue is whether before diversion of forest land for non-forest purposes and consequential loss of benefits accruing from the forests should not the user agency of such land be required to compensate for the diversion. If so, should not the user Agency be required to make payment of Net Present Value (NPV) of such diverted land so as to utilize the amounts so received for getting back in long run the benefits which are lost by such diversion? What guidelines should be issued for determination of NPV? Should guidelines apply uniformly to all? How to calculate NPV? Should some projects be exempted from payment of NPV? These are the main aspects which require examination and determination in the backdrop of various legislations which we would presently notice.

The legislature to provide for conservation of forest and for matters connected therewith or ancillary or incidental thereto enacted the Forest (Conservation) Act, 1980 (for short, the FC Act'). It postulates that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. The Central Government under the FC Act has been empowered to constitute a Committee to advise it with regard to grant of approval. Under Section 2 of the Act the question of use of any forest land for non-forest purposes and any other matter connected with the conservation of forest may be referred to such a committee by the Central Government under the FC Act. The contravention of any of the provisions of Section 2 has been made an offence.

Noticing the decline in environment quality due to increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support system, the Environment (Protection) Act, 1986 (for short, the 'EP Act' has been enacted. It has been noted in the Statement of Objects and Reasons that although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment. The EP Act was, therefore, enacted to provide for protection and improvement of environment and for matters connected therewith. The Central Government has been given wide powers to take measures to protect and improve the environment as provided under Section 3 including the power to constitute an authority or authorities for the purpose of exercising and performing such of the powers and functions, including the power to issue directions under Section 5, of the Central Government under the Act and for taking measures with respect to such of the matters referred to in sub-section (2) of Section 3 as may be mentioned in the order and subject to the prejudice and control of the Central Government. Section 5 of the EP Act empowers the Central Government, in exercise of its powers and performance of its function under the Act, to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The Central Government has the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage of regulation of the supply of electricity or water or any other service.

Parliament has also enacted enactments to prevent and control water pollution and air pollution [The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981]

Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981]. A statement was placed before this Court by the Central Government showing the position as on 20.03.2000 of the cases approved for diverting forest lands, stipulation for compensatory afforestation under the FC Act and the compensatory afforestation done, funds to be utilized and actually utilized. The "Court noted the dismal situation as there was a shortfall to the extent of 36% of total afforestation compensatory or otherwise afforestation. It further noted that though funds had been realized by all the States in connection with such afforestation, a very large number of States had spent 50% or fewer amounts on afforestation. In this background, taking suo moto action, notices were directed to be issued to the States mentioned in the Order dated^ 17.04.2000 to explain as to why moneys realized have not been spent on carrying out afforestation.

On 23.11.2001 after considering the affidavits that had been filed, it was noted that large sums of money had been realized by various States from the user-agency to whom permits were granted to use forest land for non-forest purposes. The moneys were paid by user agencies to the state Governments for compensatory afforestation but the utilization was only about 83% of the funds actually realized by the State Governments, the shortfall being of nearly Rs.200 crores.

The Ministry of Environment and Forests (MoEF) was directed to formulate a scheme providing that whenever any permission is granted for change of use of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation, then the responsibility of the same should be that of user agency and it should be required to set apart a sum of money for doing the needful. In such a case the State Government will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user-agency or of the State Government, as the State Government may decide. It was decided that the scheme shall ensure that afforestation takes place as per the permissions which are granted and there should be no shortfall.

The scheme was submitted by MoEF alongwith an affidavit dated 22.03.2002.

The Central Empowered Committee (CEC) on consideration, of relevant material including the scheme submitted by MoEF made its report (IA 826) containing recommendations dated 09.08.2002. The report, taking note of the present system of compensatory afforestation as per guidelines issued by MoEF from time to time under the FC Act, the procedure for receipt and utilization of funds for compensatory afforestation, activities permissible under compensatory afforestation, adequate compensation for loss of forest land - recovery of Net Present Value, funds for catchment area, treatment plant and involvement of user-agency for compensatory afforestation, made the following recommendations:

- (a) in addition to the funds realized for compensatory afforestation, net present value of the forest land diverted for non-forestry purposes shall also be recovered from the user agencies, while according approval under the Forest (Conservation) Act, 1980;
- (b) 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area treatment Plan funds, etc. shall be deposited. The rules, procedure and composition of the 'body for management of the Compensatory Afforestation Fund shall be finalized by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month;

- (c) the funds received from the user-agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26A or 35 of the Wildlife (Protection) Act, 1972, for undertaking activities related to protection of biodiversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking 'protection and conservation activities in protected areas of the respective State/UT;
- (d) the amount received on account of compensatory afforestation but not spent or any balance amount lying with the State / UT or any amount that is yet to be recovered from the user agency shall also be deposited In this Fund?
- (e) besides artificial regeneration (plantations), the funds shall also be utilized for undertaking assisted natural regeneration, protection of forests and other related activities. For this-purpose, site specific plans should be prepared and Implemented in a time bound manner;
- (f) the user agencies especially the large public sector undertakings such as Power Grid Corporation, NTPC, etc., which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user-agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the MoEF with the concurrence of the Central Empowered Committee.

The aforesaid report, *inter alia*, notes that there was general consensus amongst the States/Union Territories that the present practice of concentrating only on artificial regeneration through plantations should be dispensed with as it does not adequately compensates the loss of natural forest and that a part of the fund should also be used for assisted natural regeneration wherein the natural forests are allowed to regenerate and grow by undertaking silvicultural and cultural operations such as fire tracing, singalling of seedlings, protection, etc. These activities help in regenerating the rootstock which may exists in the degraded forests. Besides, this helps in restoring the natural forests, which is not possible through plantations. It also noted that to compensate for the loss of tangible as well as intangible benefits flowing from the forest lands which has been diverted for non-forest use, the NPV of such land is being recovered .from the user agency in the States of Madhya Pradesh, Chhattisgarh and, Bihar. In the states of Madhya Pradesh, and Chhattisgarh, the NPV is being recovered at the rate of Rs. 5.80 lac per hectare to Rs.9.20 lac per hectare of the forest land depending upon the quality and density of the forest land diverted for non-forestry use. The underlying principle for recovery of NPV was that the plantations raised under the compensatory afforestation scheme could never adequately compensate for the loss of natural forests as the plantations require more time to mature and even then they are a poor substitute to natural forest. It noted that States/Union Territories as well as MoEF are of the view that in addition to the funds realized for compensatory afforestation, the NPV of the forest land being directed for non-forestry purposes should also be recovered from the user-agencies.

The MoEF, in principle, accepted the aforesaid recommendations of CEC. The order dated 29.10.2002 notices this fact. Further noticing that no other State had filed any response to the report of CEC, the Court presumed that the State Governments were also not opposed to the said report and have accepted the same in the same manner as Union of India. On detailed examination of the report, the recommendations of CEC were accepted and Union of India was directed to frame comprehensive rules with regard to the constitution of a body and management of the compensatory afforestation funds in concurrence with the CEC. It was directed that the compensatory afforestation funds which had not yet been realized by the States shall be transferred to the aforesaid body by respective States and the user agencies within six months of its constitution. In addition, while according approval under the FC Act for change in user, the user-agency shall also pay into the said fund, the NPV

of forest land diverted for non-forest purposes at the rate of Rs.5.80 lac per hectare to Rs.9.20 lac per hectare of forest land depending upon the quality and density of the land in question converted for non-forest use. The amount was subject to upward revision by the MoEF in consultation with CEC as and when necessary. The aforesaid recommendations of CEC were accepted.

An application (I.A. No.1046) was filed by the MoEF, inter alia, seeking directions that the NPV calculation shall be part of the detailed project report submitted to it for a forestry clearance under the FC Act. During the course of hearing, learned Solicitor General informed this Court that the Government was agreeable to the suggestions of CEC that money received from user-agencies for compensatory afforestation fund should be kept in an interest bearing account, though initially it had some reservations about it. Reference has also been made in the application about exemption being granted to some projects from payment of NPV, an aspect which we would consider later at an appropriate stage so also the basis of the calculation of the We may, however, note that although In the application it was stated that the format issued by the World Bank for calculation for NPV for the projects shall be the basis of its calculation, the learned Solicitor General stated that he was not relying upon the said format. Regarding the mining projects, the application mentions that there has to be difference in approach for mineral of high volume and low volume and low value and minerals of high value and low volume. It is stated that levying of flat rates of NPV per hectare basis will, therefore, not be rational. The application states that in case of mining, NPV should be calculated at the rate of 10% for the major minerals and 5% for the minor minerals to be levied on the annual royalty. An application (IA 1047) has also been filed by the Ministry of Mines, Government of India taking similar pleas as are taken in IA 1046 seeking directions that in mining NPV may be calculated at the rate of 10% and 5% as above noted.

Now, we may refer to Notification dated 23.04.2004 issued by MoEF in exercise of the powers conferred by sub-section (3) of Section 3 of the EP Act constituting an authority known as Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA') for the purpose of management of money towards compensatory afforestation, NPV and any other money recoverable in pursuance of this Court's order and in compliance of the conditions stipulated by the Central Government while according approval under the FC Act for non-forestry uses of the forest land. The Executive Body of the Authority comprises of the following:

- (i) Director General of Forests and Special Secretary, Ministry of Environment and Forests, Government of India - Chairperson
- (ii) Addl. Director General of Forests (Forests) Ministry of Environment and Forests, Government of India - Member
- (iii) Addl. Director General of Forests (Wildlife) - Member
- (iv) Inspector General of Forests (Forest Conservation), Ministry of Environment And Forests, Government of India - Member
- (v) Joint Secretary and Financial Advisor, Ministry of Environment and Forests, Government of India - Member
- (vi) Chief Executive Officer (CEO) - Member
- (vii) A professional ecologist, not being from The Central and State Government, for A period of two years at a time, for up Two consecutive terms." - Member

The powers and functions of the Executive Body are:

- (a) deployment of staff on contractual basis or on deputation;
- (b) financial procedure;
- (c) delegation of financial or administrative powers;
- (d) other day-to-day working in respect of receipts of funds;

- (e) investment of funds;
- (f) expenditure on establishment and other overheads including office accommodation subject to the approval of the annual budget by the Governing Body,"

The management of the fund is provided in clause 6.3 and the disbursement of the fund in clause 6.4 of the Notification. These clauses read as under:

6.3 Management of the Fund:

- i The amount collected by the CAMPA shall be invested in Reserve Bank of India, Nationalized Banks, Post Office, Government Securities, Government Bonds and deposits.
- ii The non-recurring as well as recurring cost for the management of CAMPA including the salary and allowances payable to its officers and staff shall be met by utilizing a part of the income by way of accused interest on the funds invested by the CAMPA excluding income from funds received as per para 6.2 (ii).
- iii The expenditure incurred on independent monitoring and evaluation shall be borne by the CAMPA out of the income by way of interest on the funds invested by the CAMPA excluding income from funds received as per para 6.2(iii).
- iv The CAMPA shall get the annual accounts audited internally as well as externally through chartered accountant(s) who are on the panel of the Comptroller and Auditor-General of India and the auditor(s) shall be selected on the approval of the Governing Body.

6.4 Disbursement of Funds:

- (i) The money received for compensatory afforestation, additional compensatory afforestation may be used as per the site specific schemes received from the States and Union Territories along with the proposals for diversion of forest land under the Forest (Conservation) Act, 1980.
- (ii) The money received towards Net Present Value (NPV) shall be used for natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities.
- (iii) Monies realized from the user agencies in pursuance of the Hon'ble Supreme Court's order or decision taken by the National Board for Wildlife involving cases of diversion of forest land in protected areas shall form the corpus and the income there from shall be used exclusively for undertaking protection and conservation activities in protected areas of the States and the Union Territories and in exceptional circumstances, a part of the corpus may also be used subject to prior approval of the CAMPA.
- (iv) CAMPA shall release monies to concerned State and Union Territory in predetermined installments through the State Level Management Committee as per the Annual Plan of Operation (APO) finalized by the concerned State and the Union Territory.
- (v) The monies, received in CAMPA from a State or the Union Territory as per para 6.2 and the income thereon after deducting expenditure incurred by the CAMPA on its establishment cost, monitoring and evaluation on a prorata basis shall be used only in that particular State or the union Territory."

Clause 6.6 provides for other functions and reads thus:

- (i) The CAMPA may establish Special Purpose Vehicles (SPV) for undertaking compensatory afforestation particularly by involving large public sector undertakings which frequently require forests and for their

projects, in consultation and as far as possible with the concurrence of the CEC.

- (ii) The CAMPA may also consider evolving new mechanism to generate additional sources of fund for forest conservation works and to create capacity and data base for better conceptualization and management of fund."

Having regard to the nature of the functions of the Executive Body of the CAMPA, we find substance in the suggestion of learned Amicus Curiae that there should be more involvement of NGOs by including in the Executive Body, the conservationists, environmentalists, economists and experts in forestry. We are of the view that the Executive Body deserves to be expanded as, presently, only one professional ecologist is its member, remaining all being officers of the Government. We may note here that a forthright and fair stand was taken by the learned Solicitor General not only in regard to the constitution of CAMPA but on other aspects also, keeping in view the non-adversarial nature of the litigation. Learned Solicitor General submitted that the Government is committed to conserve the forest and protect the environments, and would implement, in letter and spirit, the directions issued by this Court.

In view of above, we direct that clause 2.2 shall be suitably amended so as to include two more environmentalists, one of whom may be expert in the field of forest and the other in the field of forest economy development. These members shall be included in the Executive Body in consultation with the Chairperson of the CEC.

Regarding clause 6.3(iv), it was suggested that there should be corporate accounting based on double entry system and auditing should be conducted by the Comptroller and Auditor-General (CAG). We see substance in this suggestion as well.

Clause (v) in 6.4 provides that the monies received in CAMPA shall be used only in that particular State or Union Territory. The clause seems to be too rigid. Many a times, the effect of degradation of environment or depletion of forest can be felt more in the adjoining area which may be in a differed State or Union Territory. The effect of environmental degradation cannot be restricted to a particular area. The impact cannot be limited to the place of origin. Therefore, we direct that a suitable modification of the clause shall be made so as to provide that ordinarily expenditure shall be incurred in the particular State or Union Territory but leaving it to the discretion of the CAMPA to also incur expenditure in the State or Union Territory other than the one mentioned in clause .6.2 if it considers it necessary.

Clause 6.6 which by use of the word 'may' leaves it to the discretion of the CAMPA to establish Special Performance Vehicle (SPV) for undertaking compensatory afforestation deserves to be amended so as to substitute the word 'may' by the word 'shall' so that the regeneration is done by some SPV in specified areas.

Now, we come to the question of the guiding principle to be laid for determining the NPV. Reference was made to opinions of various experts laying down as to what is the concept of NPV and how it is to be calculated. The question is also about the legal and jurisdictional basis to levy NPV. Most of the States did not object to the recovery of the NPV from the user-agency but strenuously urged that since the land under the forest belongs to the State, the amount deposited by the user-agency as NPV shall be paid to them. It was also contended on behalf of the States that there should be no NPV on degraded forest. The further submission was that all public utility projects shall be exempted from payment of NPV. On the other hand, relying upon the principles of inter-generational equity and sustainable development, Mr. Harish Salve, learned senior counsel and Amicus Curiae contended that forest is a part of ecosystem and, therefore, the value to be put and calculated is not only on trees and leaves but the basis has to be the preservation of bio-diversity. It is submitted that NPV is to be levied and

collected not because property rights of the States are affected but on account of effect on ecology by conversion of forest land for non-forest purpose. Further, Mr. Salve submits that the basis for calculation of NPV should be the economic value, spread over a period of 50 years, which would be regenerative value for forest regeneration to be taken into account as opposed to restoration value, i.e., financial value. Regarding legal and jurisdictional basis to levy NPV, Mr. Salve contended that there are various legal principles which act as source of power to levy NPV. In this regard, reference has been made to provision of the FC Act, EP Act and Forest Policy of 1988. It is contended that these enactments and the policy are the measures taken by the legislature and the Government to discharge the constitutional obligation to protect the environments. Reliance is also placed upon the doctrine of public trust, which learned counsel submits is a constitutional doctrine.

First, we may consider the meaning of NPV and determine what is NPV.

The NPV is the present value (PV) of net cash flow from a project, discounted by the cost of capital.

Forestry is a public project, it is important to bear in mind that a benefit received today is worth more than that received later. The benefit received today is in fact 'cost incurred', today. Time value of the cash inflow/outflow is important in investment appraisal. NPV is a method by which future expenditures (costs) and benefit are levelised in order to account for the time value of money. The object behind NPV is to levelise costs. What is the value of Rupee today would not be the value of Rupee say 50 years later. For example, let us have the starting point of value of Rupee in India in the year 2005 and analyse it with the value of Rupee that may be in the year 2050. Cost incurred or to be incurred in 2050 have to be discounted by using appropriate parameters like rate of discount, gestation period, ratio of deflators to GDP. Therefore, expenses incurred in each year between say 2005 and 2050 have to be brought down to their present values by using appropriate discount rate in the NPV.

The project like forestry has long gestation period of 40-50 years. It goes through cost cycles each year depending upon inflation, rate of interest, internal rate of return etc. Therefore, costs for the year 2005 will differ from the cost of 2006 and cost of 2006 will differ from that of the year 2007 and so on and so forth. However, this constitutes what is called as conventional method of accounting cost which does not take into account social and economic cost of diversion of forest.

Cost is a function of the discount rate (a measure of the value of capital) used. Under NPV, all costs are discounted to some reference date which we have taken as 2005 for illustration. The total cost reckoned at this reference date is the sum of present value or future value of "costs discounted to the year 2005. Similarly, one can calculate the present value of the revenues from the expected benefits of forest regeneration.

The question then is why charge NPV. In the case of a conventional project like Hydro-electric Project, the accounting procedure is normally based on Return on Investment (ROI) in which the unit cost of energy includes return on capital, investment, depreciation of capital, annual fuel cost and operational and maintenance costs. However, ROI excludes the time value of money. It also excludes the gestation period of the project. Therefore, we have the NPV method which discounts future costs and future benefits by use of appropriate discount rate and brings down such costs and benefits to the reference date which in the present case has been assumed to be the year 2005.

The question, which we have to answer, is concerning the relevance of fixing appropriate discount rate in valuation of the costs and benefits arising from forestry as a project.

The value of any asset is discounted by present value of the economic benefits it will generate in future years. For

example, timber asset value is the discounted future stumpage price for mature timber after deducting costs of bringing the timber to maturity. NPV is one of the methods for valuation of standing timber. The general expression V for the value of an asset, in the base year O , is simply the sum of the net economic benefits it yields in each year over the life time, T , of the Asset, discounted to the present value by the discounted rate.

The current method of valuing public sector projects, like forestry, has become contentious as public sector undertakings agree for lower discount rate on account of long gestation period. However, the flaw with this argument is that the low rate of return is computed without including the intangible or environmental impacts/benefits emanating from forest.

How does one value the intangibles? There are several methods, viz., opportunity cost, replacement cost, travel cost, contingent value method (CVM) and social benefit cost analysis (SBCA).

SBCA can be applied to the evaluation of environmental impacts of forestry projects. Here, one must appreciate that the environmental outputs from forests appear as public goods for which there is no market. Various environmental outputs can be classified into this category, namely,

- Flood Control Benefits,
- Water Production
- Soil Conservation
- Outdoor Recreation
- Biodiversity & Conservation
- Habitat
- Air Purification

The problem in valuation of the above outputs is: allocation of fixed costs according to the contribution of each product in total revenue. This is because except contribution of timber product, contribution of the other above-noted outputs is not known, especially intangible outputs. However, under SBCA, benefits from each of the above environmental outputs are identifiable. For example, flood control benefits arise because of the role of forests as stream regulator. Similarly, valuation method for each of the above outputs differs. In valuing biodiversity, CVM is useful. SBCA is helpful in placing monetary value on carbon storage on air purification.

The point is that for each of the above functions of the forests, different methods of valuation have to be applied. Various methods have been used to estimate the value of environment like CVM, Opportunity Cost Method, Travel Cost Method, SBCA etc. It would be appropriate if body of experts examine the aspect and report to this Court suggesting the best method depending on factors like gestation period, rate of discount (interest), density of the forest, social benefits of the project undertaken by PSU etc. They will take into account economic values associated with forests, viz., direct use values, indirect use values such as value of environmental benefits from the forest, option values and existence value.

The above discussion shows that NPV helps levelising the costs of public projects like forestry. It is an important tool of SBCA. Under SBCA, benefits from each of the above environmental outputs are identifiable. Hence, applying NPV, one can allocate levelised costs according to the contribution of each product in the total revenue. It is important to bear in mind that a benefit or cost received or incurred now is worth more than that received or incurred later. Therefore, using the appropriate discount rate helps to aggregate marginal benefits and costs. The choice of interest rate depends upon time preference. For public project, such as forestry, a social discount rate, which indicates time preference of the society, should be used.

Forest sustainability is an integral part of forest management and policy that also has a unique dominating feature and calls for forest owners and society to make a long-term (50 years or longer) commitment to manage the forest for future generation. One of the viewpoints for sustaining forest is a naturally functioning forest ecosystem. This view point takes a man and nature relationship to the point of endorsing to, the extent possible, the notion of letting forest develop and process without significant human intervention. A strong adoption of the naturalistic value system that whatever nature does is better than what humans do, this is almost the "nature dominates man" perspective. Parks and natural reserve creations, non-intervention in insect, disease and fire process; and reduction of human activities are typical policy situation. This viewpoint has been endorsed by 1988 Forest Policy of Government of India.

Yet another viewpoint recognizes the pragmatic reality faced by the governments and the administrative, namely, trees don't vote while people do. Some of the criteria reflecting key elements of ecological, economic and social sustainability are:

1. Conservation of biological diversity.
2. Maintenance of productive capacity of forest ecosystems.
3. Maintenance of forest ecosystem health and vitality.
4. Conservation and maintenance of soil and water resources.
5. Maintenance of forest contribution to global carbon cycles.
6. Maintenance and enhancement of long-term multiple socio-economic benefits to meet the needs of societies.
7. Legal, institutional and economic framework for forest conservation and sustainable management.

An expert dealing with principles and applications of forest valuation, on the aspect of value of inputs and outcomes and conditions, says:

"Decision making in forest management requires that we understand the relative values of inputs, outcomes, and conditions. Cost values for inputs such as labour, capital, interest, supplies, legal advice, trades, and other management activities as well as the market value of existing timber stands are relatively easy to obtain. Outcomes or resulting condition values are more difficult, but we need measures of the values of timberland, recreation, water, wildlife, visual amenities, biodiversity, environmental services, and ecological process to help guide management decisions. By understanding market, social and other values of forests, we can better allocate our scarce and valuable resources to attain the desired mix of outcomes and conditions."

The emphasis is on ecosystem, management philosophy that has greater emphasis on integration, biological diversity and ecological processes.

In respect of working economic values of the outcome, it is said:

"In real world forest management situations, decision makers are faced with several alternatives and potentially large sets of criteria related to the ecological, economic and social impacts of these alternatives. It would be very easy to generate a nearly incomprehensible table that documented every physical, biological, economic, and social outcome and condition resulting from each management alternative. Such information could include outcome levels for water yield, sediment production, and timber growth; population trends for important wildlife species, and recreation use for backcountry and developed recreation sites. Similarly, information on the economic value of these outcomes can be estimated by means of the methods discussed in chapter 8 and added to our impact table. To this avalanche of information, we could add the impacts on the social well-being of local and regional communities. The forest management analyst can easily overwhelm the decision makers and stakeholders with information".

Dealing with fundamental of decision analyses to achieve ecological, economic and social goals, it is said that what is to be broadly kept in view is

"Ecological and environmental goals are important to forest managers, landowners, and their stakeholders, we need information about how decision alternatives affect such goals. These goals can be broadly stated as

1. Maintaining and enhancing forest productivity
2. Conservation of biological diversity
3. Protecting and enhancing environmental conditions."

The aforesaid also shows that NPV as a tool of SBCA is required to be based on Total Economic Value (TEV). It indicates the components of TEV It further shows what are the type of agency or experts which are required to examine these issues.

Dealing with co-relation between economics and environmental management, in 'Environmental Economics in practice' edited by Mr. Gopal K. Kadekodi in his write up through case studies, answers the question as to what has economics got to do with environmental management. The author says that economics is the science of explaining the behaviour of different agents who take part in production, consumption and distribution activities in the economy and make decisions regarding the use of resources. That, environmental economics focuses on market and non-market behaviour of different agents in the society regarding natural and environmental resources, viewed from intergenerational. inter-temporal and different institutional frameworks. (Emphasis supplied by us)

It is further stated that one of the major branches of economic theory is the 'theory of value'. Economic theory always makes a distinction between value and price. Answering the question as to why value natural resources specifically, it is stated that one reason is that there is no market for ecosystem services such as nutritional cycle, carbon sequestration, watershed functions, temperature control, soil conservation etc. It is also stated that assuming there are markets, they do not do their job well. This market may be regulated one. There may be restrictions on entry as a result of licensing or rationing introduced by the Government. For the above reasons, it is concluded that valuation beyond the present is necessary and for natural resource Accounting NPV method is a must.

Mr. Salve advocates for Total Economic Value (TEV) on the ground that TEV expresses the full range of value or benefits - both tangible and intangible. Basically, it is understood that natural and environmental resources provide several 'use values' and non-use values' to enhance human welfare and provide sustainability to all lives (often termed as anthropogenic values). Conceptually, it is the sum of use values (UV).and non-use value (NUV) which constitutes the TEV. Further elaborations UV, option value (OV) non-use value (NUV) etc. have been given. The UV, it is stated, can be further broadly classified into three groups - direct, indirect and option values. Direct Use Values (DUV) refer to the current use (consumption) of the resources and services provided directly by natural and environmental resources Examples are the use of timber and non-timber forest products. Recreation (tourism to wildlife sanctuaries or Himalayan Glaciers, mountains), education, research etc., are examples of direct non-consumptive use values. Indirect Use Values (IUV) generally are referred to the ecological functions that natural resource environments provide. It can be broadly classified into three groups - watershed values, ecosystem services and evolutionary processes. The Optional Value (OV) is associated with the benefits received by retaining the option of using a resource (say a river basin) in the future by protecting or preserving it today, when its future demand and supply is uncertain. Take the example of the Narmada river basin.

It is not necessary to delve further in this matter since ultimately it would be for the experts to examine and assist this Court as to the Model to be adopted for valuation, namely. TEV, CVM, SBCA etc. It is for the experts to tell

us as to what NPV-should be applied in case of mines and different types of forests. We may only note that basis of these valuations is the theory of sustainable development, i.e., development that meets the needs of the present without compromising with, the ability of future generations to meet their own needs. Despite various elaborations, definition of sustainable development, though very old still is widely accepted world over and has been reiterated by this Court in catena of cases.

Regarding the parameters for valuation of loss of forest, we may only note as to what is stated by Ministry of Environment and Forests, Government in its handbook laying down guidelines and clarifications upto June 2004 while considering the grant of approval under Section 2 of the FC Act. Dealing with environmental losses (soil erosion, effect on hydrological cycle, wildlife habitat, microclimate upsetting of ecological balance), the guidelines provide that though technical judgment would be primarily applied in determining the losses, as a thumb rule, the environmental value of one hectare of fully stocked forest (density 1.0) would be taken as Rs. 126.74 lakhs to accrue over a period of 50 years. The value will reduce with density, for example, if density is 0.4, the value will work out at Rs. 50,696 lakhs. So, if a project which requires deforestation of 1 hectare of forest of density 0.4 gives monetary returns worth over Rs. 50,696 lakhs over period of 50 years, may be considered to give a positive cost benefit ratio. The figure of assumed environmental value will change if there is an increase in bank rate; the change will be proportional to percentage increase in the bank rate. Ms. Kanchan Chopra, while conducting the case study of Keoladeo National Park in respect of economic valuation of biodiversity at the institute of economic growth, Delhi as a part of the Capacity 21 project sponsored by the UNDP and MoFF, Government of India examined the question as to what kind of values are to be taken into consideration. As per the study, different components of biodiversity system possess different kinds of value (1) a commodity value (as for instance the value of grass in a park), (2) an amenity value (the recreation value of the park) and/or (3) a moral value (the right of the flora and fauna of the park to exist). It is recognized that it is difficult to value ecosystem, since it possesses a large, number of characteristic, more than just market oriented ones. It also leads to the need to carry out bio-diversity valuation both in terms of its market linkage and the existence value outside the market as considered relevant by a set of pre-identified stakeholders. It is, however, evident that while working out bio-diversity valuation, it is not trees and the leaves but is much more. Various techniques for valuing biodiversity that have been developed to assess the value of living resources and habitats rich in such resources have been considered by the author for her case study while considering the aspect of value, their nature and stakeholders interest. In so far as the value of ecology function in which the stakeholders or scientists, tourists, village residents, non-users, the nature of value is regulation of water, nutrient cycle, flood control. These instances have been noted to highlight the importance of the biodiversity valuation to protect the environments. The conclusions and the policy recommendations of the author are:

"Biodiversity valuation has important implications for decision making with respect to alternative uses of land, water and biological resources. Since all value does not get reflected in markets, its valuation also raises methodological problems regarding the kinds of value that are being captured by the particular technique being used. Simultaneously, in the context of a developing country, it is important to evolve methods of management that enable self-financing mechanisms of conservation. This implies that biodiversity value for which a market exists must be taken note of, while simultaneously making sure that the natural capital inherent in biodiversity rich areas is preserved and values which are crucial for some stakeholders but cannot be expressed in the market are reflected in societal decision making.

A focus on both the above aspects is necessary. It is important to take note of the nature of market demand for aspects of biodiversity that stakeholders, such as tourists, express a revealed preference for by way of paying a price for it. Simultaneously, it is important to examine the extent to which a convergence or divergence exists between value perceptions of this and other categories of stakeholders. It is in this spirit that two alternative methodologies are used here to arrive at an economic valuation of biodiversity in Keoladeo National Park. The

travel-cost methodology captures the market-linked values of tourism and recreation. It throws up the following policy implications:

1. Keeping in mind the location of the park and the consequent joint product nature of its services, cost incurred locally is a better index of the price paid by tourists. It is found that demand for tourism services is fairly insensitive to price. A redistribution of the benefits and costs of the park through an increase in entry fee would not affect the demand for its services.
2. Cross-substitution between different categories of stakeholders can improve the financial management of the wetland. A part of the proceeds can go to the local management. Also, high-income tourists, scientists and even non-users with a stake in preservation can pay for or compensate low-income stakeholders for possible loss in welfare due to limits on extraction and use.
3. However, the limit to such a policy is determined by the number of visitors and their possible impact on the health of the wetland. Such a constraint did not appear to be operational in the context of the present park.

Identification and ranking of values of different aspects of biodiversity resources as perceived and expressed by different categories of stakeholders namely scientists, tourists, local villagers and non-users is an important object in the process of valuation. In the KNP study, a fair degree of congruence with respect of ecological function value and livelihood value is discovered to exist in the perceptions of diverse groups. Stakeholders as diverse as scientists, tourists, local villagers and non-users give high rankings to these uses."

Next question is to which expert reference shall be made. Counsel for parties agree that Institute of Medical Economic Growth is an institute of eminence having been set up about half a century earlier. It has also been pointed out that this Institute is getting regular maintenance and development grant from Indian Council of Social Sciences research (ICSSR). Further, it appears that the Institute is also receiving research and training grants from Ministry of Finance, Ministry of Health and Family Welfare and Ministry of Agriculture, besides National Bank for Agriculture and Rural Development. We have been informed that eminent faculty members in the institute are engaged in the field of research and Ms. Kanchan Chopra, (Ph.D. Economics, University of Delhi) is one such faculty member and her field of specialization is resources and environmental economics, agriculture and rural development and project evaluation. The matter deserves to be referred to a committee of experts in respect whereof we will in latter part of the judgment issue appropriate directions.

Next, we will deal with the contention of. Mr. Venugopal who, appearing for State of Kerala, submitted that the State has no objection to the levy of NPV but the amount so received should come to the State. Referring to Notification dated 23.04.2004 constituting CAMPA, learned counsel contended that clause 6.4 of the said Notification, which deals with disbursement of the funds, does not envisage the amount being disbursed to the State Government. Learned senior counsel also challenged the constitutional validity of the Notification. The contention put forth is that the Notification does not have any Parliamentary or Legislative control. Referring to various clauses of the notification, it was contended that fund sought to be created under CAMPA lacks accountability and puts aside financial control. There is a total lack of financial discipline which, learned counsel contends, is against the constitutional framework. It was further contended that the forests vest in the Government; the same are State properties and, therefore, all amounts received shall go to Consolidated Fund of India or Consolidated Fund of the State or to Public Funds, as the case may be. Reference has also been made to the provisions of the Comptroller and Auditor-General (Duties, Powers and Conditions of Service) Act, 1971 (for short, the 'CAG Act) and the submission is that no provision under the Notification shows that the account can be subjected to audit under the CAG Act. The contention, in short, is that constitutionally it is not permissible to any person or authority

to hold funds collect on behalf of the Government. This is basis for urging that the Notification dated 23.04.2004 is unconstitutional.

For examining the nature of the fund sought to be regulated by CAMPA, brief reference is necessary to be made to some of constitutional provisions.

Article 110 in so far as the Parliament is concerned and Article 199 in so far as the State is concerned, while defining Money Bills make a Jeemmg provision for certain contingencies. Article 110(1) (f) and Article 199(1)(f) read as under:

"110. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

(a) to (d)....

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

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199. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the, following matters, namely :

(a) to (d)...

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or"

The contention is that Notification constituting CAMPA shall be deemed to be a Money Bill.

Articles 294 and 295 deal with succession to property, assets, rights, liabilities and obligations in certain cases as from the commencement of the Constitution of India, providing for vesting of the properties and assets m the Union and in the States. These articles were referred to contend that forest is the property and asset of the State.

Article 266 deals with Consolidated Fund of India and of the States. Article 283 deals with custody of the consolidated funds, contingency funds and the moneys credited to the public accounts. Article 284.deal with other monies received by public servants in courts and postulates the same shall be paid into the public account of India or the public account of the State, as the case may be.

Article 266(1) deals with all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and likewise the sum received by Government of State shall form one consolidated fund to be entitled "the Consolidated Fund of the State". Article 266(2) stipulates that all other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

Third category of receipt is in terms of Article 284 which is required to be paid into the public account of India or

the public account of the State, as the case may be.

Chapter III of CAG Act deals with duties and powers of the Comptroller and Auditor-General. Section 10 thereof deals with compilation of accounts of Union and the States by CAG. Under Section 11, the CAG is required to prepare and submit accounts to the President, Governors of State and Administrators of Union Territories having Legislative Assemblies. Under Section 12, CAG is required to give information and render assistance to the Union Government and the State Governments. Section 13 sets out general provisions relating to audit. Under this provision, it shall be the duty of the CAG to audit all expenditure from the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it; to audit all transactions of the Union and of the State relating to contingency funds and public account; to audit all trading, manufacturing, profit and loss accounts and balance sheet and other subsidiary accounts kept in any department of the union or of a state; and in each case to report on the expenditure, transactions or accounts so audited by him. Section 14 of CAG Act deals with audit of receipts and expenditure of bodies and authorities substantially financed from Union or State revenues. Section 15 provides for the functions of CAG in the case of the grants or loans given to other authorities or bodies. Section 16 deals with audit of receipts of Union or of States and Section 17 with audit of accounts of stores and stock. Section 18 provides for the powers of CAG in connection with audit and accounts. The audit of Government companies and corporations by CAG is dealt with under Section 19. Section 20 is in the nature of a residuary provision providing that CAG, if requested by the President of India or the Governor of the State or the Administrator of Union or Territory having a Legislative Assembly to undertake the audit of the accounts of such other body or authority of which audit has been entrusted to CAG, the CAG shall undertake such audit. Chapter III shows the responsibility of CAG to conduct audit in the manner provided in the law or on request made for the audit in the manner provided under Section 20.

Relying on aforesaid constitutional provisions and also of CAG Act, it was contended that the notification constituting CAMPA is unconstitutional as it does not stipulate that the amounts collected on behalf of Government shall go to the relevant consolidation fund or to public fund. Further, no provision has been made for audit under the CAT Act. To examine this contention, it is necessary to determine the nature of Fund dealt with by CAMPA.

The background under which the fund came to be created has already been noted. Noticing fast depletion of forests, the fund was ordered to be utilized for protection of forests and environments. The environments are not the State property and are national asset. It is the obligation of all to conserve the environments and for its utilization, it is necessary to have regard to the principles of sustainable development and inter-generational equity.

Reverting now specifically to forests, if it becomes necessary for economic development to use the same for non-forest purpose, then before grant of permission for diversion of forest land, there should be some scheme where under loss occurring due to such diversion can be made up by adopting both short term measures as well as long term measures one of it being a regeneration programme. Natural regeneration is a long process. It requires huge amounts. It requires a policy and direction. It requires proper use of funds for regeneration of depleted forest and ecology. The natural resources like forests are in trust with the present generation. In this light, various statutes noted above have been enacted by the Parliament. Keeping in view the letter and spirit of those statutes and constitutional provisions, the legality of CAMPA and the power to issue directions for natural regeneration and utilization of funds is required to be appreciated. The body set up or fund generated to protect ecology and provide for regeneration cannot in constitutional scheme of things be considered and treated as a fund under Article 266 or Article 283 or Article 284 of the Constitution of India. When seen in this light, neither Article 110 nor Article 199 and/or Article 294 or 195 would have any application.

There is an additional reason for the view that NPV will not fall under Article 110 or 199 or 195 of the Constitution. Our constitution draws a distinct line between a "TAX" and a "FEE". In case of *Ratilal Panachand Gandhi v. State of Bombay & Ors.* [1954 SCR 1055], one of the questions which arose for determination was regarding constitutional validity of Section 58 of Bombay Public Trust Act, 1950. That section makes it obligatory on every Public Trust to pay to the Administration Fund a contribution at such time and in such manner as may be prescribed. Under the rules, the contribution was fixed at the rate of 2% per annum upon the gross annual income of every Public Trust. Failure to pay such contribution was made liable to penalty under Section 66 of the Act. It was contended on behalf of the Trustees that the levy of contribution under Section 58 was in substance the levy of a tax, it was beyond the competence of the State legislature to enact such a provision. This argument was rejected by this Court by holding that the Administration Fund constituted under Section 57 of Bombay Public Trust Act was a Special Fund which was to be applied exclusively for payment of charges for expenses incidental to the regulation of Public trusts and in carrying into effect the provisions of the Act. Under Section 57 Special Fund vested in the Charity Commissioner. That Fund was set up from the charges levied on various Trusts in the State. The Fund was to be managed by the Charity Commissioner. All investments were to be made by the Charity Commissioner. All investments were to be made by him in the manner prescribed by the rules. The collections of these charges, deployed in the Special Fund, were not merged in the general revenue, but these collections were earmarked and set apart for the purposes of the Act. This Court further noticed that the Charity Commissioner and the servants appointed under the Act drew their salary from the Consolidated Fund of the State. However, this Court observed that Section 57 was enacted to facilitate the Administration and not with a view to mix up the Fund with the general revenue collected for government purposes. Therefore, this Court held that Public Trusts Administration Fund was set up to meet all expenses of the administration of Trust property within the scheme of the Act and it is to meet such expenses that they levy was made and collections were effected. Therefore, this Court held that such payments were levied for rendering service which the State considers beneficial in public interest. In the circumstances, it was held that Section 57 and Section 58 of the 1950 Act were not ultra vires the State legislature because they did not levy a tax but they levied a fee which came within Entry 47 of List III of Seventh Schedule to the Constitution, which reads as under:

"47. Fees in respect of any of the matters in this • List, but not including fees taken in any court."

Thus reading Entry 47 with Entry 20 of the same List, the imposition of NPV is a charge or a fee which falls within Entry 47 read with Entry 20 of List III of Seventh Schedule to the Constitution. The Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted.

To sustain ecological, economic and social values, in so far as forests are concerned, primarily, it is a question of Forest Management. In the introduction chapter of Forest Management, Fourth Edition, co-authored by Lawrence S. Davis, Professor Emeritus, University of California-Berkeley, K. Norman Johnson, Oregon State University, Peter S. Bettinger, Oregon State University and Theodore E. Howard, University of New Hampshire, authors have said that "forest management remains the attempt to guide forests toward a society's goals. A forest manager is the catalyst of this effort. As such, the manager needs an earthy understanding of biological process; a knowledge of animals and their habitats; an appreciation of streams and their environments; the long-range viewpoint of a planner; the patience of a labour negotiator, the skills of an administrator; and the alertness, flexibility and all-round resourcefulness of a successful business executive. Above all, the forest manager requires a genuine sense and feeling for the forest as an entity." This objective is to be borne in mind while considering the question of ecology as opposed to mere compensatory afforestation. Compensatory afforestation is only a small portion in the long range efforts in the field of regeneration. It has been said that recognizing the aforesaid uniqueness while applying the principles of management is the heart of forest management.

Forest Management planning involves a blend of ecological, economic and social systems with the economic and social sides of planning often just as complex as the ecological sides. Table 1.1 gives examples of decisions needed in the management of forest as under:

"Table 1.1. Examples of decisions needed in the management of forests

Type of decision	Example
Extent and distribution of Wilderness reserves	
Management emphases for areas where active management will occur	Big game emphasis, high-intensity timber production, scenic areas
Types of activities allowed	Timber harvest, prescribed fire
Aggregate harvest level over time	Evenflow, nondeclining yield
Silvicultural system	Even-aged, uneven-aged
Age structure of forest	Areas by 10-year age classes
Size and shape of treatment units	Small units versus large units
Spatial pattern of treatment units	Concentrated or dispersed cutting blocks
Protection strategy	Wildfire suppression policy
Vertical and horizontal diversity/stand density	Approach to partial cutting and prescribed burning
Regeneration harvest timing	Rotation age (even-aged), cutting cycle (uneven-aged)
Regeneration method	Clearcutting, clearcutting withleave -trees, shelterwood, selection, prescribed fire, natural disturbance."

When permission is granted by the Government of India to use the forest land for non-forest purposes, it is not unconditional. Conditions are attached mainly with a view to protect the environments and to make good the loss likely to occur by grant of such permission. The payment into such a fund or imposition of conditions are for the protection of natural resources. The Notification dated 23.04.2004 sets up a body to which payment is made so that the said body can carry out the statutory and constitutional obligations. Since the amount does not go to the accounts postulated by Article 283, the said provision shall have no application. Similarly, the provisions of the CAG Act would also have no application. At the same time, it may be noted that clause 6.3 stipulates the audit through Chartered Accountants on the panel of CAG. In order to provide for financial discipline, transparency and accountability, it would be appropriate to provide for corporate accounting on the principles of double entry system. We are further of the view that the accounts of the Fund shall be subjected to internal Statutory Audit, the Statutory Auditors to be taken from the panel of CAG. The internal audit shall be conducted every six months.

The duty to preserve natural resources in pristine purity has been highlighted in *M.C. Mehta v. Kaml Nath & Ors.* [(1997) 1 SCC 388]. After considering the opinion of various renowned authors and decisions rendered by other countries as well on environment and ecology, this Court held that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land. The Court accepted the applicability of public trust doctrine and held that it was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These natural resources have a great importance to the people as a whole that it would wholly unjustified making them subject to private ownership. These resources being a gift of nature should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon

the Governments to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It was held that our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of these resources. The State as a trustee is under a legal duty to protect these natural resources. Summing up the Court said:

"We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

In view of above, we hold that the natural resources are not ownership of any one State or individual, public at large is its beneficiary and. there-fore, the contention of Mr. Venugopal that the amount of NPV shall be made over to the State Government cannot be accepted.

The Indian Forest Act was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. The focus of this Act is on the proprietary rights. Section 3 empowers the State Government to constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled in a reserved forest in the manner provided in the Act. As provided in Section 5, no right can be acquired over the land in respect whereof notification has been issued under Section 4. In the manner provided in Section 11, the Forest Settlement Officer is empowered to acquire the land. Section 20 provides for declaration of reserved forest. No right in or over a reserved forest can be acquired, as provided in Section 23. Acts prohibited in respect of forests have been incorporated in Section 25. Section 29 deals with declaration of protect forest and Section 30 empowers the State Government to issue notification reserving trees etc. in a protected forest. The power of the State Government for protection of forest has been provided in Section 35. The power to impose duty on timber and other forest produce is contained in Section 39 of the Act.

From the above, it can be seen that scheme of 1927 Act is a State management and regulation of the forest. On the assumption that local communities were incapable of scientific management of forest, the British Government introduced Forest Policy and Management by setting up a forest department and enacting the Indian Forest Act, 1878 which was amended from time to time. By passage of time, it was found that the provisions of the said Act were not adequate and, thus, in order to consolidate the law relating to forest, the transit of forest produce and the duty leviable for timber and other forest produce, the Indian Forest Act, 1927 was enacted. To further tighten the management and regulation, the FC Act of 1980 was enacted. It became necessary for conservation of forest on realizing that there has been large scale of deforestation which is causing ecological imbalance leading to environmental deterioration. This led to enactment of the FC Act providing for prohibition for use of forest land for non-forest purpose by anyone including the State Government or other authorities except with the prior approval of the Central Government. This legislature was enacted, as already noted, after Forest and Wildlife were taken out from the State list and placed in the Concurrent list. At the same time, Article 48A was

inserted in the Constitution of India for protection and improvement of environments and safeguarding forest and wildlife in the year 1977.

The basic objectives leading to the laying down of the National Forest Policy, 1988 may also be noted and also the need and requirement for its enforcement. This policy was framed on realizing that 1952 Forest Policy for the management of State forest in the country had not halted the depletion of forests. It was, therefore, considered necessary to evolve a fresh policy for future to lay down new strategies of forest conservation which had become imperative. Conservation includes preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. The principal aim of the forest policy is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

The forest policy has a statutory flavour. The non-fulfillment of aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution. The basic objectives of the Forest Policy, 1988 are:

"2.1 The basic objectives that should govern the National Forest Policy are the following:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of silting of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilization of forest produce and maximum substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimize pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim."

It has been recognized that one of the essentials for forest management is the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas to be strengthened and extended adequately.

The strategy under the Forest Policy is to have a minimum of one-third of the total land area of the country under forest or tree-cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile ecosystem. Clause 4.3 lays down the aspects of management of State forests. It would be instructive to reproduce hereunder certain parts of the Policy with a view to have clarity of the aim to be achieved.

“4.3.1. Schemes and projects which interfere with forest that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forest, particularly in areas like Arunachal Pradesh, Kerala, Andaman and Nicobar Islands should be totally safeguarded.

4.3.2. No forest should be permitted to be worked without the Government having approved the management plan, which should be in a prescribed format “and in keeping with the National Forest Policy. The Central Government should issue necessary guidelines to the State Government in this regard and monitor compliance.

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4.4.1. forest land or land with tree cover should not be treated merely as a resource readily available to be utilized for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should be least provide in their investment budget, funds for regeneration/ compensatory afforestation.

4.4.2. Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practice. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

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4.6 Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in arid around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following:

- One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages;
- Family-oriented schemes for improving the status of the tribal beneficiaries; and,
- Undertaking integrated area development programmes to meet the needs of the tribal economy in the around the forest areas, including the provision of alternative sources of domestic energy on a subsidized basis, to reduce pressure on the existing forest areas.

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4.8.1. Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There should be no regularization of existing encroachments.

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4.9. The main considerations governing the establishment or forest-based industries and supply of raw material

to them should be as follows:

As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of direct relationship between the factory and the individuals who can grow the raw material by support the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of local population should not be sacrificed for this purpose.
- Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.
- Natural forests serve as a gene pool resources and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.
- Framers, particularly small and marginal-farmers would be encouraged to grow, on marginal/degraded lands available with them, wood species required for Industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by forest department/corporations on degraded forests, not earmarked for natural regeneration.
- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalized.
- The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

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4.16. The objective of this revised Policy cannot be achieved without the investment of financial and other resources on a substantial scale. Such investment is indeed fully justified considering the contribution of forests in maintaining essential ecological processes and life-support systems and in preserving genetic diversity. Forest should not be looked upon as a source of revenue. Forests are a renewable natural resource. They are a national asset to be protected and enhanced for the well being of the people and the Nation."

It is clearly a constitutional imperative to preserve and enhance forest cover as a natural gene pool reserve.

As opposed to the above, the ground reality has been depletion of forest.

The shift in the approach of the legislation is evident from the FC Act of 1980 when compared with the scheme underlying the Indian Forest Act, 1927 which was State oriented for conserving the Forest Policy of 1952. Further, in 1977, Forest and Wildlife were taken out from the State list and incorporated in Concurrent list. Considering compulsions of States and large depletion of forest, these legislative measures have shifted the responsibility from States to Centre. Moreover, any threat to the ecology can lead to violation of right of enjoyment of healthy life guaranteed under Article 21 which is required to be protected. The Constitution of India enjoins upon this Court a duty to protect environments.

The aforesaid background has been given to demonstrate that the object of amount of NPV is to utilize the fund to conserve the ecology without in any manner affecting proprietary rights of the State Government over the land, timber or the minerals. The Notification dated 23.04.2004 does not deprive any State of any land timber or mineral and, therefore, there is no question of disbursement of any amount to the State. The damage to environment is damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view

the likely impact of activities on future generation.

We have already noted that this matter came to be examined on Central Government filing statement showing the dismal state of affairs of the forest in the country. It is evident that despite the FC Act and the forest policy the forests have been rapidly depleting. The forest policy recognizes this fact and, in fact, was involved to check the menace of fast eroding of forest in the country. Despite constitutional amendments made effective from the beginning of 1977 and despite various environmental laws enacted between 1974-1986 depletion of forest has not halted.

The State of Forest Report 1995 published by Forest Survey of India when compared with the State of Forest Report 1997 also shows that there has been considerable depletion of forest cover. It also shows the limited regeneration. A comparison of the two reveals that total forest cover of the country deceased from 638,879 sq. km. to 633,397 sq. km., thus showing a net loss of 5,482 sq. km. Further it reveals that there has been a net decrease of 17,777 sq. km. of dense forest cover of the country while open forests and mangroves have increased by 12,001 sq. km. and 294 sq. km respectively. The redeeming feature, however, is an improvement which can be seen from the State of Forest Report 2001. Learned Amicus Curiae submits that improvement is a result of strict vigil on account of various orders passed by this Court from time to time. It cannot be doubted that it is necessary to continue the efforts for regeneration of forest.

It would also be useful to make a mention of the order dated 22.09.2000 passed by this Court which led to grant of sanction of rupees 1,000 crores for maintenance of forest under the 12th Finance Commission (2005-2010). The said order took note of the fact that felling of the trees is far in excess of what would be justified with reference to regeneration, and the main cause is non-availability of sufficient funds. It also notices that even with regard to the felling of trees as per working plans in the last three years, the corresponding prescription for regeneration has not been implemented. It further notices that there cannot be any felling without regeneration because that will, over a period of time only result in forest vanishing. Further, the order says that the shortfall of regeneration which has resulted in depletion of forest cover has to be made up. The court took note of the suggestion that for regeneration there should be a joint venture between State of Madhya Pradesh - a State having a large forest area, and the Central Government whereby the working capital, in whole or substantially the whole, can be provided by the Central Government and the regeneration of degraded forests carried out. Taking an overall view, it is important for the nation that in certain areas where natural forest exists, the same should be preserved and at the same time the Central Government should consider whether the deficient States should not be asked to contribute towards the preservation of the existing forest cover and the compensation/incentive given to the forest rich States to preserve and regenerate forests. In a sense, there should be a partnership of all the States to ensure the maintenance and improvement of forest cover. It was observed that this suggestion should be considered by a Committee of Secretary (MOF) and the Secretary (MoEF). In consultation with the Chief Secretaries of all the States.

Para 14.25 of the 12th Finance Commission Report deals with maintenance of forest. Noticing that several States have represented that subsequent to the restrictions placed by this Court on exploitation of forest wealth, the forests have become a net liability for the States rather than a source of revenue and maintenance of forest has become a problem due to financial constraints, these States pleaded that separate grant should be provided for maintenance of forest. Recognizing that forest are a national wealth and the country as a whole has the responsibility in preserving the said national wealth, the Commission decided to recommend a grant of rupees 1000 crores spread over the award period 2005-2010 for maintenance of forest. This would be over and above what the States have been spending through their forest departments. The amount was distributed among the States based on their forest area, to be spent for preservation of forest wealth. In this light, it is not open to the State Government to contend that the amount of NPV paid by the user agency shall be handed over to them.

Reference may also be made to report of the Planning Commission (Chapter IX) relating to forest environments in Tenth Five Year Plan (2002-2007) which has taken note of the fact that sustainability is not an option but imperative since without it environmental deterioration and economic decline will be feeding each other leading to poverty, pollution, poor health, political upheaval and unrest. Environment cuts across all sectors of development. The rapid increase in green house gases in the atmosphere, land degradation, deteriorating conditions of fragile eco systems, deforestation, loss of biodiversity and environmental pollution have become subjects of serious global concern. The overall impact of these phenomena is likely to result in depletion of ozone layer, change of climate, rise in sea-level loss of natural resources, reduction in their productivity ultimately loading to an ecological crisis, affecting livelihood options for development and over all deterioration in quality of life.

From the above report, it follows that the deterioration and consequently preservation of eco-systems cannot be area or state specific and that utmost attention is required to be accorded to conservation of natural resources and for improvement of the status of our environments. The report notices the need to tackle the environmental degradation in a holistic manner in order to ensure both economic and environmental sustainability. Forests play an important role in environmental and economic sustainability. It takes note of the forests being consistently and seriously undervalued in economic and social terms. It recognizes that the economic value of the eco-system services of the forests is vast though it is extremely difficult to quantify. It takes note of the fact that generally much of the land-use decision that presently drives forest change takes relatively little account of these values. The country's forest resource is under tremendous pressure. Note has been taken of the fact that India's biological diversity is reflected in the heterogeneity of its forest cover. It is one of the 12 'mega-diversity' countries of the world. India is also at the meeting zone of three major zone of three major bio-geographic realms, namely, the indo-Malayan (the richest in the world), the Eurasian and Afro-tropical. India also has the two richest bio-diversity areas, one in the northeast and the other in the Western Ghats. The biological diversity is being conserved through a network of biosphere reserves, national parks and sanctuaries, however, the challenges for conservation emanate from population pressures, adverse impacts of industrialization and intensifying threat from illegal trade.

The importance of conserving and managing existing natural forest and forest soils, which are very large stores of carbon, has been emphasized as it will significantly reduce greenhouse gas emissions. To develop and protect forest, a scientific management is necessary so as to enhance productivity, density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile eco-systems should be properly managed in order to safeguard the livelihood of millions of people.

The national development agenda must recognize the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanization and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment.

It is recognized that the sustainable use of bio-diversity is fundamental to ecological sustainability. The loss of bio-diversity stems from destruction of the habitat, extension of agriculture, filling up of wetlands, conversion of rich bio-diversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of ecosystems, bio-diversity and environment whether examined on common law principle or statutory principle or constitutional principle eying from any angle it is clearly a national issue to be tackled at the national level. All initiatives are required to seriously pursue.

Dealing with inter-generational justice, it has been rightly observed that posterity shall not be treated like dirt. In an article published in 2003 *Columbia Journal of Environmental Law* (28 *Colum.J.Env'tU.* 185), the author says that the way in which a society cares or does not care for its dirt - its land - reflects the degree to which it cares or does not care for its own long-term future.

We may also briefly refer to Public Trust doctrine and its applicability to the matters under consideration. The Public Trust Doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in Boston College Environmental Affairs Law Review, Spring 1990 under the title 'But most of it belongs to those yet to be born'. The story relates to digging of well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the well is only for your own village and they can dig their own. It was then said that "water is not only ours, but is gift of nature from God and must be shared". Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including future generation as well. The public trust doctrine has to be used to protect the right of this as also future generation.

Having regard to the above, amounts under CAMPA have to be used for regeneration of eco-system and the same cannot be handed over to any State Government on the premise that ecology is not property of any state but belongs to all being a gift of nature for entire nation. The object of the FC Act and EP Act is protection of environments. These Acts do not deal with any propriety rights of anyone.

As already stated the question as to what amount of NPV is required to be paid to achieve these object is a matter to be gone into by the experts. However, the amounts shall have to be updated from time to time after every three years. For grant of approval under Section 2 of the FC Act besides payment of NPV as being presently calculated by MoEF, the user agencies shall have to give undertakings to pay the remaining amount, if any, pending finalization of determination by the experts.

Turning now to the grant of exemption to certain projects, learned Solicitor General submitted that Government hospitals, dispensaries, non-commercial government ventures like schools, rain water harvesting tanks, sewer lines, village roads etc. are the projects meant for public welfare and have no adverse impact on environment as such and, therefore, these cases deserve to be granted exemption. Learned Amicus Curiae has no objection to non-commercial and non-revenue earning Government public welfare projects being treated differently and granted exemption from the purview of the payment of NPV. Submission was also made by learned counsel appearing for some of the parties that other projects like irrigation, hydro electricity or other similar projects engaged in public welfare and public utility activities too deserve to be similarly treated and granted exemption. On behalf of the National Hydro Project Corporation Ltd. (NHPC), it was submitted that dams/hydro electric projects and other similar projects are undertaken in public interest and these will also not create environmental pollution and mere fact of these are revenue earning projects should not be taken as a ground to treat them differently. Reliance has been placed on observations made in *Hindustan Motors Ltd. & Anr. v. N. Siva Kumar & Anr.* [(2000) 10 SCC 664] to contend that such a project is not a pollution industry. This decision is not relevant for determining the question about levy and payment of NPV. The question is not only about these and projects referred by the Solicitor General not creating pollution but is about diversion of forest land for non-forest purpose, thereby depleting forest so as to utilize land area in setting up those projects. A distinction has to be maintained between a project set up for providing public utility but which is revenue earning, the category to which the project of NHPC falls and the government projects of the nature above referred like hospitals, schools etc., non-revenue earning projects. A balance is required to be maintained in the development and protection of environments. As already noted, the development has to be based on sustainability. If NHPC uses the forest land for non forest purposes, the payment of NPV is to protect the ecological and bio-diversity having regard to the doctrines above referred. Generally speaking, projects like NHPC are commercial ventures.

What we have, stated above is also applicable to submissions made on behalf of Grid Corporation of Orissa (GRIDCO), State of Uttaranchal and State of Madhya Pradesh. We are unable to accept the submission that wherever the government is the user agencies in notified forest area, protected forest/reserved forest etc., NPV should not be charged. Such a submission cannot be accepted in the teeth of Section 2 of the FC Act and other environmental laws noticed hereinbefore.

The submission made on behalf of the Federation of Indian Mineral Industries about calculation of NPV at the rate of 10 per cent for major mineral and 5 per cent for minor mineral as already noted cannot be accepted. The question is not of the value of the mineral or it being high value and low volume and mineral of high volume and low value, the question is about use of the forest areas and need to protect the environments in the manner above stated. A larger public interest has to be the guiding principle and not the present interest of user agency only.

We are of the view that the question as to which class of projects deserves to be exempted can first be examined by experts having regard to principles laid in this judgment and in receipt of the report from them; this Court would further examine the matter and issue appropriate directions. However, prima facie we feel that revenue earning projects do not deserve similar treatment as non-revenue earning public welfare projects.

We are clear that if let loose, the benefits achieved as indicated in the State Forest Report of 2001 would be lost and we may be again where we were in 1990's or 1980's and earlier period during which there was immense depletion of forest and insignificant regeneration. The work of regeneration and also of compulsory afforestation requires special, specific and expert attention and we see no illegality in establishment of Special Purpose Vehicle (SPV) in terms of clause 6.6 above quoted except that for present till further orders it would be necessary to monitor the establishment of SPV. Thus, in respect of clause 6.6 in relation to establishment of SPV, we hold that before establishing SPV, its format shall be filed in Court and SPV shall not be established without permission of the Court. Further in our view the constitution of authority (CAMPA) is necessary to fully and effectively implement recommendation dated 09.08.2002 made, by CEC for protection of environment.

In view of the aforesaid discussion, our conclusions are:

1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.
2. The payment to CAMPA under notification dated 23.04.2004 is constitutional and valid.
3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.
4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.
5. The NPV has to be worked out on economic principles.

In view of the above, we issue following directions:

A. An expert committee comprising of three experts including Ms. Kanchan to be appointed within a period of

one month by the Institution of Economic Growth (North Campus).

- B. The committee of experts would examine the following issues:
- i To identify and define parameters (scientific, bio-metric and social) on the basis of which each of the categories of values of forest land should be estimated.
 - ii To formulate a practical methodology applicable to different bio-geographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.
 - iii To illustratively apply this methodology to obtain actual numerical values for different forest types for each bio-geographical zone in the country.
 - iv To determine on the basis of established principles of public finance, who should pay the costs of restoration and/or compensation with respect to each category of values of forests.
 - v Which projects deserve to be exempted from Payment of NPV.
- C. The user agencies shall give undertakings for the further payment, if any, as may be determined on receipt of report from the expert body.
- D. The Special Purpose Vehicle shall be established with the permission of the Court.
- E. The Institute shall send report of Committee of Experts within a period of four months.
- F. The various clauses of CAMPA shall be suitably modified in terms of this judgment within a period of one month.

List after four months

I.A. No.:	Order Date: 30.09.2005	
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I.A. No.1391

Issue notice.

List this application with I.A. Nos. 1372 and 1234/04.

I.A. Nos. 1392-1393

While declining to entertain these applications filed by an individual, we permit the applicant to supply necessary information to the Amicus Curiae who, if necessary, may file appropriate application.

IA Nos. 1392-1393 are dismissed.

I.A. No. 1394

The recommendation of CEC, as contained in Para 8 of the report dated 29.08.2005 regarding the collection of cashew nuts by villagers adjoining the Blaukhanda-Konark Sanctuary through their respective Eco Development Committees under the supervision of Orissa Forest Development Corporation Ltd. (OFDC), is allowed in relaxation of the order of this Court dated 14.02.2000. The sale proceeds should be utilized in improving the protection of the Sanctuary and also for creating community assets through the Eco Development Committee in their respective villages on pro-rate basis.

IA Nos. 604 and 1394 are disposed of accordingly.

I.A. No.1396-1398

I.A. No. 1396: - This application is allowed.

I.A. No. 1397: - The CEC shall file its response to the application within four weeks.

I.A. No. 1398: - Reply to the application shall be filed by the Chief Conservator of Forests, Government of Assam and also by the CEC within four weeks.

I.A. No.1399

Copy of the report shall be supplied to the counsel for the State of Uttar Pradesh within one week. Response, if any, may be filed within four weeks thereafter.

Adjourned for five weeks.

I.A. No. 1048 and 1203

Learned Counsel for the State of Chhattisgarh shall file an affidavit within four weeks placing on record the latest position.

Adjourned for five weeks.

I.A. No. 1127

List this application along with IA No. 925.

I.A. No.1134

Seen the letter circulated by Ms. B. Sunita Rao, learned counsel for Ranci Association.
Adjourned.

List along with SLP (C) No. 18030/2003.

I.A. No.1147

Learned counsel for the MoEF prays for a short adjournment to look into this application and if necessary, file reply to it. Let the same be done within two weeks.
List after two weeks.

I.A. No.1150

In terms of the order dated 30.10.2002, no mining is permissible after 31.12.2005.
List all these applications in January 2006.

I.A. No. 1413 and 1414

The CEC and MoEF may file response to these applications within four weeks. Till the decision of these applications, the directions contained in our Order dated 16.09.2005 that no mining activity would continue under any Temporary Working Permit or Permission, would not be applicable to the applicants for the reasons disclosed by them in their applications.

I.A. No.:	Order Date: 02.12.2005	
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I.A. Nos 989 & 1221& 1311 in I.A. Nos. 857-858 with I.A. Nos. 997-998, I.A. Nos. 1128 & 1187, 1282-1284, 1295, 1296, 1305, 1320-1321, 1335, 1376-1377 & I.A. No. 1388

Mr. M.L. Varma, learned senior counsel resumed his submissions at 1.45 p.m. and concluded at 3.45 p.m. Thereafter, Mr. Anoop G. Choudhary, learned senior counsel made his submissions till 4 O'clock. Written submission to be filed within one week.

Hearing concluded. Judgment reserved. Rest of the matters are adjourned.

Letter of Ms. Kanchan Chopra in I.A. 826 in I. 566

Learned Amicus Curiae has brought to our notice letter dated 21.11.2005 addressed by Prof. Kanchan Chopra to Assistant Registrar, (PIL Cell) of this Court seeking certain clarifications and directions with regard to procedure to be followed on the following three aspects:

1. Whether the Committee can chart its own method and procedure for ensuring that a wide range of viewpoints (with stakeholder and spatial diversity ensured) are represented before it or whether the Court wishes to prescribe any guidelines for procedure to be followed, in particular with reference to regional hearings etc.
2. Whether the Court wishes to nominate a Member-Secretary (possibly a gazetted government officer) or whether it considers that the Committee follows its own procedure and the Report be submitted duly signed by the chairperson.
3. Does the Court have any direction regarding the source of funding of the administrative cost incurred by the committee or whether the subject-matter ministry may be approached for the same? The Ministry of Environment and Forests has proposed that a budget be submitted to it.

From the letter of Mr. Sandeep Kumar, Assistant Inspector General of Forests, it seems that the aforesaid three aspects have been clarified. Be that as it may, we make it clear that it will be for the Committee to prescribe its own method and procedure and also to nominate person considered fit to be its Member-Secretary. Regarding funding, the Ministry has agreed to bear the entire cost that may be incurred and make necessary payment, including, the payment of sitting fees of the Chairperson/Members/Member Secretary, etc. Ordered accordingly.

I.A. No.:	Order Date: 09.12.2005	
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I.A. No. 1448-1449

On the basis of the vague nature of averments and that too by association and not by individual industries, it is not possible to grant the prayer which is for rejection of report submitted by CEC and for quashing the order dated 21.06.2005 granting sanction for licenses being issued to six new wood based industries.

I.A. Nos. 1448-1449 are, accordingly, dismissed.

I.A. No.1240 with I.A. Nos. 1266, 1299, 1341 and 1382

On request of Mr. Raju Ramachandran, learned senior counsel appearing for the Andaman and Nicobar Administration, adjourned for six weeks.

Additional affidavit may be filed in the meanwhile.

I.A. No. 1177 in I.A. Nos. 742-743

None is present for the state of Rajasthan. However, in the affidavit dated 29.11.2005 filed on behalf of the State Government, it has *inter alia* been stated that a revised proposal for 30.70 hectares of forest land was sent for diversion to MoEF only with regard to 19 mining leases existing on the date. The total area for which first stage clearance was granted was 54 hectares.

While adjourning the matter because of the absence of counsel for the State, we have asked Mr. A.D.N. Rao to take instructions from MoEF on the plea of alleged revised proposal having been sent by the State Government to the MoEF and stage thereof.

The affidavit also refers to the order dated 02.06.2005 having been passed by the State Government. Copy of that order shall be placed on record by the State Government after supplying it to the counsel for the applicant.

List the matter in the month of January, 2006.

I.A. Nos. 1234, 1372 & 1391

List in the month of January, 2006.

In the meanwhile, State of U.P. may file its response.

I.A. No 1235-1237

List in the month of January, 2006.

SLP(C) No. 18973/2005.

As prayed, two weeks' time is granted to file statement of objections.

SLP (C) No. 15562, 15578, 16106, 26033, 25791 & 26032 of 2004

Leave granted. The appeals are allowed in terms of the signed order.

C.A. No.7417/2005 SLP(C) No. 15562/2004

Leave granted. In the first appeal filed by the plaintiff-respondents herein, the High Court by the impugned judgment setting aside the order of the trial court rejecting the application for injunction, allowed those applications and permitted the plaintiff/respondents to do agricultural operations in the area where Vanilla plants have already been planted and certain other directions were also issued. The operation of the impugned judgment of the High Court has been stayed by this Court. Now the suits have been decided and we are told that one set of appeals are pending in the High Court another set in the District Court, having regard to valuation of the suits. Having heard learned counsel for the parties, we are of the view that the interim order passed by this Court shall continue till the decision of the appeals which will mean that there will be no interim order in favour of the respondent-plaintiffs but at the same time the appeals pending in the District Court and/or High Court deserve to be disposed of expeditiously. The parties may bring this order to the notice of the courts where the appeals are pending so that the same can be disposed of as early as possible. The impugned order is set aside and the appeal is allowed.

C.A. No. 7418/2005 @ SLP(C) No. 15578/2004, C.A. No. 7503/2005 @ SLP(C) No. 16106/2004, C.A. No. 7419/2005 @ SLP(C) No. 26033/2004, C.A. No. 7421/2005 @ SLP(C) No. 25791/2004 & C.A. No. 7420/2005 @ SLP(C) No. 26032/2004

In view of the order passed in C.A.No.7417/2005 @ SLP(C) No. 15562/2004, these appeals are allowed.

I.A. No. 1011

List this application on 16.12.2005.

I.A. No.:	Order Date: 16.12.2005	
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I.A. No.1413, 1414, 1426, 1428, 1440, 1439, 1444-45, 1454 & 1460

Such of the mines which are operating under temporary working permit as on date, which permits are likely to expire before we take up the matter for hearing on the next date, will continue to operate under the existing temporary working permits. The direction for closure of such mines shall not be applicable.

The objections, if any, to the recommendations of CEC, may be filed on or before 03.01.2006. List these matters on 06.01.2006.

I.A. No. 1441

CEC may file response to the application by 03.01.2006. List on 06.01.2006.

Having record to the peculiar circumstances brought to our notice by learned Solicitor General and having regard to the larger public interest, we permit operation of the mine subject to the applicant – South Eastern Coalfields Ltd. – depositing an amount in the sum of Rs.Fifty crores towards NPV and undertaking to deposit the remaining amount. The amount shall be deposited with CEC.

SLP 25068 of 2005

Issue notice returnable for 06.01.2006.

Dasti, in addition is permitted.

In terms of order dated 01.08.2005, passed by the High Court, period for license was extended up to 30.11.2005 so that necessary permission could be obtained from the authorities under the Forests Conservation Act. It appears that on 17.11.2005 the petitioner made the deposit of Rs. 38,30,38,000/- (Rupees thirty eight crore thirty lacks and thirty eight thousand only). With the Deputy Conservator of Forests, Chanderpur. The order dated 01.08.2005 stands vacated as a result of the impugned judgment.

The period extended on 01.08.2005 up to 30.11.2005 shall stand further extended up to the date the matter is taken up and the operation of the impugned order is stayed.

CEC to file response by 03.01.2006.

I.A. No1459

The applicant undertakes that all mining operations would stop from 01.01.2006. It is also so stated in para 2 of the application. In this view for the present, awaiting response from CEC, we grant the applicant-company the relief prayed for in para 'A', for pumping of water from Lakya Dam at Kudermukh to Mangalore through existing pipeline on the company. If any permission, approval or sanction is required to be obtained from the State Government, the applicant would obtain such permission, approval or sanction before pumping the water, as prayed.

List this application with connected matters.

I.A. No.1011

The CEC in its report dated 24.08.2005, has recommended that the Ministry of Railways may be permitted to use 12.764 hectares of Forest Land falling within the National Wild Life Sanctuary for construction of Broad Gauge line between Guna and Etawah subject to various conditions stipulated in the report. Mr. B. Datta, learned counsel appearing for the Ministry of Railways states that all the conditions are acceptable. In this view, we grant the permission sought for the IA No. 1011 subject to the applicant complying with the conditions stipulated in the recommendations of the CEC and further underlying to pay/deposit such amount of NPV which the applicant may be directed.

Mr. Datta further states that the amount of Rs. 7.57 crores, after deducting the amount already paid will be deposited within a period of four weeks. The permission to divert the land would come into operation after the deposit is made.

I.A. No.1323

Taken on Board. Mr. Ashok Kumar appearing in person.

Copy has been given to Mr. A.D.N. Rao, Advocate. Let him take instructions and file response by 03.01.2006.

List on 06.01.2006.

Mr. Harish N. Salve, learned amicus curiae, suggests that Special Investigation Team (SIT) which was entrusted with the work of examining the aspect of poaching and other related work of examining the aspect of poaching and other related matters in Sariska Wild Life Sanctuary be permitted to also investigate the aspect of poaching in Ranthambore and Panna Tiger Resort. On this issue too, Mr. AND Rao, may respond on the next date of hearing. It would be open to the States of Madhya Pradesh and Rajasthan to file their responses by 03.01.2006.

I.A. No.827

To be listed on 06.01.2006.

I.A. No.:	Order Date: 06.01.2006	
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Letter of Prof. Kanchan Chopra in IA 826 in I.A. 566

Mr. A.D.N. Rao, learned Amicus Curiae has brought to our notice the letter dated 28.12.2005 addressed by Prof. Kanchan Chopra to A.R., PIL Cell of this Court.

As requested in the letter, the date for submission of the report of the Committee is extended upto 31.03.2006.

I.A. Nos. 1413 and 1414

Regarding grant of Temporary Working Permit (TWP), we have perused the report of CEC including its recommendations and procedure for grant of TWP. In the light of discussion today, we have requested amicus curiae to redraft the recommendations and the procedure.

List these matters on 03.02.2006. Further, we direct that such of the mines which were operating under Temporary Working Permit as on 16.12.2005 will continue to operate until further orders.

SLP 25068/2005

The Special Leave Petition is directed against in interim order dated 18.11.2005 passed in W.P. 159/2005 by the High Court of Bombay at Nagpur restraining the petitioner from carrying on any mining activity in the area in question. This interim order of the High Court has already been stayed. Further, for the present until further orders we also stay further proceedings in W.P. 159/2005.

We have considered the report of the CEC dated 02.01.2006. The recommendations made therein are to the following effect:

- (i) the MoEF may expeditiously take a decision under the FC Act in respect of the Durgapur Rayatwari underground mine after considering the Compliance Report sent by the Maharashtra Forest Department and till then the mining may be allowed to be continued in the already broken up area, and
- (ii) a decision regarding sanction sought by the Forest Department to prosecute officials of M/s. WCL for violation of the FC Act may be taken expeditiously by the MoEF as per the Hon'ble High Court of Bombay, Nagpur Bench order dated 01.04.2005.

The aforesaid recommendations are acceptable to the petitioner. The MoEF prays for two months time to take a decision in terms of the aforesaid recommendations.

List after two months.

I.A. No. 1441

The state government, as prayed, is granted two weeks time to file response to the report of the CEC dated 23.12.2005.

List on 03.02.2006.

I.A. No. 1455

Mr. ADN Rao, learned Amicus Curiae, states that the Central Government has decided to hand over the investigation regarding poaching of tigers in Ranthambore to CBI. Regarding Panna National Park, learned counsel submits that the matter is still under consideration and that is likely to be decided soon. We direct the matter shall be decided expeditiously but not later than 13th January and if the Ministry decides to hand over the probe to SIT, CBI, we hope that it would immediately move in to action.

List on 27.01.2006.

I.A. No. 1456

The application is disposed of in terms of order dated 28.01.2005 in IA 1230 read with order dated 12.05.2005 in IA 1317 subject to further condition that it will also give an undertaking to pay the difference, if any, in NPV which may be payable after same is determined.

I.A. Nos. 1463 & 1156

These two applications be listed before a bench of Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice S.H. Kapadia on 16.01.2006.

I.A. No. 827

As an interim measure, CEC is permitted to release a sum of Rs. 5 crores to the State Government. The amount shall be spent under the direct supervision of the Committee constituted earlier.

List the application on 27.01.2006.

I.A. No.:	Order Date: 27.01.2006	
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I.A. Nos. In Contempt Petition

We have heard the contempt petition for some time. For further hearing, list on 03.02.2006.

During the course of hearing, two matters of concern have come to light. One is an un-dated hand-written Marathi note. It is admitted by the learned senior counsel appearing for Mr. Ashok Khot, who is also present in court, that the said note is in his hand-writing. According to the photocopies of the note-file given to the learned Amicus Curiae and the Central Empowered Committee in 2005, this note was not there, we have been shown the photocopies delivered to them. Mr. Goolam E. Vahanvati, learned Solicitor General appearing for the Chief

Secretary of the State of Maharashtra, states that the original file was given to the Central Empowered Committee and in the copies kept, hand-written note was not there. The Chief Secretary shall file affidavit placing on record the movement of the file to ascertain as to when the note was made in the file. The movement of file shall show who was in possession of the file at the relevant times.

Our attention has also been drawn to photocopy of the Minutes of the Meeting of the High Power Committee held on 28.01.2004 in the chamber of the Chief Secretary as filed by Respondent No. 2, Mr. Sarup Singh Naik, the then Minister for Forest in the State Government as Annexure –D from Pages 47-57. The copies of minutes which are handed over in court are taken on record. Page 56 contains the decisions in issues Nos. 1 to 3 as at clauses (a) to (d). According to the Minutes supplied to the CEC and the learned Amicus Curiae, the minutes after clause (d), however, are not there in Annexure – D filed by Respondent No. 2. There are four paragraphs after clause (d) at Pages 56-57. According to the first respondent, Mr. Ashok Khot, in the copy of the minutes supplied to him also, these paragraphs were not there in the minutes and had clauses (d). In this view, Respondent No.2 may file additional affidavit on or before 02.02.2006 explaining his stand on the minutes dated 28.01.2004.

The parties would be granted inspection of the files if so desired.

I.A. Nos. 1469-70

Issue notice.

The MoEF and CEC may file response to the application within four weeks.

Adjourned for six weeks.

I.A. No.1472

The application seeking permission for use of forest land falling within the national Park and Sanctuaries for the proposed 9 drinking water supply schemes is allowed subject to the State Government complying with the conditions imposed in the recommendations of CEC which we accept. Learned counsel for the State Government agree to the said conditions.

I.A. No. 827 with I.A. No. 1216 with I.A. No. 1337

Having examined the report of the CEC dated 24.01.2006, we direct the MoEF to file its response, within four weeks, to the recommendations made in para 6(a) and 6(c). In respect of para (b), we direct that Comptroller and Auditor General (CAG) shall appoint auditors to conduct the audit of monies received from the user agencies towards the compensatory afforestation, additional compensatory afforestation, NPV, conservation and protection of National Parks/Sanctuaries etc. that are being deposited with the concerned officials of the State Government.

I.A. No. 1234 with I.A. No. 1372 with I.A. No. 1391

There can not be any exemption in respect of the site which was relocated for the saw mills of the applicants. Learned counsel for the state of UP. Also does not seek such exemption and submits that the applicants can give a fresh proposal in respect of the site of relocation which will be considered by the state Government. In view of the statement, the applicants are at liberty to give any such proposal.

The applications are disposed of accordingly.

I.A. Nos. 1308, 1323 & 1455

On 6th January, this Court, while noticing the stand of the Central Government that insofar as poaching of tigers in Ranthambore is concerned, it has decided to hand over the investigation to CBI and insofar as the Panna National park is concerned, the matter is under consideration and is likely to be decided expeditiously, has directed that the decision shall be taken by 13.01.2006 and if the Ministry decided to hand over the probe to Special Investigation Team of CBI, it shall move into the action. Unfortunately, none is present to give us the correct information today, Mr. Salve, learned Amicus Curiae, however, suggested that all cases of tiger poaching, whichever may be the park, in which Sansar Chand is said to be involved shall be handed over to the Special Investigation Team of CBI so that the ssaid agency has the complete picture of tiger poaching. Let Mr. A Subba Rao, learned counsel for MoEF, take instructions on this suggestion of learned Amicus Curiae.

Insofar as the State of Madhya Pradesh is concerned, Mr. Mukul Rohtagi, learned senior counsel, states that census of tigers in Panna National park has since been completed and the report will be filed at the earliest.

To consider the response of the Ministry on the suggestion of Mr. Salve, list the mater on 17.02.2006.

The application for intervention of Dr. Raghunandan Singh shall also be considered on the next date of hearing.

I.A. Nos. 1240, 1266, 1299, 1341 & 1381

On behalf of the Andaman & Nicobar Administration, Mr. Raju Ramachandran, learned counsel, seeks leave to withdraw IA No. 1341. It is dismissed as withdrawn. Learne counsel states that if advised, the Administration may move fresh application.

Rest of the matters.

List on 03.02.2006.

I.A. No.:	Order Date: 03.02.2006	
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I.A. No. 1474 with I.A No. 1324

We have perused the affidavit dated 03.02.2006, filed by the Ministry of Environment and Forest, in particular Paragraph (7) thereof in relation to the proposal for diversion of 660.749 hectares of forest land for bauxite ore mining in favour of M/s. Orissa Mining Corporation Ltd. Which has entered into an agreement with the applicant, M/s. Vedante Alumine Limited for providing ore for the Alumina Refinery proposed to be installed by M/s. Vedanta Alumina Limited. In the said affidavit, it has been stated that various aspects require indepth study by experts/originations having expertise in the concerned field. This study is to be conducted by the Ministry of Environment and Forests and report is to be submitted to the Forest Advisory Committee. It is submitted by the learned Solicitor General that the study is likely to take some time. We grant three months time to the Ministry of Environment and Forests to look into the matter in detail and consult such experts/organizations, which it may deem fit and proper. It would be open to the concerned parties to assist the Forest Advisory Committee. In case, names of experts are suggested by the Central Empowered Committee, it would be open to the Ministry of Environment and forests to consider whether to consult the said experts or any other experts.

List the matters after four months.

Contempt Petition (C) No.83/2005

Mr. Ashok Kumar is present in court and wants to make a statement in regard to the Marathi note, referred to in the order dated 27.01.2006. Mr. Khot states that the said Marathi note was written by him on 01.02.2005. He wrote this note on the file inadvertently instead of on a separate piece of paper and the file was passed on to Mr. Tripathi, Joint Secretary, to argue the case. This contempt petition has been filed by learned amicus curiae against respondent No. 1 Ashok Khot, the then Principal Secretary (Forest), presently Additional Chief Secretary, Government of Maharashtra, and respondent No. 2 Sarup Singh Naik, the then Minister of Forest, Government of Maharashtra, for initiating contempt proceedings against them for having granted permission in State of Maharashtra to six plywood/veneer units in willful disobedience of the orders of this Court. During the course of hearing, the original record has been produced before us. It contains a hand-written Marathi note after the note sheet date 05.04.2004. the name of the scribe has not been mentioned. The said note is before the typed Marathi note dated 05.04.2004 which was signed by the first respondent on which respondent No. 2 granted permission on 06.04.2004.

On the last date of hearing, i.e. 27.01.2006, we directed the Chief Secretary of Government of Maharashtra to file an affidavit placing on record the movement of the file to ascertain as to when the note was made in the file. It was further noted that the movement of the file shall show as to who was in possession of the file at the relevant time. Pursuant to the said order, Mr. R.M. Premkumar, Chief Secretary, Government of Maharashtra, has filed affidavit dated 02.02.2006 explaining the movement of the file as per record. According to that affidavit, the hand-written Marathi note seems to have been made between 01.02.2005 and 03.02.2005. In any case, today in Court, the first respondent has admitted that he made the note on the original file on 01.02.2005. He has sought to give some explanation which, of course, would be considered at the relevant time. The order dated 27.01.2006 also permitted respondent No.2 to file an additional affidavit explaining his stand on the minutes of the High Power Committee, dated 28.01.2004. That order notes how the copy of the minutes filed by respondent No. 2 in these proceedings were different than the minutes shown to us in Court. Pursuant to that order, respondent No. 2 has filed affidavit dated 01.02.2006 admitting that the offending portion noted in the order dated 27.01.2006 is, in fact, not part of the minutes dated 28.01.2004 and how it came to be included in Annexure – D filed by the said respondent along with his answer to contempt notice contained in the affidavit dated 30.06.2005.

Having heard learned counsel for the parties, prima facie, we are of the view that the matter requires deeper consideration after framing of charges which will give further opportunity to the alleged contemnors to file their response, if they so wish. Accordingly, we frame the charges as under:

Whereas this Court by its order date 04.03.1997 directed the closure of all un-licensed saws mills, veneer and plywood industries, and further by its order of 30.10.2002, directed that no State Government would permit the opening of any saw mills, veneer and plywood industries, without the prior permission of the Central Empowered Committee and whereas the state of Maharashtra, through its Interlocutory Application No. 414 sought permission to permit the reopening of the saw mills/veneer and plywood industries inter-alia dependent on imported timber, which permission was declined by rejection of their application by this Court on 14.07.2003.

Whereas in response to enquiries made by the Central Empowered Committee as well as the Amicus Curiae, the State Government assuring that the orders of the Court will be complied with and six mills in question i.e. (i) M/ M/s. Oriental Veneer products Ltd., (ii) M/s/. Konark Plywood Industries Ltd., (iii) M/s. Great Western Plywood Industries Ltd., (iv) M/s. Pagoda Woods Pvt. Ltd. (v) M/s. Woodmac (Bomay) Pvt. Ltd., (vi) Luckywood Products Pvt. Ltd., were actually closed;

AND whereas vide orders dated 07.04.2004 and 29.05.2004 the State of Maharashtra granted permission to aforesaid six units to operate in the State;

And whereas from the affidavit filed and the records produced it is apparent that these permissions were granted on the basis or decision taken by Respondent Nos. 1 and 2 deliberately and consciously and after being aware of the orders of the Court with the sole motive to favour these units and to evade enforcement of the orders of this Court;

And whereas as the result of these orders the mills have been permitted to operate in direct contravention of the orders of this Court;

And whereas a hand-written Marathi note has been added in the original record on 01.02.2005 by respondent No. 1 which amounts to interpolation of the record;

And whereas the minutes, Annexure-D, from pages 47 to 57 filed by respondent No. 2 show addition in the manner noticed in the order dated 27.01.2006;

And whereas by their conduct respondent Nos. 1 and 2 have not only violated the direction to the State to ensure that unlicensed saw mills/veneer and plywood industries are not allowed to operate, but have also attempted to lower the authority of the Court by granting permission which act clearly was in derogation of the authority exercised by the Court in exercise of its constitutional powers over the officers and employees of the State Government.

And whereas respondents 1 and 2 have interpolate the record in the manner above noted.

And whereas by virtue of the aforesaid acts, the respondents are guilty of civil and/or criminal contempt of Court by having willfully disobeyed the orders of the Court as well as having acted in a manner that attempt to lower the authority of this Court as well as interferes in the administration of justice by preventing enforcement of directions issued by the Court which constitutes a criminal contempt.

The respondents pleaded not guilty and seek an opportunity to file detailed affidavits in their defence to meet the aforesaid charges, Let those affidavits be filed within four weeks. Response may be filed within two weeks thereafter.

It is agreed that the contempt petition shall be decided on the basis of the affidavits which may be filed and the original record. The original record shall be kept in a sealed cover.

List the petition for hearing of arguments on 31.03.2006.

I.A. Nos.1265 in IA Nos. 1256-1259 & 1260-1263, 1269, 1286 & 1306, 1307

List on 31.03.2006.

I.A. Nos. 1413, 1414, 1426, 1428, 1439, 1440, 1441, 1444-45, 1454, 1459 & 1460

Mr. Rao, learned counsel appearing for MoEF, prays for and is granted ten days' time to file an additional

affidavit on behalf of the Ministry in relation to the suggestions made regarding the operation under temporary working permits. The private parties may also file their affidavits within the same time.

Adjourned for two weeks.

I.A. Nos.1441

Order dated 16.12.2005 will continue till further orders.

I.A. Nos. 1150 in I.A. 1010 in I.A. 670 with I.A. 1456 in I.A. 1010

List on 17.02.2006.

I.A. Nos.1267-1266

List after six weeks.

Rest of the matters:

List after the week commencing 24.02. 2006.

I.A. Nos. 1475-76 in IA 566

The application filed by Mr. H.K. Purim Advocate is taken on Board.

Issue notice.

I.A. No.:	Order Date: 10.02.2006	
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I.A. Nos.1279

Having heard Mr. Lahoty, learned counsel for the applicant, and Mr. Lalit, learned amicus curiae, on the material placed on record, we find no ground to set aside the order dated 27.05.2006 passed by the High Power Committee.

The application is, accordingly, dismissed.

I.A. Nos.1267

We have perused the report of the CEC dated 24.04.2005 regarding regulating the work of the sandalwood oil extraction factories. One of the aspects highlighted in the report is the existence of a number of sandalwood oil extraction factories in States which do not produce sandalwood or have nominal sandalwood production like Goa and Pondicherry. At this stage, Mr. Rajiv Data, learned senior counsel, has appeared and submits that he has been instructed to appear for the Essential Oil Manufacturers Association which has about 24 members spread All over India and having learnt about this mater they will to place before this Court the view point of the industry if so permitted. Let a copy of the report with supporting documents be supplied to the counsel. The clients of Mr. Dutta are permitted to place on record their stand in the form of an affidavit within six weeks.

Insofar as the recommendation for extending the order dated 30.10.2002 to unlicensed factories is concerned, possibly there can be no objection and none has been raised by Mr. Data. In this view, for the present, we accept the first recommendation made in the report of the CEC and direct that in the spirit of the order dated 30.10.2002, all unlicensed sandalwood oil extraction factories, by whatever name or expression they may be, operating in any part of the country shall be closed forthwith.

List the application after six weeks.

I.A. Nos.1291-1293 & 1334

Application for exemption from filing official translation are allowed.

Before deciding these applications, we feel it would be appropriate to have the view point of the CEC. The applications are, accordingly, referred to CEC. Before filing its response, the CEC would also consider the reply that has been filed by the State of Chhattisgarh.

List after eight weeks.

I.A. Nos.1297 & 1300 & I.A. 432

Adjourned, to be listed after eight weeks.

I.A. Nos.1309 in IA No. 973

If the National Highways Authority of India (NHAI) is continuing the work despite the order dated 30.01.2004 and the letter of MoEF dated 26.10.2004, alleged, the applicant should file an appropriate application also impleading NHAI as a party and not a prayer as made in the present application seeking clarification of the order dated 30.01.2004.

The application is accordingly dismissed with liberty as aforesaid to the applicant to file appropriate application.

I.A. No. 1322

Four weeks time is granted for filing reply affidavit.

I.A. No. 1326

The application is adjourned

I.A. No.:	Order Date: 24.02.2006	
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I.A. No. 1479

For present, it is not necessary to issue notice to third respondent.

Mr. A.D.N. Rao and Mrs. H. Wahi, appears for respondent Nos. 1 and 2 respectively. They shall file response to the application within four weeks.

I.A. Nos. 1308 & 1323

Mr. A.D.N. Rao, learned counsel appearing for MoEF, states that the Ministry has no objection whatsoever for transfer of Sansar Chand related poaching cases being handed over for investigation to the Special Investigation Team (SIT) of the Central Bureau of Investigation (CBI), Counsel states that, in fact, it is the said team which is investigating those cases. Further, Mr. Rao states that the case mentioned in para 4 of the affidavit of Mr. Ashok Kumar dated 13.02.2006 wherein it was mentioned that the State of Rajasthan made a major seizure of wildlife articles in Delhi on 03.02.2006 when 34 freshly tanned skins of leopards and 4 skins of Otters will also be handed over to the SIT of CBI.

Regarding fixing of modern gadgets/cameras at strategic points in various areas for nearly accurate census of tigers, it would be expedient to have the view of the Director, Wildlife Institute, Dehradun. The same be fixed within four weeks.

I.A. No.1478

The State of Madhya Pradesh may file its response to the affidavit of Dr. Raghunandan Singh Chundawat who seeks intervention within four weeks.

I.A. Nos. 1308, 1323, 1455 & 1478 are adjourned for four weeks.

I.A. No.1150 in IA 1010 in IA 670 with IA 1458 in IA 1010

In terms of order dated 20.01.2006, the MoEF has constituted a Monitoring Committee but learned Amicus Curiae has some suggestions to make which may be discussed with learned Solicitor General.

Regarding the expert body to be appointed to report on closure of mines in general but in particular the aspect of safe, slope and stability, we appoint Indian Institute of Technology (IIT), Delhi as the expert body to undertake that work. The requisite fee and expenses will be deposited with IIT, Delhi by the clients of Mr. K.K. Venugopal, learned senior counsel. We request the institute to give the report within a period of four weeks. It would be open to the company as also to the CEC to place before the expert body thus appointed by us such material as they may be advised. The expert body would, however, give its own independent report.

Post after five weeks.

I.A. Nos.1327-28 & 1367-68 with IAs. 1367-1368

IA No. 1367-1368 – Application for permission to file additional documents in IA Nos. 1327-28 is allowed.

Instead of the applicant Jai Kumar Kansharamani, we will treat the learned Amicus Curiae as the applicant in IA No. 1327-28. The applicant can supply any further documents which may be relevant to the learned Amicus Curiae.

The State of Uttar Pradesh is directed to file reply within three weeks.

List these applications along with IA No. 946.

Contempt Petition (C) No. 280 of 2003.

We would treat this contempt petition as an interlocutory application. Let it be registered so.

Issue notice to respondents. A copy of the application shall also be given to Mr. A.D.N. Rao. The MoEF shall file its response within four weeks on the procedure adopted of inviting applications from public before grant of clearance under Section 2 of the Forest Conservation Act.

Contempt Petition (C) No. 428 of 2004

This petition would be treated as an interlocutory application. Let it be registered so.

Issue Notice.

The State of U.P. shall file its response within four weeks.

List the application along with IA No. 946

Contempt Petition (C) No. 479 of 2002.

This petition would be treated as an interlocutory application. Let it be registered so.

Issue Notice.

Copy of the petition has been given to counsel for the State of Uttar Pradesh.

The State of U.P. shall file its response to the application as well as to the report of CEC dated 31.08.2005 (IA No. 1401) within four weeks.

List the application along with IA No. 946.

Civil Appeal Nos. 8133, 8134 & 8135 of 2003.

On personal difficulty of Mr. J.S. Attri, learned counsel for the appellants, the appeals are adjourned.

I.A. No.:	Order Date: 24.03.2006	
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I.A. Nos. In I.A. No.1496 in IA Nos. 1315-16 in I.A. No.566

Mr. Altaf Ahmed, learned senior counsel, states that whatever is payable at this stage by way of N.P.V., the applicant, on being informed about it by this Ministry of Environment and Forests (MoEF) is prepared to pay and in regard to the balance, the applicant is prepared to give an undertaking to C.E.C and MoEF for making the payment as and when it is determined. In this view, MoEF shall determine and inform the applicant of the NPV payable at this stage within two weeks. On deposit of the amount with the CEC and giving of undertaking, as aforesaid, request for extension of temporary working permit for diversion of forest land for non-forest purposes will be granted by the MoEF.

The interlocutory application is disposed of accordingly.

I.A. Nos. 1480-1482

Response be filed by the CEC within three weeks.

List the applications before the ensuing summer vacation.

I.A. No. 1484

Issue notice.

Response be filed within four weeks.

Notice of the application be also issued to the State of West Bengal.

I.A. No. 1485

Response be filed by the CEC within four weeks.

I.A. Nos.1489-1491

The interlocutory applications are dismissed as not pressed.

I.A. Nos. 742-743

Having heard the learned counsel for the parties and having examined the record, we direct the State Government to further process the application of the applicant for grant of mining lease to it, in principle approval having already been granted by the MoEF. The applicant will deposit with the State Government the requisite amount. The State Government shall forward the application to the MoEF for clearance under section 2 of the Forest Conservation Act.

The interlocutory applications are disposed of accordingly.

I.A. Nos. 1274-1275

None present.

The interlocutory applications are dismissed.

SLP No. 8707 / 2002

Copies of the special leave petitions be supplied to the CEC and Mr. A.D.N. Rao, learned advocate. CEC may look into it and assist the court.

I.A. Nos. 1486-1487, 1492, 1508, 1126 & 1121, 1509-1511, 1497-1498

I.A. Nos. 1471

As recommended by CEC in its report dated 10.03.2006, the felling of trees up to 2144 trees involved in the construction of Adukkam-Mumbakkarai road in district Dindigul, Tamil Nadu, is permitted, subject to the conditions stated in the recommendations of the CEC, which are as under.

- (a) the conditions on which the approval under the FC Act was accorded will be strictly followed;
- (b) the tree felling will be kept to the minimum possible;
- (c) the diversion will be carried out under the overall supervision of the Regional Chief Conservator of Forests, Regional Office, Bangalore, MoEF; and
- (d) in addition to the payment of the NPC at the existing rate, an undertaking to pay additional NPV as and when determined and demanded will be filed.

I.A. Nos. 1450-1452

Taken on board.

List the interlocutory applications in the month of May, 2006.

The term of the Committee constituted to determine the issues relating to NPV is extended till 30th April, 2006.

I.A. Nos. 1496 in I.A. Nos. 1315-16 in I.A. No. 1566

Mr. Altaf Ahmed, learned senior counsel, states that whatever is payable at this stage by way of NPV, the applicant, on being informed about it by the MoEF is prepared to pay and in regard to the balance, the applicant is prepared to give an undertaking to CEC and MoEF for making the payment as and when it is determined. In this view, MoEF shall determine and inform the applicant of the NPV payable at this stage within two weeks. On deposit of the amount with the CEC and giving of undertaking, as aforesaid, request for extension of temporary working permit for diversion of forest land for non-forest purposes will be granted by the MoEF.

The interlocutory application is disposed of accordingly.

I.A. Nos. 1480-1482

Response be filed by the CEC within three weeks.

List the applications before the ensuing summer vacation.

I.A. No. 1484

Issue notice.

Response be filed within four weeks.

Notice of the application be also issued to the State of West Bengal;.

I.A. No. 1485

Response be filed by the CEC within four weeks.

I.A. Nos. 1489-1491

The interlocutory applications are dismissed as not pressed.

I.A. Nos. 742-743

Having heard the learned counsel for the parties and having examined the record, we direct the State Government to further process the application of the applicant for grant of mining lease to it, in principle approval having already been granted by the MoEF. The applicant will deposit with the State Government the requisite amount. The State Government shall forward the application to the MoEF for clearance under Section 2 of the Forest Conservation Act.

The interlocutory applications are disposed of accordingly.

I.A. Nos. 1274-1275

None present.

The interlocutory applications are dismissed.

SLP (C) No.8707 / 2002 and SLP (C) No. 9414/2002

Copies of the special leave petitions be supplied to the CEC and Mr. A.D.N. Rao, learned advocate. CEC may look into it and assist the court.

I.A. No.:	Order Date: 31.03.2006	
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I.A. No. 235

The recommendation of the CEC is accepted. The Interlocutory Application is dismissed.

I.A. No. 267

The recommendation of the CEC is accepted. The Interlocutory Application is dismissed.

I.A. Nos. 1342-1343

The permission for shifting saw mill co Jaspur has been withdrawn. According to the report of the CEC, aerial distance is 4 km. from the boundary of the forest and, therefore, the relocation is not permissible. The report of the CEC is accepted and the Interlocutory Application is dismissed.

I.A. Nos. 1362-1363 in I.As 966 & 1012

On request of Mr. R. Venkataramani, learned senior counsel appearing for the State of Arunachal Pradesh, the Interlocutory Application is adjourned.

I.A. No.1499

I.A. No. 1499 is allowed.

I.A. No. 1500

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

At first instance, let the State of Orissa file its response to the application within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

Contempt Petition Nos. 442 with I.A. No. 1400

List along with I.A. No. 946.

I.A. Nos. 1505-1515

Copy of the application be given to Mr. A.D.N. Rao, learned counsel appearing for MoEF, who may take instructions.

Adjourned for two weeks.

I.A. Nos. 1517-1518

Copy of the application be supplied to counsel for the State, CEC and MoEF. Response may be filed within two weeks.

Adjourned for three weeks.

SLP No. 24540/2003

None is present. Adjourned.

SLP No. 3987/2003

Learned counsel for the State of Jharkhand prays for short adjournment to look into the matter. Adjourned, as prayed, for two weeks.

I.A. No. 1265 in IA 1256-1259 and 1260-1263, 1269, 1286, 1306 & 1307 with Contempt Petition (C) No. 83/2005 with I.A. Nos. 1503 & 1504.

In Contempt Petition (C) No. 83/2005

Heard Mr. L.N. Rao, learned senior counsel appearing for contemnor No. 1, in part.

List on the next date of hearing as part-heard, at the top of the board.

I.A. No.:	Order Date: 03.04.2006	
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Hearing concluded.

Judgment reserved.

Written note of submissions, if any, shall be filed by 05.04.2006.

I.A. No.:	Order Date: 07.04.2006	
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I.A. No.1483 in I.A. No. 548

The matter is referred to the Central Empowered Committee. Report be filed within one week.

List the application on the next date of hearing.

SLP (C) No. 18030 of 2003

As requested, the State is granted three weeks time to file affidavit.

The special leave petition is adjourned.

Contempt Petition (C) No.83 of 2005

Mr. L. Nagashwar Rao, learned senior counsel for the alleged contemnor No. 1 made his submissions from 2 pm. To 2.50 pm. Thereafter, Mr. Shanti Shushan, learned senior counsel appearing for respondent No. 2 started his arguments and concluded at 3.40 pm. Thereafter, Mr. Harish N. Salve, learned amicus curiae addressed the Court for twenty minutes.

Hearing concluded. Judgment reserved.

Rest of the matters stand adjourned

I.A. No.:	Order Date: 10.04.2006	
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I.A. Nos. 1486-87 with I.A. No. 1492 I.A. No. 1508-95/2006, W.P.(C) No. 111/2006, I.A. No. 1497-1498 I.A. No. 1509-1511 I.A. No. 1514 I.A. No. 1515 I.A. No. 1523 I.A. No. 1524 in I.A. No. 1525, I.A. No. 1531155/2006).

1. Development needs of the present without compromising the ability of the future generations to meet their own needs is called 'sustainable development', a concept based on the principle of inter-generational equity.
2. In this batch of cases the common issue that arises for consideration is the validity of the recommendations made by Central Empowered Committee (for short, 'CEC') in its Report dated 20.03.2006 which concerns implementation of the notification issued by State of Andhra Pradesh dated 04.10.1999 under Section 26A of the Wild Life (Protection) Act, 1972 whose validity has been upheld by the decision of the Andhra Pradesh High Court dated 30th July, 2001 in the case of *Dr. T. Patanjali Sastry, President, Environment Centre vs. Chairman, Andhra Pradesh Pollution Control Board and ors.* reported in 2001 (5) ALT315. By the impugned recommendations CEC has issued directions for demolition of all fish tanks constructed inside the Kolleru Wild Life Sanctuary in a time bound manner, as indicated therein. CEC has also issued directions prohibiting use or transportation of inputs for pisciculture in the said sanctuary. The details of the inputs are given in the report. NATURE OF KOLLERU LAKE.
3. Kolleru Lake is one of the largest shallow fresh water lake in Asia located between the delta of Krishna and Godavari rivers in the State of Andhra Pradesh. It serves as a natural flood balancing reservoir for the two rivers. It receives water from 67 inflowing drains and channels. It sustains flora and fauna and people living around it. The area of the lake at various contour levels is as under:

Contour level at Mean Sea Level (MSL)	Area
At+ 10MSL	901 sq. km. (2.25 lakh acres)
At+ 7 feet MSL	675 sq. km. (1.69 lakh acres)
At + 5 feet MSL	308 sq. km. (0.77 lakh acres)

4. It is found between the alluvial planes of river Godavari and river Krishna due to natural geological formation covering 2 mandals in West Godavari district and 7 mandals in Krishna district. Ecologically it is a wet land ecosystem. In its mean season, the lake has mean water level of 3 feet above the mean sea level, popularly known as plus 3 contour. The Water surface area in the contours of the lake vary, depending upon the seasonal flow of water into the lake. In the normal monsoon, the lake extends from plus 7 contour to plus 10 contour. At plus 3 contour level the lake spreads over 70 sq. miles. At plus 7 contour the capacity of the lake is 30 tmc. At plus 10 contour the capacity of the lake is 54 tmc, covering an area of 348 sq. miles. The peak level inflow into the lake is of the order of 1,10,000 cusecs. 4 rivers, 18 drains and 22 irrigation channels empty out into the lake and the drain Uppteru is the only outlet to the sea. There are 122 villages in the lake area out of which 46 are bed villages and 76 are belt villages. In the belt villages, above plus 5 contour, cultivation is being done both in the patta lands as well as in the government lands on payment of cist. The lake supports bio-diversity and high biomass offish plankton which constitute the source of food for birds.
5. Kolleru Lake extends over 901 sq. kms. at plus 10 contour. However, only 308 sq. kms. out of 901 sq. kms. have been declared as wild life sanctuary. This has been done in order to strike a balance between the rights of the people living in and around the lake on one hand and to protect the ecosystem on the other hand.
6. Government of India is the signatory to 1971 Convention of Ramsar (Iran) where it is declared that Kolleru is a wet land ecosystem of international importance. In the said convention it is decided that encroachments in the lake would not be tolerated. The said convention is also known as Wet Land Convention.

REASONS FOR ISSUANCE OF THE NOTIFICATION DATED 04.10.1999

7. The above notification came to be issued under following circumstances. Submersion of delta facility in the upstream area on account of blockage of free flow of water into the lake caused by encroachers. Further, thousands of land stood converted into fish tanks resulting in the blockage of the drain system of Krishna and West Godavari districts which chooses the said lake as a natural route to sea. Lakes were formed by the encroachers over areas ranging from 30 to 400 acres by raising bunds upto the height of 20 to 25 feet above the ground levels and thereby diminishing the retention capacity of the lake. Consequently, it has resulted in submergence of upstream mandals causing huge crop losses.
8. The notification above-mentioned seeks to preserve the lake both for the benefit of the migratory birds and to avoid floods. The total lake area in terms of hectares is one lac hectares out of which an area admeasuring 30,855.20 hectares is constituted as wild life sanctuary.

ARGUMENTS

9. The basic argument advanced on behalf of the objectors is that acquisition is the basis 35 for issuance of notification/official declaration under section 26A of the said 1972 Act. It is submitted that although final notification has been upheld, the terms and conditions of the notification indicate that demolition of bunds 40 can only take place after acquisition by the government of private lands. In this connection, it is urged that apart from government lands the sanctuary also covers private lands; that, the owners of these private lands are entitled to construct bunds in their own lands till the government acquires such lands. It is submitted that from 1976 upto 4th October, 1999 permissions to construct bunds have been given; that huge

investments have been made in the business of pisciculture and that thousands of employees are working to earn their livelihood from these activities. It is submitted that the notification covers an entire package and acquisition is a part of that package. Consequently, the government should first acquire the rights of the objectors before ordering demolition of the fish tanks/ bunds.

FINDINGS

10. In order to answer the above arguments we may briefly state the relevant provisions of Wild Life (Protection) Act, 1972 which has been enacted to provide for the protection of wild animals, birds, plants and for matters connected therewith. This Act is enacted by Parliament in exercise of its powers under Articles 249 and 250 of the Constitution, pursuant to resolutions passed by Houses of Legislatures of all States including Andhra Pradesh. The Act came into force in the State with effect from 01.03.1973. It may be useful to note the Statement of Objects and Reasons of the said Act:

“The rapid decline of India’s wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (Act 8 of 1912), has become completely outmoded. The existing State laws are not only outdated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to control of hunting and do not emphasize the other factors which are also prime reasons for the decline of India’s wild life, namely, taxidermy and trade in wild life and products derived therefrom.”

11. Section 2(26) defines “sanctuary” to mean an area declared, whether under section 26A or under section 36, or deemed under sub-section (3) of section 66, as a wild life sanctuary. Section 2(37) defines “wild life” to include any animal, butterflies, fish and aquatic or land vegetation which forms part of any habitat. Chapter IV deals with sanctuaries and national parks. Section 18 deals with ‘declaration of sanctuary’ by a preliminary notification with definite boundaries where the government intends to constitute any area as a sanctuary, provided it is satisfied that such area is of adequate ecological significance for protecting or developing wild life or its environment. Under section 19 the collector is required to inquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the sanctuary. Section 21 deals with proclamation by the collector and under section 22 the collector has to make inquiry after service of the prescribed notices upon the claimants. Sections 24 and 25 deal with acquisition. Under section 26A the State government shall make declaration of an area as a sanctuary. After such declaration, any alteration of the boundaries of sanctuary can be made only by a resolution passed by the State legislature. Section 29 specifically prohibits carrying out of commercial activity as well as diversion, stopping or enhancement of the flow of water into or outside the sanctuary. Section 29 reads as follows:

“29. Destruction, etc., in a sanctuary prohibited without a permit- No person shall destroy, exploit or remove any wildlife from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by Chief Wild Life Warden and no such permit shall be granted unless the State Government being satisfied that such destruction, exploitation, or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit....”

12. The government under section 18 issued preliminary notification on 25.09.1995 declaring the areas specified in the schedule as 'wild life sanctuary' and by reason thereof the collector of West Godavari and the collector of Krishna districts took steps in implementation thereof to hear and decide claims and to demarcate the boundary of the lake and the sanctuary. The preliminary notification issued under section 18 and the consequential action taken by the district collectors came up for consideration before a learned single judge of the Andhra Pradesh High Court in the case of *Kunapuraju Rangaraju vs. Government of Andhra Pradesh and others* reported in 1998 (3) ALT 215. By order dated 05.03.1998, the learned single judge held that no interference with the rights of the petitioners could take place without a notification under section 26A. Accordingly, directions were given to the State government to take steps for issuance of such notification. Pursuant to the said directions, proclamation under section 21 of the said Act was issued by the respective district collectors of the above-mentioned two districts calling for objections. After conducting an inquiry under section 22 and after considering all the objections, final notification as required under section 26A of the Act was issued on 4.10.1999 which was published in government gazette on 05.10.1999 determining the rights of the parties in terms of section 24 in the following terms:

"The existence, nature and extent of rights as determined by District Collector, Krishna vide proceedings No. E6/1236/97, Dated: 01.09.1998 and by the District Collector, West Godavari, Eluru in Rc.No. D6/11717/96, Dated: 08.08.1999 areas follows:

- (1) Right to do fishing with traditional methods using mavus, nets of size which does not cause damage to seed but catches only fish of harvestable size) which will be specified separately by the Chief Wild Life Warden of Andhra Pradesh.
- (2) No person shall form any tank for Aquaculture or for any other purposes.
- (3) Wherever Pisciculture was existing in private lands, as on the date of notification, fishing in traditional methods shall be permitted, without causing environmental hazard, till the Government acquires such private lands.
- (4) Rights to do traditional Agriculture without using pesticides and chemicals.
- (5) Right to use the ordinary boats, without motor for the movement of the people.
- (6) Right of way with existing Roads connecting main habitations and their maintenances by providing sufficient number of vents for the roads existing at the time of Notification of Kolleru Wild Life Sanctuary U/s. 18 of Wild Life (Protection) Act, 1972 without permitting new roads and culverts.
- (7) Right to maintain existing water courses and drains necessary to avert submersion of agricultural lands surrounding Kolleru lake.
- (8) Other rights and conditions as specified U/s. 27 to 34 and other provisions of the Wild Life (Protection) Act, 1972.
- (9) Electricity connection shall be given for domestic use only and not for Aquaculture or any activity connected therewith.
- (10) The 'D' form pattas granted or lease of land allowed in the area in favour of any assignee or lessee as the case may be including three societies viz., Gangaraju Fishermen Co-operative Society, Srungavarappadu; Srungavarappadu Fishermen Cooperative Society; Sanjaya Gandhi Fishermen Co-operative Society, Srungavarappadu of Krishna District will be cancelled. The claimants are not entitled to any compensation under Wild Life (Protection) Act, 1972 as they were assigned the lands by the Government on free of land value.
- (11) D-Farm pattas to the extent of Ac. 2882.00 cts issued to the individuals as per G.O.Ms.No. 118 Revenue (Q) Dept, Dated: 24.01.1976 in West Godavari District Wherein they were permitted to construct fish tanks on the said lands are liable to be cancelled and these lands will be resumed under the provisions of Wild Life (Protection) Act, 1972. These D-Farm patta holders are not entitled for

any compensation except ex gratia as provided by the Government.

- (12) The annual Licences which are being issued by the Fisheries Department for Fishery purpose indicating the areas allotted are to be discontinued.
 - (13) Encroachments in conditional patta lands of Siddapuram village of Akiveedu Mandal are to be evicted,
 - (14) The village site Poramboke of Siddapuram village of Akiveedu Mandal measuring Ac. 16.67 cts is hereby excluded from the jurisdiction of the Sanctuary.
 - (15) Any other encroachments activities, which are not permitted specifically are liable to be removed/ stopped forthwith."
13. From the above, it is clear that the right of the local fishermen to do fishing by traditional methods is not taken away, but aquaculture in the form of any tank is prohibited. Further, wherever pisciculture existed in private land, as on the date of the notification, fishing in traditional method is permitted without causing environmental hazard, till the government acquires such private lands under the said 1972 Act. The right to do traditional agriculture without using pesticides and chemicals is also permitted under the notification. Lastly, the encroachment activities are directed to be stopped, forthwith. The final notification, therefore, seeks to regulate, in public interest and in the interest of ecology, activities, such as aquaculture, pisciculture, prawn culture and shrimp culture, basically to preserve the identity of the lake which otherwise is likely to become extinct within 12 years.
 14. We, therefore, are of the opinion that having regard to the larger public interest and in view of the fact that the Notification under section 26A has been issued pursuant to the orders of the High Court in the case of *Kunapuraju Rangaraju* (supra), the Notification issued under section 26A needs to be enforced immediately. We are informed that in the previous year on account of these bunds/fish tanks free flow of water into the sea was blocked for 40 days. In any event, the rights of those fishermen surviving on a traditional method of fishing have not been taken away, they have been duly protected. Only those who had illegally constructed bunds and who were using harmful manures have been prevented from doing so by reason of the said Notification. The State government has fulfilled its obligation by issuing such Notification. When the rights of the fishermen to do fishing by traditional methods have not been taken away, and when the material placed on record before us shows that there is obstruction to the free flow of water in the lake bed area due to raising of bunds whereby the retention capacity of the lake is diminished, the government is right in regulating the rights under the said Notification. If such encroachments are not removed immediately the right of the farmers in the upstream mandals to do cultivation would be in jeopardy, consequently, it is their right to live guaranteed under Article 21 of the Constitution which is violated.
 15. Before us it has been repeatedly urged that the objectors have made huge investments over the years, that they were permitted to put up bunds under permissions given by the collector and that equity demands that a balance be struck between preservation of the lake and the livelihood of persons surviving on aquaculture and pisciculture. It is further argued that mud bunds constituted a part of traditional fishing practice and consequently this Court should not direct demolition of these bunds.
 16. We do not find any merit in the above arguments for the following reasons. Firstly, section 29 specifically prohibits commercial activity inside the Sanctuary. It prohibits commercial activity which diverts, stops or increases the flow of water into or outside the Sanctuary. With the issuance of the final Notification formation of fish tanks for aquaculture or for any other purpose is prohibited as they obstruct free flow of water both into or outside the Sanctuary. Secondly, the Notification dated 04.10.1999 provides a limited right to carry on fishing inasmuch as it permits fishing with traditional methods using mavis and nets. It expressly, however, prohibits the objectors from forming any fish tank(s) for aquaculture or for any other

purpose. It also expressly provides that wherever pisciculture was existing on the date of the notification in private lands, fishing in traditional methods shall be permitted, without causing environmental hazard, till the government acquires such private lands. It also cancels the pattas granted in the past. In our view, therefore, the Notification regulates aquaculture, pisciculture, prawn culture, shrimp culture etc. Thirdly, the argument advanced on behalf of the objectors that mud bunds formation is compatible with traditional fishing practice and, therefore, should be allowed to continue to exist, has no merit. When a bund is formed in a sanctuary or a lake it seeks to encapsulate an area which in turn obstructs free flow of water in the lake bed area. As stated above, formation of bund reduces the retention capacity of the lake. These formations, if allowed, would destroy the lake. In view of the provisions of section 26A read with section 29 all commercial activities which seek to destroy the ecology, stands prohibited. Compatibility of mud bunds with the traditional fishing practice in a lake is a concept different from formation of mud bunds inside the Sanctuary. Notification dated 4.10.1999 does not cover the entire area of the lake. Out of 901 sq. kms. of Kolleru lake, an area of 308 sq. kms. alone is notified as Sanctuary. This indicates that the government has balanced the needs of sustainable development with the livelihood of persons surviving on the resources of this lake. Lastly, the preliminary notification was issued as far back as in 1995 under section 18 of the Act. Therefore, the objectors were put to notice about the future course of action. Therefore, it is not open to the objectors now to say that they have made huge investments which would be lost if the report of the CEC is implemented. As stated hereinabove, in the preceding year free flow of water into the sea was blocked for 40 days. Such blocking of water also affects the livelihood of farmers cultivating lands in the upstream mandals. The oil cakes used as manure also pollute the Sanctuary. It is true that there are other effluents which also pollute the lake. By issuance of the Notification the government has taken a step in the right direction and it is not open to this Court to tell the government as to which of the three effluents in terms of their discharge should be regulated first in point of time. In the present case, as stated above, the blockage is due to discharge of effluents from three sources, namely, fish tanks in and around the lake containing high concentration of nutrients, effluents from municipal drainage and effluents emerging from the industries located in an around the above two districts. Destruction of the fish tanks is one of the steps taken by issuance of the Notification. That has to be done at the earliest point of time, particularly, before the onset of the monsoon.

17. For the above reason, we direct the State government and its officers to implement the directions of CEC vide para 54 of its report dated 20.03.2006. We make it clear that the use or transportation of inputs for pisciculture shall be stopped immediately. We, further, clarify that the demolition of all fish tanks in a time-bound manner shall commence with effect from 20.04.2006, as indicated vide para 54(ii). Accordingly, the interim order granted by the Court in I.A. Nos. 1486-1487 in W.P.(C)No. 202 of 1995, shall stand vacated.

18. Accordingly, all I.As./writ petitions/ objections filed by various objectors, shall stand disposed of.

I.A. No. 989, 1221 & 1311 in I.A. Nos. 857-858 with I.A. Nos. 997-998, 1128, 1187, 1282, 1284, 1295, 1296, 1305, 1320-1321, 1335, 1376-1377, 1388

The question for consideration in these matters is whether the land measuring about 15 hectares leased by State of Chhattisgarh to M/s. Maruti Clean Coal and Power Limited (for short 'Maruti') for setting up of coal washery is a part of forest land or not. This question has been raised by one Deepak Agarwal by filing LA. 858 of 2003 claiming to be a public spirited person and journalist by profession and concerned about the adverse affect on environment of the area as a result of the grant of lease of forest land for non forest activities in violation of law. The applicant claims that undue favour and patronage has been extended to Maruti for establishment of coal washery plant in respect of land which is a forest land by wrongly showing in various revenue records that the

land is part of the village Nawagaon Khurd whereas actually the land forms part of village Ratija.

The Parliament enacted Forest (Conservation) Act, 1980 (for short the 'FC Act') with a view to prevent large scale forest depletion and to protect the forest resources. The object was to check further deforestation which ultimately results in ecological imbalance. The Act has made provisions for the conservation of forests and for matters connected therewith. In *T. N. Godavarman Thirumulkpad v. Union of India & Ors.* [(1997) 2 SCC 267], this Court held that the FC Act must apply to all forests irrespective of the nature of ownership or classification thereof. Noticing earlier decisions in cases of *Ambica Quarry Works v. State of Gujarat & Ors.* [(1987) 1 SCC 213] and *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (I) SCC 504] and dispelling doubts, if any, it was held in *Godavarman* that the word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the FC Act. The term 'forest land' would also include any area recorded as forest in the Government record irrespective of the ownership. The court issued wide ranging directions. Each State Government was directed to constitute an Expert Committee to identify areas which are 'forests', irrespective of whether they are so notified, recognized or classified under any law and irrespective of the ownership of the land of such forests; identify areas which were earlier forests but stand degraded, denuded or cleared; and identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

The Government of Madhya Pradesh, of which Chhattisgarh was a part at the relevant time, issued a circular dated 13.01.1997 in compliance with the directions issued in *T. N. Godavarman's* case for the purpose of identification of the forest. The circular stated that according to the dictionary meaning, the term 'forest' means such large areas where agriculture is not done and which is covered by trees and shrubs. It further stated that, taking a practical approach, in view of the judgment as well as the dictionary meaning of the term 'forest', area measuring 10 hectares or more having an average number of 200 trees per hectare ought to be treated as forest.

According to the applicant, on application of aforesaid circular, the land in question would be forest land and it is also so under the Government record and as per the dictionary meaning of the term 'forest' as well.

To examine the question whether land is part of forest or not, this Court by order dated 07.05.2003 referred the application to Central Empowered Committee (CEC) for its report.

The CEC submitted its report dated 06.10.2003 (registered as IA 989 and hereinafter referred to as 'first report'). In this report, CEC concluded that the land allotted to Maruti is a forest land and, therefore, prior approval of the Central Government under the FC Act was necessary before allowing setting up of coal washery plant by Maruti. Admittedly, such approval had not been obtained.

The State of Chhattisgarh and Maruti vehemently disputed that the land is part of forest. Their stand is that the land was allotted after it was clearly established that it was not a forest land.

The first report shows that hearing before CEC took place on four different dates i.e. 03.06.2003, 09.07.2003, 25.07.2003 and 14.08.2003. On first two dates, one K K Srivastava appeared for the applicant Deepak Agarwal. This fact has relevance on the issue of bonafides of Deepak Agarwal in approaching this court in public interest, an aspect to which we would advert to little later.

Detailed objections were filed to the first report of CEC. On directions of this Court, an affidavit dated 13.08.2004 was filed by T. S. Chatwal, Secretary (Forest) Government of Chhattisgarh, inter alia, stating that land is not recorded in the forest land records at Katghora Division either as protected or as reserved forest; has not been subject matter of any blanket notification covering 'protected forest' for the then Central Provinces and Barar

issued under Section 29 of the Indian Forest Act, 1927; does not form part of the un-demarcated protected forest in village Ratija etc. It was further stated that as per available traversing records for the year 1893-1894, the land in question was traversed by the Survey of India and was named as Nawagaon Khurd surrounded by village Ratija, Chainpur and Sirkikhurd and its area was measured to be 50.25 acre. The settlement operation carried in 1929-1930 did not cover the land in question and as such no survey number was assigned to this piece of land, which remained un-surveyed till June 2002.

The State Government was directed to trace the relevant notifications and other notifications issued by the forest department in the month of October 1949 and place the same before the CEC. Maruti claimed that notification of October 1949 had considerable bearing on the question of the land being forest or not. Maruti was also permitted to place the same before CEC. Other parties were also permitted to file before CEC additional documents. CEC was directed to further examine the matter; hear the parties and file a report with its recommendations.

In compliance of the aforementioned directions, a report dated 04.11.2004 (Registered as IA. 1221 and hereinafter referred to as the 'second report') has been filed by CEC. The CEC, in the second report has noted detailed facts, submissions of SECL, State Government, meetings with the officers of State of Madhya Pradesh and Chhattisgarh. On detailed examination of voluminous record including notifications and maps, the old settlement records of the concerned villages, the CEC observed that there was no authentic record available to show that the area of Nawagaon Khurd merged with that of village Ratija during the settlement of 1928-1929. CEC further observed that no revenue records are reported to have been maintained/available or filed before it regarding the settlement of the area of Nawagaon Khurd or its merger with village Ratija. In the draft notification prepared by the Orange Unit, Bilaspur, this area has not been shown as part of Ratija village but as Nawapara (Masahati village) and that in the consolidated map the allocation of land allotted to Maruti falls within Nawagaon Khurd and outside the boundary of village Ratija. The CEC accordingly expressed the view that:

- (a) the area of village Nawagaon Khurd was not merged and made a part of village Ratija or any other adjoining villages during the settlement of 1928-29;
- (b) no settlement records for the area of Nawagaon Khurd were prepared during 1928-29;
- (c) since new settlement has not taken place after 1928-29, the settlement maps prepared during 1928-29 are the relevant and the correct maps which have to be relied upon; and
- (d) the location of the land allotted to M/s Maruti falls within the area of Nawagaon Khurd and not within the village Ratija.

In respect of Notifications of 1949, CEC said that:

- (a) none of the notifications particularly the notification dated 17.10.1949 pertain to Bilaspur district; and
- (b) the notification No.3228-2845 dated 17.10.1949 or 3228-3283/2845 dated 17.10.1949 referred to in the draft orange area proposal of 2002 either do not exist or pertain to other districts.

The CEC in the second report concluded that the land allotted to Maruti is not a forest land.

The second report has also noticed the submission of Maruti that application of Deepak Agarwal is not in public interest and that he has been set up to serve the business interest of M/s Aryan Coal Private Limited (for short, 'Aryan') who will be adversely affected financially after the establishment of coal washeries by Maruti due to increased competition and consequent reduction in prices. It was also pointed out that during hearing before CEC, Deepak Agarwal was represented by K. K. Srivastava who had represented Aryan in revenue proceedings before Tehsildar and also that he was a witness in a large number of sale deeds executed by shareholders of Aryan for purchase of land in Rajgarh.

The second report led to filing of various applications and also a letter dated 27.03.2005 by Secretary, Bilaspur

Environment Society filing therewith a report of Regional Remote Sensing Services Centre, Nagpur dated 28.02.2005 with a view to challenge the conclusion contained in the second report about land being not forest land and seeking to rely upon settlement record.

By an order dated 01.04.2005, CEC was directed to again examine the entire matter and report in the light of the documents brought to the notice of the Court and placed on record. The Forest Survey of India, Regional Remote Sensing Agency and the South-East Coal Field Limited were directed to render such assistance as may be required for the purpose of preparation of report by CEC.

After further examination, report dated 14.04.2005 has been filed by CEC (hereinafter referred to as 'third report').

The third report, inter alia, shows that a request was made by CEC to Forest Survey of India to carry out photo interpretation of the satellite imagery of the area by comparing imageries of different period and to give views about vegetation, forest cover, number of trees etc. Simultaneously, the National Remote Sensing Agency was also requested to give their comments on the satellite imagery of the area in and around the land area allotted to Maruti along with significant changes in the forest cover during different periods, reliability and accuracy of the interpretation and methodology for identifying the areas allotted etc. The site was also visited between 12.04.2005-13.04.2005 during which the coordinates of the area allotted to Maruti were verified by a technical expert of FSI using the Differential Global Positioning System (GPS) and the ground truth verification of the area was carried out along with Regional Director, Forest Survey of India, Nagpur. The report also notices that during the visit, inspection of other areas was also carried out and discussions were held with the Principal Chief, Conservator of Forests, Chhattisgarh Forest Department, Conservator of Forests, Bilaspur Circle, District Collector Korba, Divisional Forest Officer, Officers of SECL, members of the Bilaspur Environment Society, K.K.Srivastava, representative of the applicant, representatives of the forest trade unions of the area, public representatives, representatives of Maruti and other interested parties. Detailed reference has been made in the third report to the interpretations of experts including that of the Forest Survey of India. It also doubts the bonafides of the applicant. The report further notes number of cases that were filed in respect of allotment of land to Maruti as under:

- i) Mr. B. L. Wadera -Hon'ble High Court of Chhattisgarh at Bilaspur;
- (ii) Mr. Sanjay Srivastava (relation of Mr. K. K. Srivastava) -Hon'ble High Court of Chhattisgarh at Bilaspur;
- (iii) Mr. Deepak Agarwal- present application before the Hon'ble Supreme Court;
- (iv) Mr. Surendra Sahu petition before the Hon'ble High Court of Chhattisgarh at Bilaspur;
- (v) SECL - present application for intervention before this Hon'ble Court;
- (vi) SECL - suit in Katghora Civil Court;
- (vii) SECL - Writ Petition against CEC's report before this Hon'ble Court (dismissed as withdrawn);
- (viii) Samyuki Kendriya Shramik Sangathan - application for intervention before this Hon'ble Court;
- (ix) Koyla Mazdoor Sabha - application for intervention before this Hon'ble Court;
- (x) Rashtriya Colliery Mazdoor Congress - application for intervention before this Hon'ble Court;
- (xi) Koyla Shramik Sangh - application for intervention before this Hon'ble Court;
- (xii) Bhartiya Koyla Khadan Mazdoor Sangh - application for intervention before this Hon'ble Court; and
- (xiii) Mr. B. L. Wadera - SLP against the Hon'ble High Court's order.

Regarding nexus between K. K. Srivastava and Aryan and what type of society the Bilaspur Environmental Society is, the report states that:

"After considering the number of cases, filed on this issue, the documents filed by M/s Maruti regarding alleged nexus between Mr. K. K. Srivastava with M/s Aryan, reduction in the washed coal prices agreed to by M/s Aryan

after an offer at a cheaper rate was made by M/s Maruti to Gujarat Electricity Board, annual account of Bilaspur Environment Society. SECL's own use of revenue forest land on a large scale, prima-facie there appears to be some merit in the contention of M/s Maruti that the plethora of cases in various Courts have been filed on behalf of its competitor M/s Aryan with a view to prevent him from establishing the coal washery, and not in public interest.

The claim made by Mr. K. K. Srivastava that he is a public spirited person involved in protection of environment and forests and that he is not getting financial support from anybody but is spending from his own resources and contribution from his friends and relations, is difficult to accept on its face value;

The accounts of Bilaspur Environment Society show that it does not have a bank account and all receipts and expenditure are in cash."

The third report reiterates the conclusions and the recommendations made in the second report that the land allotment of Maruti is not of forest land.

At this stage, we may note that some dispute as to the title of the land in question between State Government and Maruti on one hand and M/s South East Collieries Limited (SECL) on the other is pending in a civil court. In these proceedings, we are not concerned about the title of the land that may have to be examined and decided by the civil court. All pleas, factual and legal, as permissible in law, would be open to the parties to be agitated before the civil court. The only question for our consideration in these proceedings is as to the nature of the land, namely, it is forest land or not.

However, before we consider the aforesaid question, first the bonafides of the applicant need to be determined. In opposition to the application filed by Deepak Agarwal, it has been urged that the label of public interest given by the applicant in the present litigation, is clearly and demonstrably a camouflage since the real person behind this application allegedly filed in public interest is a competitor of Maruti operating in the area and having a monopoly.

Some unions have also tried to jump into the fray by filing applications seeking impleadment in these proceedings so as to contend that the allotment is of a forest land. We see no reason to allow the impleadment of parties in these proceedings. Be that as it may, we have to decide in the light of facts aforesaid, whether the land leased to Maruti is forest land or not. But before we examine the question of the nature of the land being forest or not, it is necessary to consider the bonafides of Deepak Agarwal who has approached this Court in public interest. Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bonafides and credentials are in doubt. In a given exceptional case where bonafides of a public interest litigant are in doubt, the court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing Amicus Curiae to assist the court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by court on a malafide applicant in public interest litigation. These are basic issues which are required to be satisfied by every public interest litigation.

It was sought to be contended on behalf of Deepak Agarwal that the CEC had no authority to examine his bonafides and, thus, exceeded its jurisdiction by stating in its report that his bonafides are in doubt. Some insinuations were sought to be made against CEC and learned Amicus Curiae. We strongly deprecate this approach of the applicant. The CEC has been appointed and so also learned Amicus Curiae to assist this Court in determining issues relating to depletion of forests and preservation and conservation of forests in the country. Many forest

survey reports recognise that various orders by this Court have helped in arresting fast depletion of forests. Assuming in a given case an error is committed by the Committee in its report, while pointing it out, it is necessary for the applicant to use temperate language in the pleadings and not the one used by the applicant. Since, during hearing, neither the insinuations nor the language was supported and rather regret was expressed, we would say no more on this aspect. It, however, deserves to be clarified that it is incorrect to assume that CEC exceeded its jurisdiction in pointing out facts which are relevant to determine the bonafides of the applicant. In fact, having regard to nature of duties assigned and responsibility placed upon CEC, it is the duty of CEC to point out facts relevant to determine bonafides of any applicant. It is always necessary to determine real motive behind public interest litigation.

It has been repeatedly held by this Court that none has a right to approach the Court as a public interest litigant and that Court must be careful to see that member of the public, who approaches the Court in public interest, is acting bonafide and not for any personal gain or private profit or political motivation or other oblique considerations. {See S. P. Gupta v. Union of India & Anr. [1981 Supp. SCC 87]}.

For the last few years, inflow of public interest litigation has increased manifold. A considerable judicial time is spent in dealing with such cases. A person acting bonafide alone can approach the court in public interest. Such a remedy is not open to an unscrupulous person who acts, in fact, for someone else. The liberal rule of locus standi exercised in favour of bonafide public interest litigants has immensely helped the cause of justice. Such litigants have been instrumental in drawing attention of this Court and High Courts in matters of utmost importance and in securing orders and directions for many under-privileged such as, pavement dwellers, bonded labour, prisoners' conditions, children, sexual harassment of girls and women, cases of communal riots, innocent killings, torture, long custody in prison without trial or in the matters of environment, illegal stone quarries, illegal mining, pollution of air and water, clean fuel, hazardous and polluting industries or preservation of forest as in the Godavarman's case. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration {See Janata Dal v. H.S. Chowdhary & Ors. [1992 4 SCC 305]}

It seems that this caution has not had the desired effect on the applicant like the present one.

In a recent decision in Dattaraj Nathuji Thaware v. State of Maharashtra & Ors. [(2005) 1 SCC 590] (Arijit Pasayat and S.H. Kapadia, J J) taking note of earlier decisions, it was said that:

"It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope

of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

It was further said:

"Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu*, and *Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills and Anr*). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. B.K. Subbarao v. Mr. K. Parasaran*). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public."

Now, reverting to the present case, it seems that lakhs of rupees have been spent by the applicant and/or on his behalf to prosecute the present litigation. On our direction, the applicant filed his income tax return which shows that he has hardly any means to incur huge amounts which have been spent to pursue this litigation. Further, when the matter was referred by this court to CEC for a report on first date of hearing, K.K. Srivastava represented the applicant. Learned senior counsel for the applicant fairly and candidly admitted that sometimes along with the advocate-on-record, KK Srivastava has been coming to instruct him. There is ample material on record that on numerous occasions, K.K. Srivastava represented Aryan before number of authorities.

There is also ample material to show that KK Srivastava has been collecting material to prove that the land in question is forest land. He is a person in contact with Aryan. Regarding his financial status, Deepak Agarwal has filed an affidavit dated 24.08.2005 along with which certain documents have also been filed. In the affidavit, it has been claimed by him that he is fighting the case with the help of like-minded people, well-wishers and friends. As to his own financial resources, it is stated that in the income tax return, financial help taken from friends, social workers and like-minded people has not been shown as it does not fall in the category of income. He has filed affidavits of some people from whom it is claimed that donation collectively of the sum of Rs. 86,500/- was taken.

As per the affidavit of Deepak Agarwal, a sum of Rs. 55, 000/- has been incurred by Bilaspur Environment Society for obtaining satellite imagery report. Further, a sum of Rs. 60, 000/- has been spent by him on traveling and lodging expenses in connection with litigation and Rs. 50,000/- in connection with documentation and other court expenses. A revised income tax return filed on 31st March, 2005 has been placed on record. According to it, the total income from business is shown as Rs. 51,560/- and from other sources at Rs. 1,02,947/-total being Rs. 1,54,507/-. It has not been disclosed as to when the original Income Tax return was filed. The amount of tax shown to have been deducted at source is Rs. 5,147/-. The date of birth of Deepak Agarwal as per income tax return is 22.02.1973. However, in the affidavit dated 24.08.2005, the age mentioned is 32 years whereas in the affidavit dated 19.07.2005, it is stated as 35 years. Further, a perusal of the affidavits of the persons from whom donation is said to have been taken shows that alleged donors of cash amounts are mainly employees of SECL and contractors working for Aryan. It has not been explained as to what was the reason for filing a revised income tax return. A submission was sought to be made at hearing, without any plea having been raised in the application or the affidavit, that Deepak Agarwal came to this Court as a lone crusader bonafide but later on some help was rendered by others who donated the amount as claimed and also by Bilaspur Environment Society. It may be noted that Maruti has been pleading since beginning that Deepak Agarwal has been set up by their competitor and there was, in fact, a link between the competitors of Maruti and Deepak Agarwal in the form of KK. Srivastava. Deepak Agarwal, in fact, denied that there was any link between him and KK Srivastava who appeared on his behalf before CEC and Aryan and took the stand that nothing has been submitted to prove that it was the same KK Srivastava who appeared on behalf of the Aryan. Regarding K.K. Srivastava being attesting witness to the sale deeds, it was pleaded that K.K. Srivastava was in a business of sale and purchase of land and in course of his business dealing, he might have come across such sale deeds. The same plea was taken in respect of proceedings before Tehsildar. Regarding the Bilaspur Environment Society, which purportedly assisted Deepak Agarwal, as admitted by him and allegedly paid Rs.55,000/- for obtaining satellite images, it may be noted that firstly, one fails to understand as to what prevented the said society from approaching this court. Secondly, a close perusal of the record throws open many questions about the credibility of the society which spent Rs.55,000/- in cash for obtaining satellite images and also obtained donations. On perusal of record, we have no doubt that the application filed by Deepak Agarwal is far from bonafide. He has been set up by others. We strongly deprecate the filing of an entirely misconceived and mala fide application in the garb of public interest litigation by Deepak Agarwal. He is nothing but a name lender. Despite our conclusion as aforesaid, we have in-depth examined the three reports of CEC. The CEC in its second report has explained in detail the grounds and the reasons for reversal of its findings as contained in the first report. The first report had only considered the letter dated 17.10.2002 of DFO, Khatghora including no objection from grampanchayat, orange area proposals of 1997-98, joint inspection report of 18.10.2002 with enumeration lists, report of Deepak Srivastava & Mr. Negi of MoEF, Members and SECL maps. The second report, however, considers in detail several notifications of the order of October 1999, old settlement maps and the guidelines of State Government in respect of orange area proposals. It shows that non-forest land can also be included in the said proposals and various other documents and for reaching the conclusion that the land in question is not a forest land, in fact, the said land was of Nawagaon Khurd and not village Ratija and that this area was not formally merged and made part of village Ratija in the settlement (Bandobast) carried out during 1928-29. We have examined various old record from 1893-94 onwards including the old maps and find no reason to take a view different than the one taken by CEC in its second report. The conclusions reached and the recommendations made in the second report deserve to be accepted.

The third report is based on the satellite imageries and supports the conclusions reached by CEC in its second report. In respect of the third report, one of the submissions made on behalf of Deepak Agarwal was that reliance by CEC on LISS III (23.5 metre resolution) is not warranted because the satellite images provided by RRSSC has satellite data of LISS III with Panchromatic Data Technology and LISS IV (5.8 metre resolution). It was argued that State Forest Report, 2003 of Forest Survey of India noticed that 5.8 metre resolution recorded various images as small as 0.1 hectare (within given area, in this case, the area of interest of 18.12 hectares) whereas

23.5 meter resolution is not capable of recording anything less than 1 hectare forest cover within that area. In nutshell, the contention is that LISS III has limited technology and, therefore, the report based on LISS III is not reliable. The submission is that LISS IV should have been used for arriving at the correct position.

In short, Deepak Agarwal has submitted that the report of NRSA was not accurate because it has opted for a technology with 23.5 metre spatial resolution and output generation in the scale of 1:50000 considered to be inferior with respect to smaller portion of land. According to Deepak Agarwal, NRSA should have opted for a better technology available today under which the spatial resolution is available at 5.8 meter and also output generation in the scale of 1:15000. According to Deepak Agarwal, CEC should not have accepted the report of NRSA based on the above parameters of 23.5 metre (spatial resolution) and of output generation in the scale of 1:50000.

In order to decide the above contentions, it is necessary to understand the following concepts:

i) **GIS (Geographical Information System)**

GIS is an organized collection of computer hardware, software, geographic data designed to capture all forms of geographically referenced information (See Volusia.org). In short, it is a computer system capable of holding and using data describing places on the earth's surface. ERDAS IMAGINE 8.6 is a computer tool under GIS. It is referred to in the report of Forest Survey of India (FSI) dated 14.04.2005 annexed to the third report of CEC.

ERDAS IMAGINE 8.6 is an advanced software product used for image processing, to uncover features like boundary and area of a given plot of land (face). Once uncovered, the geographical information is integrated with attributes (spatial and non-spatial) and stored in an information system to be used for analysis.

Images can be taken from satellites or from planes flying over an Area of Interest (AOI). Under ERDAS IMAGINE 8.6, the images are comprised of pixels (picture elements) which are contained in the image. These pixels are scanned by the computer which gives the boundary and the area. It also scans the colours. Different surfaces reflect light differently. Colour images are used to identify various ground objects like forests, man-made surfaces, roads etc. For example, healthy crops contain infrared light whereas forests reflect different colours of the spectrum, making the spectrum information an important component of geographical information analysis.

This advancement of technology is due to combination of telecommunication and computer engineering (See: webopedia.com).

The above discussion is important because Deepak Agarwal has relied upon photo printing analysis done by him with the help of CAD (Computer Aided Designing).

The issue which is required to be considered is whether ERDAS IMAGINE 8.6 used by NRSA is better than CAD which is a programme used by Deepak Agarwal. We have indicated broadly the advanced features of the software, viz., ERDAS IMAGINE 8.6. On the other hand, CAD is also software used by engineers to view a design from an angle with the push of a button and to zoom in and zoom out for close-ups and long distance views. It helps the computer to tract designs. CAD software generally examines the boundaries and that too in a design. In the present case, we are concerned with the area covered by the forests. Therefore, the technology adopted by NRSA based on ERDAS IMAGINE 8.6 is more reliable than CAD.

Therefore, GIS links spatial data with geographical information about a particular feature on the map (See:

volusia.org).

ii) GPS (Global Positioning System)

GPS is a satellite based positioning system operated by USA. It consists of satellites. It is a data collection tool for GIS. Basically, the signals from the satellites in GPS are received by GPS receivers on the earth. Therefore, different stations are earmarked on the earth covering a particular area. It is the matching of the satellite with the receiver which plays an important role. Certain discrepancies in the matching are got over by differential GPS (See: esri.com).

iii) IRS LISS III

It stands for Linear Imaging Self Scanning Sensor which is a multi-spectral camera. LISS-III products comprise of path/row products, georeferenced products etc. (See: earth.esa.int). It helps to track areas and boundaries. Combination of LISS III with ERDAS-imagine is more reliable than photo print analysis by CAD. It is better to depend on interpretation of IRS LISS III Digital Data by EDRAS Imagine than by CAD.

As stated above, the main challenge to the NRSA report is that proper parameters have not been taken into account and although better technology was available the same was not deliberately resorted to. The contention is that CEC should have opted for the latest technology.

We do not find merit in this argument. The technology of 2001, 2002 and 2003 is not to be discarded. The later technology gives more spatial information but that does not mean that the information given by the earlier technology is inaccurate. The latest technology under GIS can locate even a pin on the earth. However, we are not concerned with such a tiny object in this case. Be that as it may, we may also point out that even in the State of Forest Report 2003, FSI has based its figures of forest cover by using Digital Image Processing (DIP) by using the scale of interpretation of 1:50000. Further, in that report, FSI has relied upon the introduction of a new methodology based on remote sensing to estimate the trees covered below 1 hectare which cannot be discerned by using LISS-III data. Under the new method, a canopy of all forests that can be delineated from satellite data (Sensor LISS-III) was termed as forest cover. Even under this new technology adopted by FSI the spatial resolution of 23.5 mtr. of LISS-III has been taken into account and by using DIP technique, forest cover was mapped even in 2003 at a scale of 1: 50000. Therefore, consistently FSI has taken the above parameters into account. Hence, there is no merit in the contentions raised by Deepak Agarwal saying that CEC has been randomly selecting queries and data.

In short, NRSA's report submitted through FSI is reliable and we see no reason to reject it. On the basis of the said report, it can be said that AOI (Area of Interest) does not qualify so as to be included in the category of Deemed Forest i.e. a compact block of 10 hectares having 200 trees per hectare.

Before concluding, it may also be noted that except Deepak Agarwal, other parties before us have not questioned the conclusions in the second and the third report of CEC that the land in question is not a forest land. Besides, Maruti being the allottee, the State of Chhattisgarh, the Ministry of Environment and Forest, Forest Survey of India and even SECL have not questioned the conclusion of CEC that the land in question is not a forest land.

In view of the aforesaid discussion, even on facts we find no substance in the plea that the land allotted to Maruti is forest land. Accordingly, we accept the recommendations of CEC as contained in the second and third report. As already noted, the dispute in respect of the title is not a matter in issue before us. Thus, we have not examined this issue.

In conclusion, we dismiss the applications filed by Deepak Agarwal with costs. The applicant has abused the process of law and deserves to be sternly dealt with. Enormous judicial time has been wasted which could have been used for deciding other cases. It has also resulted in CEC and others incurring huge expenses and their wastage of time as well. In this view, we quantify costs at Rs. 1,00,000/-payable by the applicant Deepak Agarwal to CEC. The cost, if not deposited with CEC within four weeks, shall be executable as a decree. The amount of cost shall be utilized for preservation of forests in State of Chhattisgarh. The Special Leave Petition and other applications are also disposed of in terms of this judgment

I.A. No.:	Order Date: 13.04.2006	
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I.A. No. 1333

We have perused the report of the CEC dated 03.04.2006. It indicates as to the particulars sought for from the State Government which have not been supplied. The information shall now be supplied after being duly verified by a senior officer of the State Government. As prayed, the State is granted four weeks time to supply the requisite information. The CEC would consider the information supplied and give another report.

I.A. No. 1527-1527A

The application is dismissed.

I.A. No. 1528

The application is dismissed as withdrawn with liberty to the applicant to have recourse to appropriate remedy at appropriate stage.

I.A. No. 1529

Issue notice to the Bharat Sanchar Nigam Limited.

I.A. No. 1530

Issue notice to the Bharti Tele-Ventures Limited.

I.A. No. 1483 in I.A. No. 548

List after re-opening of the court after summer vacation.

I.A. No. 1345 in I.A. 1252

The recommendations made by the CEC in para 8(i) to 8(iv) and para 8 of its report dated 11.07.2005 are acceptable to the State Government. The State Government is therefore, permitted to regularize pre-25.10.1980 encroachments subject to the following conditions under the overall supervision of the Regional Chief Conservator of Forest, Bhubaneswar, subject to clearance, if any, given by the MoEF:

- (i) Regularisation of encroachments in favour of the eligible encroachments will be done simultaneously with the eviction of ineligible encroachers and taking back of excess land in possession of the eligible encroachers;

- (ii) No regularization of encroachments which have taken place on forest land after 25.10.1980 will be done;
- (iii) The MoEF's guidelines dated 18.09.1990 will be strictly adhered to; and
- (iv) Compensatory afforestation over equivalent non-forest land will be carried for which adequate funds will be made available by the State of Orissa.

I.A. No. 1346 in I.A. 1227-1228

As prayed, four weeks' time is granted to file response to the recommendations of CEC.

SLP (C) No. 24951-24954/2005

Mr. Manjit Singh, Advocate, appears for respondent Nos. 1, 2 and 4. Learned amicus curiae appears for respondent No. 3.

Response, if any, shall be filed within three weeks and rejoinder within two weeks thereafter.

List the petition along with IA No. 1429 (Report of CEC, dated 17.10.1005) and IA No. 1381 (Report of CEC, dated 17.08.2005).

SLP (C) No...../2006 (CC 2637 & 2850) *(This is an unregistered SLP and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

Delay condoned.

Issue notice.

Mrs. Rachana Srivastava, learned counsel, accepts notice for the State of Uttaranchal.
Copy of the petitions be given to the CEC. Response be filed within two weeks.

List the petitions in July, 2006.

I.A. No.:	Order Date: 28.04.2006	
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Recommendation of CEC regarding exemption from payment of NPV for relocation of villages from NPs & Sanctuaries.

The report of the CEC dated 28.04.2006 is taken on Board. It shall be registered and numbered as an IA.

Considering the report, we direct that subject to final orders that may be passed on the report of the Expert Committee constituted in IA No. 566 regarding the NPV, the Ministry of Environment and Forests may approve diversion of forest land under the Forest Conservation Act for relocation of villagers from National Parks/Sanctuaries without, for the present, payment of NPV.

The application should come up along with the report of the Expert Committee.

CEC report regarding permission sought by Uttar Pradesh Irrigation Department for urgent repairs of Gangao Dam situate in Panna Tiger Reserve, M.P.

The report of the CEC is taken on Board. It shall be registered and numbered as an IA.

We have perused the report of CEC dated 27.04.2006 regarding the repairs of Gangao Dam situated in Panna Tiger Reserve, M.P. We grant permission to carry out repairs of the said dam located within the Panna Tiger reserve subject to the following safeguards/conditions:

- i) The labour camp will be located outside the PTR/forest area in village Bhusor or at any other convenient place approved by the FD, PTR. As far as possible only local unskilled labourers will be used from the villages around the PTR. Adequate arrangement for the supply of fuel wood from outside the boundary of the PTR to the labourers in the camp shall be made.
- ii) The repairs of the existing road will be undertaken as per the specification approved by the Field Director, PTR. In no case, black topping of the road will be permitted.
- iii) Felling of trees, blasting of any type, digging of soil, or removal of stone from the PTR/adjoining forest area shall not be permitted. However, salvaging of stones from the damaged structure and use of silt obtained by de-silting the reservoir may be permitted by the FD, PTR.
- iv) The details of the staff, the number of unskilled/skilled labourers, vehicles, machinery etc. to be used in the repair works along with the time frame for the repair will be made available in advance to the FD, PTR for his approval.
- v) The repair works shall be carried out only between dawn to dusk. There shall be no movement of vehicles during the night.
- vi) For regulating the movement of vehicles, staff, labourers etc. and to control poaching in the impact area of the PTR, the construction of the boundary wall along with the entry gate, a forest post, appropriate anti poaching measures, river patrolling etc. will be undertaken at the cost of the user agency. The funds for this purpose, not exceeding Rs. 10 lakhs, will be made available by the project authorities to the FD, PTR.
- vii) In case of violation of any of the above conditions, the project work will be liable to be suspended by the FD, PTR, with prior approval of the Chief Wild Life Warden, Madhya Pradesh Forest Department.

For carrying out the aforesaid repairs, for the present, it would not be necessary to impose/pay 5% of the project cost.

According to the report, following heavy rains and floods during the year 2005 – July, 2005 – parts of the dam got damaged which require immediate heavy repairs. The nature of the repairs required are mentioned in the report. The Uttar Pradesh Government is directed to file an affidavit as to what steps are taken from July, 2005 for carrying out the repairs and why till date repairs have not been affected. The affidavit shall be filed within four weeks.

List the IA in the month of August, 2006.

I.A. No.. in IA No. 703/2000 filed by Amicus Curiae in Court (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

The IA is taken on board.

Issue notice to the State of Kerala. On behalf of the Union of India, Mr. A.D.N. Rao, learned counsel, accepts notice.

The CEC would look into the matter and file its report, particularly, in respect of what has appeared in "The Hindu" dated 24.01.2006 that the encroachments from forest land which had taken place in the recent, i.e. in October, 2005, shall not be removed/disturbed. Meanwhile, the State Government is restrained from interfering with removal of illegal encroachments in forest land is the State.

I.A. No.203

None is present for the Association. In view of para 4 of the Report of CEC dated 17.02.2006, the IA is dismissed.

I.A. No. 208-209

The applicant be heard afresh and thereafter recommendations made by the CEC.

I.A. Nos. 1560-1561, 1562-1563, 1564-1565

In view of the order passed in I.A. Nos. 208-209, these IAs are disposed of.

I.A. Nos. 1557-1558

The applicant be heard afresh by the CEC and report made thereafter. The I.A. is disposed of.

I.A. Nos. 210, 270-272 & 288-290

None is present before us for the applicants nor was anyone present before the CEC. The applications are, accordingly dismissed.

I.A. Nos. 241-242, 245, 268-269

Issue notice to the applicant.

I.A. Nos.1516, 1541 to 1556

The CEC shall examine and report. Meanwhile, the applicants may also approach the CEC which may look into the matter and, if justified, permit the applicants to operate the saw plant.

I.A. No. 1535

The CEC shall file its response to the application within four weeks. Mr. Naveen Kumar Singh, learned counsel, accepts notice for the State of Rajasthan. The State shall also file its response within four weeks.

List the application in the second week of July, 2006.

I.A. Nos. 1539 & 1540

To be listed after the pronouncement of judgment in Contempt Petition (C) No. 83 of 2005.

I.A. No.1348 in I.A. No. 1036

Further, time is sought to file response. Let it be filed within four weeks. Adjourned.

I.A. Nos. 1378-1380 in I.A. Nos. 1246-1247

Permission is sought to withdraw IA Nos. 1378. This application, filed by Ekta Parishad, Gandhi Bhavan, Bhopal in

public interest, seeks enquiry in regard to grant of mining leases to various parties. Before we consider the prayer for withdrawal of the application, we deem it necessary to direct the applicant to file an affidavit as to what led the applicant to file the application and what is the reason for seeking its withdrawal. The affidavit shall be filed within four weeks.

I.A. No.1349 in I.A. No. 1246-1247

The submission of Mr. Salve, learned amicus curiae, in this matter is that once any mine is put in the land bank and transferred to the forest department, the same land cannot be pulled out of the land bank without complying with the provisions of the Forest Conservation act. It is sought to be disputed by the State Government as also by the leaseholders. On this issue, Mr. A.D.N. Rao, learned counsel appealing for MoEF, states that he would like to file an affidavit placing on record the stand of the Ministry. Let that affidavit be filed within four weeks. The affidavit shall also explain the procedure for placing the land in the land bank of the forest department. The State Government shall also file its affidavit, within four weeks, stating the procedure followed in placing the land in question in the land bank.

The I.A. is adjourned.

I.A. No.1350

No response has been filed to the recommendations of the CEC. The recommendations of the CEC are, accordingly, accepted and IA disposed of.

SLP (C) No.18973/2005

The respondent is reported to have expired. Learned counsel for the State of Manipur prays for time to take steps to bring the legal heirs on record.

I.A. is adjourned.

I.A. No.:	Order Date: 05.05.2006	
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SLP (C) No.17116-17117 of 2003

The special leave petitions are directed against order dated 02.04.2003, whereby, as an interim measure during the pendency of the proceedings before the Cauvery Water Disputes Tribunal [for short, The Tribunal], the petitioner State of Kerala was directed not to proceed with the construction and to maintain status quo. The learned counsel for the parties submit that the main matter has been argued before the Tribunal. In this view, we dispose of the special leave petitions and the issues raised therein may be considered by the Tribunal while disposing of the matter finally and making the Award.

I.A. Nos.1533-1534 in IA No. 548

Taken on Board.

Issue notice.

Mr. A.D.N. Rao, learned counsel, accepts notice on behalf of MoEF.

The applicants seek permission for developing Water Sports Complex at Tighra Dam, Gwalior. The Central Empowered Committee may look into it and file its report within eight weeks.

I.A. Nos.1572 and 1578

Issue notice.

Mr. A.D.N. Rao, learned counsel, accepts notice on behalf of MoEF.

The Central Empowered Committee may look into the proposal for diversion of forest land and file its report within eight weeks.

In Re. NPV Report:

A copy to the Report be supplied to Mr. A.D.N. Rao, learned counsel for the MoEF, the CEC and to Mr. Harish Salve, learned Amicus Curiae.

I.A. Nos. 1566-1568

Issue notice.

Mr. A.D.N. Rao, learned counsel, accepts notice on behalf of MoEF.

The CEC may look into it and file its report.

I.A. Nos. 1450-52

Issue notice.

Mr. A.D.N. Rao, learned counsel, accepts notice on behalf of MoEF.

I.A. Nos. 1480-1482

Report of the CEC is awaited.

List the matter in July, 2006.

I.A. No. 1150

Copy of the Reports and documents filed by the Indian Institute of Technology be supplied to the counsel for the parties and learned amicus Curiae.

List the matter on 10.05.2006 at 10.30 a.m.

I.A. No. 1232

The seized timber shall be sold under the supervision of HPC by inviting sealed tenders after giving the publicity

and the sale proceeds for the time being shall be kept by HPC subject to further orders that may be passed by this Court.

In the meanwhile, steps be taken for bringing on record the legal representatives of Mr. Indrasen.

I.A. Nos. 1387 and 1434

The MoEF may file its response within eight weeks. The CEC may also examine it and file its report within the same period. In the meanwhile, Ministry of Defence/Army authorities are permitted to use firing range/training areas, subject to the further orders that the court may pass in regard to the payment of NPV, for the present without payment of NPV.

I.A. No.1351

The interlocutory application is disposed of in terms of orders already passed on 16.09.2005.

I.A. No. 1337 with IA Nos. 827, 1122, 1216, 1473

We have considered the Report (IA No. 1473) of the CEC dated 24.01.2006.

In terms of the order dated 29.10.2002, it was directed that a Compensatory Afforestation fund shall be created in which all monies received from the user-created in which all monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, catchment area treatment plan funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalized by the MoEF with the concurrence of CEC within one month. The position till date is that CAMPA has still not become operational, though it appears that Planning Commission and Ministry of Finance have conveyed their suggestions and no objection to the matter of operation of CAMPA. We have seen the position as disclosed by this Principal Director of Audit in its communication dated 04.05.2006, addressed to Member Secretary, Central Empowered Committee and it appears therefrom that test checks show diversion of large amounts.

Having regard to the facts and circumstances of the case, we accept the suggestion, as contained in the Report of Central Empowered committee, for constitution of ad-hoc body till CAMPA becomes operational. The ad-hoc body would comprise of Director General of Forests and Special Secretary, MoEF as Chairman, IG of Forests, a representative of the Comptroller and Auditor General and a nominee of the Chairman of the CEC as members. All the State Governments/Union Territories shall account for and pay the amount collected with effect from 30.10.2002, in conformity with the order dated 29.10.2002 to the said ad-hoc body. In short, we accept suggestions (a) and (b) in the Report, which are as under:

- (a) ensure that all the monies recovered in behalf of the CAMPA and which are presently lying with the various officials of the State Government are transferred to the bank account(s) to be operated by this body;
- (b) get audited all the monies received from the user agencies on behalf of the CAMPA and the income earned thereon by the various State Government officials. The auditors may be appointed by the CAG. The audit may also examine whether proper financial procedure has been following in investing the funds;

The Chief Secretaries of State Government/Administrators of Union Territories are directed to cooperate with the ad-hoc body as well as with the Comptroller and Auditor General. For the present, the administrative expenditure will be borne by the CEC.

The affidavit filed by the MoEF is taken on record.

List the matter in August, 2006

I.A. No.:	Order Date: 10.05.2006	
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Contempt Petition No. m83 of 2005 with I.A. Nos. 1503 &1504

The "King is under no man, but under God and the law"- was the reply of the Chief Justice of England, Sir Edward Coke when James-I once declared "Then I am to be under the law. It is treason to affirm it"- so wrote Henry Bracton who was a Judge of the King's Bench.

The words of Bracton in his treatise in Latin "quod Rex non debat esse sub homine, sed sub Deo et Lege" (That the King should not be under man, but under God and the law) were quoted time and time again when the Stuart Kings claimed to rule by divine right. We would like to quote and requote those words of Sir Edward Coke even at the threshold.

In our democratic polity under the Constitution based on the concept of 'Rule of law' which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system. THE LAW IS SUPREME.

Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

The case at hand involves two contemnors. Shri Ashok Khot (hereinafter described as 'contemnor No. 1') was the Principal Secretary, Department of Forest, Government of Maharashtra and Shri Swarup Singh Naik (hereinafter described as 'contemnor No.2') was the Minister, Incharge of Department of Forest at the relevant point of time.

On the basis of submissions made by learned Amicus Curiae, proceedings were initiated against them. It was highlighted by learned Amicus Curiae that the respondents have acted in brazen defiance of the orders of this Court and their conduct constitutes the contempt by way of (a) wilful dis-obedience of directions issued by this Court, (b) the manner in which contemnors have conducted themselves clearly tends to lower the authority of this Court and obstructs the administration of justice (c) as their conduct falls both under the definition of Civil contempt, as well as seeing dimensions of the matters, under criminal contempt

It was pointed out by learned Amicus Curiae that this Court by order dated 04.03.1997 directed the closure of all un-licensed saw mills, veneer and plywood industries. Further by order dated 30.10.2002 it was directed that no State Government would permit the opening of any saw mill, veneer and plywood industry without the prior permission of the Central Empowered Committee (in short the 'CEC'). The State of Maharashtra by I.A.414 sought permission to permit the re-opening of saw mills/veneer and plywood industries inter alia dependent on imported timber; which permission was declined by this Court's order dated 14.07.2003. On enquiries made by

CEC as well as learned Amicus Curiae the State Government stated that the orders of this Court will be complied with and six mills in question i.e. (i) M/s Oriental Veneer Products Ltd. (ii) M/s Konark Plywood Industries Ltd. (iii) M/s Great Western Plywood Industries Ltd. (iv) M/s Pagoda Woods Pvt. Ltd. (v) M/s Woodmac (Bombay) Pvt. Ltd. (vi) Luckywood Products Pvt. Ltd. were actually closed.

But by orders dated 07.04.2004 and 29.05.2004 the State of Maharashtra granted permission to aforesaid six units to operate in the State. Such permissions were granted on the basis of decisions taken by the contemnors 1 and 2 deliberately and consciously though fully aware of the orders of this Court with the sole motive of favouring those units and to evade enforcement of the orders of this Court. It was pointed out that 20 as a result of such orders, the units have been permitted to operate in direct contravention of the orders of this Court.

Initially, responses were filed by contemnors 1 and 2 but on consideration thereof this Court was of the view that in fact contempt of this Court's order has been committed and, therefore, by order dated 03.02.2006 charges were framed as follows:

"Whereas this Court by its order dated 04.03.1997 directed the closure of all unlicensed saws mills, veneer and plywood industries, and further by its order of 30.10.2002, directed that no State Government would permit the opening of any saw mills, veneer and plywood industries, without the prior permission of the Central Empowered Committee and whereas the State of Maharashtra, through its Interlocutory Application No.414 sought permission to permit the reopening of the saw mills/ veneer and plywood industries inter alia dependent on imported timber, which permission was declined by rejection of their application by this Court on 14.07.2003.

Whereas in response to enquiries made by the Central Powered Committee as well as the Amicus Curiae, the State Government assured that the orders of this Court will be complied with and six mills in question i.e. (i) M/s Oriental Veneer Products Ltd. (ii) M/s Konark Plywood Industries Ltd. (iii) M/s Great Western Plywood Industries Ltd. (iv) M/s Pagoda Woods Pvt. Ltd. (v) M/s Woodmac (Bombay) Pvt. Ltd. (vi) Luckywood Products Pvt. Ltd. were actually closed.

AND whereas vide orders dated 07.04.2004 and 29.05.2004 the State of Maharashtra granted permission to aforesaid six units to operate in the State.

AND whereas from the affidavit filed and the records produced it is apparent that these permissions were granted on the basis of decision taken by Respondent Nos. 1 and 2 deliberately and consciously and after being aware of the orders of the Court with the sole motive to favour these units and to evade enforcement of the orders of this Court.

AND whereas as the result of these orders the mills have been permitted to operate in direct contravention of the orders of this Court.

AND whereas a hand-written Marathi note has been added in the original record on 01.02.2005 by respondent No. 1 which amounts to interpolation of the record.

AND whereas the minutes, Annexure-D from pages 47 to 57 filed by respondent No.2 show addition in the manner noticed in the order dated 27.01.2006.

AND whereas by their conduct 45 respondent Nos. 1 and 2 have not only also attempted to lower the authority of the Court by granting permission which act clearly was in derogation of the authority exercised by the Court in exercise of its constitutional powers over the officers and employees of the State Government.

AND whereas respondents 1 and 2 have interpolated the record in the manner above noted.

AND whereas by virtue of the aforesaid acts, the respondents are guilty of civil and/or criminal contempt of Court by having wilfully dis-obeyed the orders of the Court as well as having acted in a manner that attempt to lower the authority of this Court as well as interferes in the administration of justice by preventing enforcement of directions issued by the Court which constitutes a criminal contempt.”

Affidavits in relation to the charges have been filed by contemnors. Their stand in essence is as follows:

COTEMNOR No 1.

He has stated that the opinion given by him was based on the decision taken by the High Powered Committee (in short 'H.P.C.') on 28.01.2004. He has further stated that if he has made a mistake in his bona fide interpretation of the orders of this Court there was no mens rea involved and he tenders his unconditional apology. He has stated that there is no question of any disobedience, much less wilful disobedience of the orders passed by this Court so as to amount the contempt of this Court's order. It is stated that the State Government was of the opinion that units running exclusively on slicer or peeler machines do not require a licence and, therefore, cannot be termed as un-licensed units even after the order of this Court dated 04.03.1997. The units in question were not closed. Subsequently, the Nagpur Bench of the Bombay High Court by order dated 10.08.1998 passed in Writ petition 3795 of 1995 (known as 'Kitply case') directed that even the slicing and peeling machines being run along with licensed saw mills would require separate license. As a result of this order, the said units were also closed. Several writ petitions were filed by the aggrieved units and the State decided to take a policy decision in the matter. Consequently, on 15.05.2001 the State Government constituted H.P.C. to take a policy decision in respect of such peeler and slicer units. The units in question applied to the State Government for permission to recommence their operation. Their stand was that they were not using any saw mills but only peeler and slicer machines and were operating on the basis of "No Objection Certificates" issued by the Forest Department and the licenses issued by the Industries Department. On receipt of the representation, a meeting was held by contemnor No.2 which was attended by Principal Conservator of Forest, the Conservator of Forest, the Deputy Secretary of Forest Department, one Shri Tripathi whose role in the present matter is of considerable importance. Contemnor No. 1 was not present in the meeting but his stand was that the contemnor No.2 who is the Minister gave direction as per the discussion to submit a note for his order. The Deputy Secretary of the Department Sri Tripathi in his note clearly stated that the requests should not be accepted and express orders from this Court and the Bombay High Court were necessary for the purpose. Contemnor No. 1 expressed otherwise and in view of the alleged decision of the H.P.C. and the stand of the State Government before the Courts suggested that the units should be permitted to operate. The contemnor No.2 being the final authority i.e. the Minister-in-charge of the Forest Department accepted his stand. It was further pointed out that the units were to operate exclusively using imported wood. Therefore, in essence, his stand is that there is no wilful dis-regard of this Court's orders and no contempt was committed. So far as the charge relating to interpolation of records is concerned, he has stated that he has not interpolated any records of this Court. On the contrary, the handwritten note was made by him on 01.02.2005 during the course of hearing before CEC. By a bona fide mistake, the note was made in the official file and not on a separate piece of paper. He, therefore, has stated that there was no intention of manipulation or interpolation of the official records.

CONTEMNOR NO.2

The stand of contemnor No.2 is that he has acted bona fide without any mens rea. He has also tendered his unconditional apology. It is pointed out that he is qualified only upto secondary school level and belongs to Scheduled Tribe category and had represented the Nandurbar Lok Sabha Constituency as a Member of Parliament, was a member of the Legislative Council nominated by the Government of Maharashtra as well as a member of the State Assembly from Nawapur Assembly. He is presently one of the senior-most members of the Maharashtra

Legislative Assembly and a member of the Cabinet being Minister of Transport, Ports, etc. He was the Minister of Forest and Environment between 19.10.1999 and 31.10.2004. The expert H.P.C. was constituted. The view expressed by it was at variance with the view of the State Government. Though he was not aware of the details of the orders he was conscious of the fact that giving the growing technicalities of the law involved in the day to day functioning of the Ministry in contrast to his background and the level of his educational qualification, it was not feasible for him to arrive at an appropriate decision unilaterally without being assisted by responsible officers of the Government. Therefore, in line what was decided by the H.P.C. which was constituted for a specific purpose and comprised of top bureaucrats and other important limbs of the Government and public personalities, the decisions arrived at by them would be entitled to great respect. The H.P.C. took the decision on 28.01.2004, and taking note of various relevant factors indicated in the representations made on or about 25.3.2004 passed the order. It is now alleged that the same amounted to violation of this Court's orders. He had concurred with the views expressed by contemnor No. 1 and it was also clarified that the unit holders have closed the units after the decisions rendered by this Court as well as by the Bombay High Court, Nagpur Bench. He in his capacity as Minister-in-Charge endorsed the view of the senior most bureaucrat/office of the Department of Forest and Revenue, Government of Maharashtra and accepted the proposal which was forwarded to him. There is no mens rea or personal element in the alleged contumacy. So far as the, allegations that he had deliberately given false explanation about the view of H.P.C, it was submitted that due to wrong typing of the pages and the preparation of draft by learned counsel the mistake has occurred and there is deliberateness involved.

There are several factors which completely nullify the alleged claim of bona fides made by the contemnors. Firstly, the note made by the Deputy Secretary, Shri Tripathi is of great relevance in showing as to how the stand taken by contemnor No. 1 is clearly false and the claim of acting bona fide is falsified. The note reads as follows:

"As directed by Pr. Secretary (F) on 02.04.2004

1. In the said filed, four applications, which have been submitted by the Oriental Veneer Products Ltd. Konark Plywood Product Ltd, Pagoda Woods Private Ltd, Great Western Wood Private Ltd, are being dealt with. The applicants have requested to grant the licences for running their units.
2. The history behind these cases are as:
 - a. In the State veneer and plywood units can be placed into three categories, first, units which are running along with saw mills, licences, second which are running exclusive, by using slicer and peeler machines and third which are running along with unlicensed saw mills.
 - b. The issue of veneer and plywood units came first time in the matter of T.N. Godaverman v. Union of India (W.P. No. 1 71/96, 202/95) before Supreme Court. Hon'ble Supreme Court directed to the State Government to file affidavit before the Court, regarding the status of saw mills, veneer & plywood units in the State. The affidavit was filed by State Government before the Supreme Court treating veneer & plywood industries units as composite units along with saw mills. According to the affidavit, which implied, that veneer & plywood industries if running along with license saw mills may be treated as licensed unit and if running, without unlicensed saw mills may be treated as unlicensed. On 04.03.1997 Hon'ble Supreme Court passed order as under:
 "All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and State of U.P. are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mills, veneer and plywood industries and it shall also not grant any fresh permission/licence for this purpose.

3. The State Government approached the apex Court by way of filing I.A. No.414 of January 99 with request to allow State Government to grant licences to existing unlicensed ply wood and veneer industries which require saw milling activities but have industrial licences and also allow the State Government to issue licences to saw mill and veneer/plywood industries which intend to operate on imported timber from outside the country. The matter came before apex court for final hearing on 14.07.2003. The Hon'ble Supreme Court rejected the request made by State Government and disposed off the I.A. No 414 along with other I.As.
4. After the order of Hon'ble Supreme Court on 04.03.1997, the unlicensed saw mills in these plywood/ veneer industries were closed, no other machinery in these industries was closed because of the interpretation of the Bombay Forest Rule 1942 was that only sawing machine i.e. band saw/horizontal saw/circular saw need licence. However, in the W.P. No.3795/95, Kit Ply case Hon'ble Bombay High Court Bench at Nagpur on 10.08.1998 made it clear that petitioner (i.e. Kitply's owner) do not entitle to operate any machinery or saw mills for cutting, slicing and/or peeling the timber without licence, as contemplated under rule 23(i)(ii) of Bombay Transit Forest Product Rule, 1960 (Vidarbha region, Saurashtra & Kutch areas).
5. After this judgment Mumbai High Court Bench Nagpur in Kitply's case the Forest Department issued instructions to the field officer to close the slicing and peeling machinery. This resulted in closure of wood conversion machinery i.e. slicer & peelers machine in the industries. Therefore, these industries filed W.Ps. in the Mumbai High Court Nagpur Bench. The gist of their main argument was as follows: "Forest department never demanded licence to run veneer & plywood machinery therefore they were not getting licence from Forest Department to operate these units. Hence at this stage they cannot be compelled for licence to operate these units."

The Badar (Special Counsel Forest) admitted before the Court that Government is taking policy decision in this case.

This issue came before the High Powered Committee comprised under CS on 02.06.2001 and 13.06.2001. In the meeting on the issue of licensing of veneer and plywood industries the Committee took following decision:

"The Committee has decided that at this stage it will not be proper to make any licensing policy regarding veneer and plywood industry. However, industry department may be directed not to issue any new licence for establishment of veneer and plywood units.

6. This decision of the Committee, after getting the approval of State Government submitted in the High

Court in W.P. No. 3795/95, 1315/ 2001, 3731/78. In the hearing of these W.Ps. the Hon'ble Court observed that:

"It leads nowhere, as to the existing position, whether today a licence is required to the complete veneer unit or whether it is required only where a saw mill unit is in existence? Why the seal should not be open. Why these industries should not be allowed to run. The decision is vague it only says for future that Forest Department is not going to grant any licence and decision would have been taken by industry department."

7. Since the issue to giving the licences to the veneer & plywood industries was not decided then this matter was put up further before High Powered Committee on 28.01.2004. The H.P.C. on this issue took following decision.
 - a. Licence should be given to those veneer and plywood Industries which were in operation prior to 04.03.1997.
 - b. The veneer and plywood industries running only on sheer and peeler machine are required to get the licence.
 - c. Slicing and peeling machine cannot be treated as composite unit along with sawmills.
 - d. The Hon'ble High Court may be apprised according to the decision of State Government.
8. On the basis of decision taken by H.P.C. the matter may be placed before the Hon'ble Court, by way of filing affidavit, after taking the approval from State Government. This is under consideration under shortly affidavit shall be filed before the Hon'ble Court.
9. In view of above, in my opinion, the matters of the applicants may be considered only after getting permission from the State Government and the Hon'ble Courts. Submitted for information and approval.

Sd/5.4.2004

Pr. Secretary(F)"

After referring to the history behind the cases, the orders passed by this Court on 04.03.1997 and 14.7.2003, the order dated 10.8.1998 passed by the Bombay High Court, Nagpur Bench, the opinion of the H.P.C, the Deputy Secretary categorically indicated his stand as follows:

"On the basis of decision taken by H.P.C. the matter may be placed before the Hon'ble Court by way of filing affidavit, after taking the approval from State Government. This is under consideration and shortly affidavit shall be filed before the Hon'ble Court.

In view of the above, in my opinion, the matter of the applicants may be considered only after getting permission from the State government and the Hon'ble Courts.

Submitted for information and approval."

Contemnor No. I Shri Ashok Khot on 05.04.2004 completely ignored the view expressed by the Deputy Secretary, and on a clear and what appears to be a deliberate mis-reading of the H.P.C.'s recommendations expressed the view that there seems to be no objection in using imported timber for plywood/veneer/flash door/black board etc. since the permission given by the Conservator of Forest was prior to the orders of this Court i.e. 20.02.1997 and 21.02.1997 and these units can be made operational subject to the decisions of the Nagpur Bench of the Bombay High Court and of this Court. The permission shall be at the responsibility of unit holders and the units holders shall close the units if the decisions of the Bombay High Court and this Court are contrary to the stand put forward by the Maharashtra State. Contemnor No. I noted as follows:

"Thanks. Proposal accepted. Permission be granted to start."

With reference to the orders passed by contemnors 1 and 2 several units in other States like U.P. started making demands for similar permissions. When this came to the notice of the CEC and learned Amicus Curiae, they intimated the State Government about the violation of the orders. The view of the CEC was contested by the

State of Maharashtra. Here comes into picture the manipulation in the official records. It has been accepted by contemnor No. 1 that on 01.02.2005 he had made a note in Marathi in the official file. Significantly, rest of the note sheets is in English. The stand that he wanted to highlight certain aspects during the hearing is clearly contrary to the materials on record. He claims to have made the entry on 01.02.2005. But materials clearly establish that by that time the file was in possession of CEC. Further, the High Powered Committee in its recommendations on 21.08.2004 had never finally decided in the manner projected by contemnor No. 1. The file indicates something very interesting. Just before the note by contemnor No. 1 recommending the grant of permission to saw mills which is a typed note running into several pages there is a handwritten note updated which suggested that there were different points of view on the subject and an opinion of counsel who was the then Advocate General presently the learned Solicitor General was also available. The obvious purport of this note was to show that there were also others who did not share the view of the subordinate officer who had suggested that the proposal to re-open the mills was to be rejected.

Since there was no comment of CEC on this note, learned Amicus Curiae made an enquiry from CEC to find out whether the note had missed the attention of members of CEC and whether they had enquired into the correctness of what was stated in the note. The Member Secretary of the CEC asserted that he did not recollect having seen any such note and therefore made enquiries from the Chief Secretary, Maharashtra.

Reply of the Chief Secretary is also very significant. The Chief Secretary handed over a set of xeroxed pages of the file which he had returned before handing over the files to the CEC and they did not carry any such note. The object of introducing this Note is very clear i.e. to show that his view was a possible view as there were different view points on the subject. In his reply, contemnor No. 1 had stated that the files were kept in the custody of the Joint Secretary and were returned to the Forest Department on 01.02.2005 by CEC and the files were brought to this Court by the Joint Secretary subsequently. The relevant files were always in the possession of the Joint Secretary since then and were produced before this Court by him on 25 15.04.2005. He has stated that he had never been in possession of the files except when required. He has further stated that there was never any manipulation of file by him as alleged. He re-iterated that as a matter of fact that there has been no specific insertion as alleged by learned Amicus Curiae. This stand was subsequently given a go bye. He admitted to have made the note. Then comes the other palpably unacceptable and frivolous explanation that instead of writing on a separate piece of paper he by mistake wrote on the official file. Apart from the frivolity of the plea, it is clearly further falsified by the fact that on 01.02.2005 the file was with the CEC. These leave no manner of doubt that contemnor No. 1 has deliberately and wilfully disregarded the authority of law.

In *B.M. Bhattacharjee (Major General) and Anr. v. Russel Estate Corporation and Anr.* (AIR 1993 SC 1633) it was observed by this Court that "all of the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the courts have to be obeyed implicitly and that orders of the apex court for that matter any court should not be trifled with".

Any country or society professing rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. Only monarchies and even some democracies have adopted the age old principle that the king cannot be sued in his own courts.

Professor Dicey's words in relation to England are equally applicable to any nation in the world. He said as follows:

"When we speak of the rule of law as a characteristic of our country, not only that with us no man is above the law but that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and

amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done with legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of State, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is private and unofficial person. (See Introduction to the Study of the Law of the Constitution, 10th Edn. 1965, pp. 193-194).

Respect should always be shown to the Court. If any party is aggrieved by the order which is in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the Court. This had been done and this Court after consideration had rejected the I.A. long before.

Stand of contemnor No.2 is that he being not very highly educated depended on the view of the H.P.C./high placed officials. This plea is not only hollow but without any substance. As the contemnor No.2 in his reply has indicated that he has been a parliamentarian, a member of Legislative Assembly and Minister for very long period. To say that he was not aware of the complexities of the orders of this Court and, therefore, depended on the top bureaucrats is a futile attempt to shift the responsibility. He has not even indicated as why the view of the Deputy Secretary, Shri Tripathi was not to be accepted. He tried to take shelter behind the so called view of the H.P.C. and an alleged mistake committed by the typist. In the further affidavit it has been stated that the learned counsel drafting the petition took note of mistake committed by the typist and accordingly drafted the reply. It is pointed out that the correct documents were available with CEC and he would not derive any advantage by taking plea contrary to the documents. The specific case is that the mistake occurred at the stage of filing of the reply. Even if that is so, it is certainly a very careless act and more care and caution was necessary, particularly when the affidavits were being filed before this Court.

The stand of contemnors also is further falsified when one takes note of the order passed by the High Court in Kitply's case on 10.08.1998. It was clarified that for operation of any machinery for cutting, slicing and/or peeling the timber a license under Rule 23(1)(ii) of the Bombay Transit of Forest Produce (Vidarbha region Saurashtra and Kutch Area) Rules, 1960 is required. It is not disputed that since 1999 corresponding Rule 88 of Bombay Forest Rules, 1942 (in short 'Forest Rules; 1942) has become applicable for entire Maharashtra. Keeping that in view IA. No. 414 of 1999 was filed to permit grant of license under Forest Rules, 1942 to unlicensed Plywood/veneer industries, which had NOC, industrial license etc. and to wood based industries which intended to operate only on imported timber. The said I.A. was rejected by this Court on 14.07.2003. This Court accepted recommendations of CEC. It was further directed as follows:

"So far as 64 saw mills which claimed to be actually eligible for grant of licenses as per notification dated 16.07.1981 are concerned their cases may be examined by the State Government within a period of two months and if found eligible, their application may be sent to the CEC which may submit a report to this Court." (Underlined for emphasis)

It is thus crystal clear that the applications of those eligible for grant of licenses were required to be sent to CEC, who was then required to submit a report to this Court. Thereafter, this Court would have decided on the question of entitlement for license. The procedure mandated by this Court was not followed. Instead of that by their impugned actions, the contemnors permitted resumption of operations by the unit holders. There was absolutely no confusion or scope for entertaining doubt as claimed by the contemnors.

There is one other factor which shows the brazen manner in which facts have been distorted and without any manner of doubt wilfully. As noted by the CEC in its second Report, the Chief Conservator of Forests, Maharashtra by his letter dated 15.02.2000 had stated that pursuant to this Court's order dated 04.03.1997 and High Court's order dated 5 10.08.1998, 40 unlicensed plywood/veneer units were closed during 1999. These 40 units include the six units to whom subsequently permission was granted. Their names figure at Sl. Nos. 29,30,36,37,38 and 55 of the list enclosed to the letter dated 15.02.2000. But during a raid conducted by the Regional Deputy Director (WL) Western Region, MoEF on 22.03.2004, the premises of one of six units M/s Oriental Veneer Products Pvt. Ltd. (which was sealed on 21.03.1999), the seal was found to be broken and the unit was functioning. The raid conducted on 22.03.2004 appears to have pressed the panic button for making representations on or about 25.03.2004. The orders were passed on these representations showing scant regard for this Court's order.

The explanations of the contemnors are clearly unacceptable. Mens rea is writ large.

The inevitable conclusion is that both the contemnors 1 and 2 deliberately flouted the orders of this Court in a brazen manner. It cannot be said by any stretch of imagination that there was no mens rea involved. The fact situation clearly shows to the contrary.

Learned counsel appearing for contemnor No.1 and 2 stated that they have tendered unconditional apology which should be accepted.

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. As was noted in *L.D. Jaikwal v. State of Uttar Pradesh* (AIR 1984 SC 5 1374) "We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law to make a finding of contempt against any official of the Government say Home Secretary or a Minister.

While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The Very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend

the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See *M. v. Home Office* (1993 (3) AllER537).

This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red-herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have propensity of disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month simple imprisonment in each case would meet the ends of justice. It is to be noted that in *Re: Sri Pravakar Behera* (Suo Motu C.P. 301/2003 dated 19.12.2003)(2003 (10) SCALE 1126), this Court had imposed costs of Rs.50,000/- on a D.F.O. on the ground that renewal of license was not impermissible in cases where licenses were issued prior to this Court's order dated 04.03.1997. That was the case of an officer in the lower rung. Considering the high positions held by the contemnors more stringent punishment is called for, and, therefore, we are compressing custodial sentence.

The contempt petition No.83 of 2005 with I. A. Nos. 1503 and 1504 in W.P.(C) No.202 of 1995 are disposed of.

I.A. No. 1150

We have perused the reports dated 10.04.2006 and 18.04.2006 submitted by the Indian Institute of Technology Delhi (IIT Delhi) pursuant to the orders passed by this Court. The Kudremukh Iron Ore Company Limited (KIOCL) has filed in Court today an affidavit raising various issues in regard to the disposal of about 7 lakh tonnes of silt which is collected in the Pollution Control Dam No. 1 and the treatment of the North-western slope which, during monsoon, would collapse and slide in to the Bhadra river. In these reports, IIT Delhi has mentioned certain aspects which have not been covered in the closure plan and given its conclusion and recommendation. The affidavit filed today in Court would require further consideration and also response from the Central Empowered Committee (CEC) and a further report on some of the issues from IIT Delhi. There is, however, urgency in the matter for two reasons, namely, (i) the monsoon is likely to set in around 10th of June, and (ii) the Court vacation will start in two days.

It has been stated by KIOCL that Pollution Control Dam No. 1 is nearly full and once the monsoon sets in there will be continuous flow of silt into the said dam and entirely of the silt will start overflowing down the spillway into the Bhadra river which is 500 metres down the spillway of the dam. According to the affidavit filed by KIOCL today, the only manner of operating the silt control measure is by evacuating the silt. On the other hand, it has been submitted on behalf of the CEC by learned Amicus Curiae that the present position can be taken care of to a great deal by elimination of the water and if necessary, the extra silt can be stored and matter considered later the court reopens and that it is not necessary to operate the silt control measure as suggested in the affidavit.

Till we further consider the matter and for present, we direct KIOCL to forthwith give copy of its affidavit to IIT Delhi and only take such measures as may be suggested by IIT Delhi so that the silt does not spill into the Bhadra river. If and to the extent necessary, the KIOCL can be permitted by IIT to evacuate the silt. In short, till further orders, the KIOCL will operate in the area under the direction and guidance of IIT Delhi and carry out only that operation which is permitted by IIT under the supervision of IIT. It would be open to CEC to assist IIT. Meanwhile, IIT Delhi may examine the affidavit and the suggestions incorporated in that affidavit and file its response. The same may be filed within eight weeks during which period of CEC can also respond to the affidavit of KIOCL.

I.A. No.:	Order Date: 21.07.2006	
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I.A. Nos.1595-1596

On the request of the learned counsel for the applicant, MoEF is impleaded as Respondent No. 3

Copy of the application has been given to Mr. A.D.N. Rao, learned counsel. On behalf of the Respondent Nos. 1 and 2, Mr. J.K. Das, learned counsel, accepts notice.

I.A. No. 1597

In substance, the application seeks modification of the order dated 24.03.2006. It records the statement of the learned counsel for the applicant, inter alia, to the effect that the applicant, on being informed about the payment of NPV by the Ministry of Environment and Forests, will pay the same and for the balance amount, will give an undertaking. Though the applicant, it is stated, has not been informed about the amount of NPV but from the communication dated 27.03.2006 of the Divisional Forest Officer, it seems that NPV being sought for, is Rs. 1515.898 lakhs. In view of the peculiar circumstances explained, at present, the applicant may pay Rupees thirty crores instead of paying the amount informed by the MoEF. To this extent, the order dated 24.03.2006, shall stand modified.

I.A. Nos. 1214-1215

As prayed by the learned counsel, State of Bihar is granted four weeks' time to respond to the recommendations of the CEC.

I.A. Nos. 1291-1292

As prayed by the learned counsel for the State of Bihar four weeks time is granted to file response to the recommendations of the CEC.

I.A. Nos.1469-1470

We grant the permission, as sought, for de-reservation of 0.84 hectares of forest land under the Deer Wildlife Sanctuary situated between Gouri Kund and Ram Bada for widening of route of about seven kilometers to the extent it falls in the Wildlife Sanctuary, subject to the applicant complying with Condition Nos. 1 to 6 in the Report of the CEC dated 05.07.2006. The applicant State Government has agreed to abide by those conditions. The State Government would also expedite preparation of integrated infrastructure development plan, as recommended/suggested in Condition No. 7 and file the same before the Central Empowered Committee, Ministry of Environment and Forests and this Court.

The application is disposed of accordingly.

I.A. Nos. 1354 in IA No. 1154

The CEC, in its Report dated 06.07.2006, has recommended an alternate route than the one in respect whereof Ministry of Defence has sought permission. The proposed alternate route is shown in 'Blue' colour at page 24 of the Report. In the affidavit of Lt. Col. S.S. Vats filed on 24.03.2006 it is stated that despite the constraints, the Army is willing to settle for the development of Road OKSRT as a viable alternative. That alternative is what is shown in 'Blue' colour. Mr. Rajiv Dutta, learned senior counsel, states that Army is prepared to undertake the

proposed alternate route suggested by the CEC. Therefore, the recommendation is Paragraph 22 (i) is accepted.

The CEC, in Paragraphs 22(ii) and (iii) has recommended for setting up of a task force to assess the extent of damage caused in road construction in violation of the order of this Court. In principle, it is acceptable to the Ministry, as per the submission of Mr. Dutta but the learned counsel submits that the Ministry would like to file its response to this suggestion. Let the response be file within four weeks. Thereafter, appropriate orders for setting up of the task force will be made.

The ministry of Defence shall take requisite permission from authorities before undertaking the work.

I.A. No. 1358 in I.A. No. 992

The learned counsel for the applicant states that Bilashipara is about fifty kilometers away from the residence and carrying timber from Dhubri to Bilashipara and back involves huge cost in terms of money. Let the CEC look into it.

List the matter after two weeks.

I.A. Nos.1362-1363 in I.A. Nos. 966 and 1012

In terms of order dated 19.04.2004 on IA Nos. 966 and 1012, the project proposed by the National Hydroelectric Power Corporation was permitted by the MoEF, subject to the conditions noted therein. The applicant, State of Arunachal Pradesh, seeks modification of condition Nos. (ii) and (vii), which read as under:

[ii] The Reserve Forest areas that forms part of the catchment of the Lower Subansri including the reservoir should be declared as a National Park/Sanctuary. NHPC will provide funds for the survey and demarcation of the same.

[vii] There would be no construction of dam upstream of the Subansri river in future.

The matter is referred to the Standing Committee of the National Board of Wildlife to consider waiving or modifying of these conditions as sought by the applicant.

List after receipt of report from the Standing Committee.

SLP (C) Nos. 24951-24954 of 2005

List the special leave petitions along with I.A. No. 1381 after 04.08.2006.

I.A. Nos. 1604-1605 in I.A. No. 548

Taken on Board.

Let the MoEF and CEC file their response to the application within four weeks.

I.A. No. 1591

The matter has been directed to be listed on 04.08.2006. The CEC may look into it and file its response before that date.

I.A. No.:	Order Date: 04.08.2006	
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I.A. Nos. 1598-1600

Ms. Rachana Srivastava, learned counsel, accepts notice on behalf of the respondents.

Reply to the applications be filed within four weeks. Two weeks time therefore is granted for filing rejoinder affidavit.

I.A. Nos. 1601-1603

The CEC may examine the matter and file its report within two weeks.

The interlocutory applications are adjourned for two weeks.

I.A. Nos. 1485 and 1507

The Government of India and the National Mineral Development Corporation may file their response within two weeks.

The interlocutory applications are adjourned for three weeks.

I.A. No. 1574

The affidavit dated 15.06.2006, filed by Mr. A.K. Srivastava in compliance with the orders of this Court dated 28.04.2006, is utterly vague and does not disclose the relevant information as per the Report of the CEC dated 27.04.2006, which, in turn, refers to the restoration of Gangao Dam. It was stated that first phase of the work would be executed within a period of three months, i.e. from 01.04.2006, to 30.06.2006, and the second phase would be executed during the period 01.07.2006 and 30.06.2007. The affidavit does not show whether the first phase, as proposed by the same officer, is complete or not. It does not even show whether the work has even commenced or not. Undisputedly, the damage came to the notice of the respondent in July, 2005. Under these circumstances, we direct the Principal Secretary, Irrigation, to file a detailed affidavit after verification of all relevant facts within three weeks.

I.A. Nos. 827, 1122, 1216, 1337 and 1473

I.A. No. 827

Report of the CEC dated 31.07.2006, regarding non-recovery of the Net Present Value by the Ministry shall be registered as a separate interlocutory application.

As prayed by Mr. A.D.N. Rao, learned counsel, MoEF is granted four weeks time to file its response.

Audit Report is taken on record.

I.A. Nos. 1122, 1337 and 1473

The interlocutory applications are adjourned.

I.A. No. 1216

This application has been worked out. It is, accordingly, disposed of.

I.A. No. 1591

As requested in the letter dated 31.07.2006, the CEC is granted eight weeks time to file the Report.

List the interlocutory application after receipt of the Report.

I.A. No.1535 in I.A. No. 548

The prayer in the interlocutory application is to direct the State of Rajasthan to continue grant of grazing permits in the Kumbalgarh Sanctuary to the right-holders and concessionists 'Raika'. According to the applicants, the cause for approaching this Court is the letter dated 02.07.2004, sent by the CEC to all the Chief Secretaries, Principal Chief Conservator of Forests and Chief Wildlife Wardens, which has led to the State Government stopping the issuance of the grazing permits.

We have perused the Report of the CEC dated 13.07.2006. One of the suggestions made is that, in terms of the provisions of the Wildlife (Protection) Act, 1972, the concerned Chief Wildlife Warden may be asked to assess the carrying capacity of each of the wildlife sanctuary, i.e. the number and type of domestic animal which can safely be allowed to graze in the sanctuary area without adversely affecting the requirement of the herbivores in area. Further, the Chief Wildlife Warden should also provide the details of the livestock which have been immunized along with the mechanism put in place to ensure that over-grazing does not take place.

Section 33 of the Wild Life (Protection) Act, 1972 vests in the Chief Wildlife Warden the authority to control manage and maintain all sanctuaries and for that purpose within the limit of any sanctuary, he may regulate or control or prohibit, in keeping with the interest of wildlife, the grazing or movement of livestock. Immunization measures are required to be taken, as stipulated. The Chief Wildlife Warden shall submit a report as to the carrying capacity of the sanctuary in question, namely Kumbalgarh Sanctuary, in terms of the suggestion made in Paragraph (17) of the Report of the CEC dated 13.07.2006, including the details of immunization measures and the mechanism which is in place in the said sanctuary.

Paragraph (17) of the Report reads as under:

"It is submitted that in terms of the provisions of the Wildlife (Protection) Act, the concerned Chief Wildlife Warden may be asked to assess the carrying capacity of each of the wildlife sanctuary, i.e. the number and type of domestic animal which can safely be allowed to graze in the sanctuary area without adversely effecting (affecting?) the requirement of the herbivores in area. The Chief Wildlife Warden should also provide the details of the livestock which have been immunized alongwith the mechanism put in place to ensure that over grazing does not take place. After receipt of the above information, if required, appropriate directions may be issued by this Hon'ble Court for allowing grazing in the Sanctuary area".

The Report shall be submitted within three weeks.

List the interlocutory application after four weeks.

I.A. Nos. 1413, 1414, 1454, in IA No. 1413, 1426, 1428, 1440, 1439, 1441, 1444-1445, 1459 and 1460

By order dated 16.09.2005, it was inter alia, directed that no Temporary Permit or any other permission, by whatever name called, shall be granted for mining activities in the National Parks, Sanctuaries and Forest areas. It was further directed that no mining activity would continue under any Temporary Working Permit or Permission TWP which may have been granted. This order was later relaxed on the applications filed by some of the applicants. Suggestions have been filed by the learned Amicus Curiae and the MoEF, besides the Foundation of Indian Minerals Industries (FIMI) regarding the conditions, which would govern grant of TWP.

On consideration thereof, the conditions precedent for the grant of TWPs as well as the procedure for their grant shall be as provided hereinafter. At the outset, it is clarified that TWPs shall be granted only where the following conditions are satisfied.

Pre-conditions:

- i) TWPs can only be granted for renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency;
- ii) The mine is not located inside any National park/Sanctuary notified under Section 18, 26-A or 35 of the Wildlife (Protection) Act, 1972.
- iii) The grant of the TWP would not result in any mining activity within the safety zone around such areas referred to in (ii) above, (as an interim measure, one kilometer safety zone shall be maintained subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary)
- iv) The user agency who has broken up the area of the mine (in respect of which the TWP is being sought) has or had the requisite environmental clearances and at no time proper to the grant of the TWP, was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of the Forest (Conservation) Act [for short, "F.C. Act"]. In cases involving violation of the F.C. Act, a formal decision on merit should be taken under the F.C. Act after considering the gravity of the violation. However, the grant of a TWP may be considered where past violations have been regularized by the MoEF [for short, MoEF] by the grant of an approval under the FC Act with retrospective effect;
- v) The conditions attached to the approval under the FC Act for the grant of the mining lease (or the renewal of the mining lease), have been fulfilled, particularly those in respect of (but not limited to) compensatory afforestation, reclamation plan and over burden dumping on the specified site;
- vi) The user agency has, within the stipulated time, already filed a proposal in conformity with the Forest (Conservation) Rules, 1980, for seeking an approval under the FC Act along with the complete details as are required to be furnished. A application for the grant of the TWP in favour of the user agencies, who have either not filed a proper proposal and/or have not provided complete information, particularly in respect of (but not limited to) compensatory afforestation, phased reclamation plan, felling of trees, details of minerals extracted in the past, etc., should not be entertained;
- vii) A TWP shall be granted only limited to working in the area broken up legally an during the validity of the lease. No TWP can be granted in respect of, or extending to either unbroken area or the areas which have been broken after the expiry of the mining lease or have been broken in violation of the FC Act or any other law for the time being in force;
- viii) In no circumstances can the duration of a TWP extend beyond the period of one year. Where an application for grant of permission under the FC Act is not disposed of during the currency of TWP, the applicant, on the strength of the same TWP may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court.
- ix) A valid lease under the MMRD Act exists (including by way of a deemed extension in terms of Rule 24-A(6) of the Mineral Concession rules) in respect of the area of the TWP.

Procedure for Grant of Clearances under the FC Act and the Issuance of TWPs (in relation to renewal of mining leases):

- i) The user agency shall submit, in the first instance, to the State Government, proposals seeking renewal of the mining lease under the FC Act not less than two years prior to the expiry of the mining lease, except the leases which are due to expire before August, 2008, provided applications are made on or before 31.10.2006.
- ii) On receipt of the proposal within the stipulated time as aforesaid, and upon its examination, where the State Government is of the view that further details (besides the information submitted by the user agency in the prescribed formats) are necessary, the State Government shall give intimation thereof not later than ninety days of the receipt of the proposal;
- iii) The State Government shall forward the proposal together with their recommendations to the Central Government not later than nine months after receipt of the proposal;
- iv) The Central Government shall ordinarily dispose of the application for grant of permission not later than four months of its receipt;
Provided where the Central Government is unable to dispose of the application within four months as aforesaid, it shall record special reasons explaining the delay;
- v) Where the application for grant of permission under the FC Act is delayed beyond the periods stipulated hereinabove, the user agency may then apply for the grant of a TWP. In such cases, the user agency will have the option of applying for a TWP through the State Government in the proforma prescribed by MoEF with an advance copy both to the MoEF and the Regional Office of the MoEF. Such applications shall be made at any time after the expiry of thirteen months from the date of filing of the proposal with the State Government but not later than nine months prior to the expiry of the existing approval under the FC Act. In cases where lease/renewal was granted prior to the enactment of the FC Act and the lease period has not expired, the application shall be made at least nine months prior to the expiry of lease period;
- vi) The proposal seeking the TWP shall be processed by the State Government and forwarded to the MoEF within a period of three months, who shall place the proposal before the FAC constituted under Section 3 of the FC Act in its next meeting. The information/details, which have not been filed by the user agency, either in respect of the proposal under the FC Act or in the proposal for the TWP shall also be sought by the State Government and made available by the user agency during this period;
- vii) In the event of failure on the part of the State Government to send its recommendations on the proposal submitted by the user agency for grant of TWP within the stipulated period, the advance copy of the application, already sent by the user agency to the Central Government, shall be placed before the FAC for its consideration. The FAC shall provide an opportunity to the State Government and user agency to be heard before giving its recommendations on the merits of the case.
- viii) If the State Government, for reasons to be recorded in writing, recommends a refusal of the request to grant a TWP the FAC shall, after giving the user agency and the State an opportunity to present their views pass such orders as it thinks fit. The FAC shall be at liberty to evolve a suitable procedure for this purpose;
- ix) In respect of cases where no recommendation has been received from the State Government within the stipulated time, the FAC shall, after giving the state an opportunity to be heard, examine the proposal on merit and pass appropriate orders. The FAC should evolve a suitable procedure that shall be fair and reasonable and would ensure adherence with the time schedule;
- x) All proposals for grant of FC Act clearances and TWPs in respect of mining leases shall be placed before the FAC. Where the FAC, by order recommends the grant of a clearance or a TWP, the MoEF shall within a period of four weeks from the date of such order, issue orders for the grant of clearance on the usual terms, including those relating to payment of NPV;
Provided where a TWP is being granted, it shall only be for a period not exceeding one year and upon payment of NPV for the already broken up area;
- xi) Decision of grant of TWP shall be taken before the expiry of the mining lease. Decision of the MoEF on the proposal for diversion of forest land for mining lease under the FC Act shall be conveyed to the user agency

before the expiry of the TWP.

- xii) In case the MoEF disagrees with the recommendation of the FAC, it shall record its reasons in writing and communicate the same to the FAC, and the FAC may, after considering such reasons, pass such further orders as it thinks fit;
Provided where the Government still disagrees with the order passed by the FAC, it may seek appropriate directions from this Court;
- xiii) All the orders of the FAC shall be made available to the user agency and the State Government;
- xiv) In cases where the recommendations have been made by the FAC without ascertaining the views of the State Government, the TWP shall become effective only after the details made available by the user agency are confirmed by the State Government within a maximum period of one month. In case the information furnished by the user agency is found to be at variance with the factual position, the State Government shall refer the matter back to the MoEF, who may, if so advised, suspend the grant of the TWP;
- xv) The TWP shall become effective only after the payment towards the NPV for the already broken up area is deposited by the user agency;
- xvi) In cases where site inspection by the Regional CCF is mandatory, the proposal for the TWP shall be examined by the FAC after considering the site inspection report of the Regional CCF, the Regional CCF shall ensure that the inspection is completed in such time as may be directed by the FAC.; and
- xvii) At the time of payment of NPV at the present rate, the user agency shall also give an undertaking to pay the additional NPV, if so determined as per the final decision of this Court.

Those who are continuing to operate on the strength of the temporary permit under the interim protection granted by this Court, would continue, as before, for a period of not exceeding four months. We direct that their cases shall be decided by the FAC within the said period of four months. The State Government are directed to consider and send their recommendations to the MoEF forthwith, and not later than six weeks from today, with a view to ensure decision within the stipulated period of four months.

To consider the question of constitution of appropriate FAC adjourned to 25.08.2006.

I.A. Nos. 1465-1467

The learned counsel seeks leave to withdraw the interlocutory applications. They are, accordingly, dismissed as withdrawn.

I.A. No. 4

Not taken up

I.A. Nos. 1614

The learned counsel appearing for the State of Gujarat, states that all the conditions recommended in the Report of the Central Empowered Committee dated 28.07.2006, are acceptable to the State Government. In this view, permission sought for in IA Nos. 863 and 905 is granted on the State Government complying with the conditions as under:

- i) the requisite approval under the Forest (Certification) Act for use of the forest land will be obtained;
- ii) the NPV for the forest land will be deposited in the Compensatory Afforestation Fund with an undertaking to pay additional NPV as per the decision taken by this Hon'ble Court;

- iii) 5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the sanctuary.
- iv) as recommended by the Standing Committee of the National Board for Wildlife, a ten year master plan for the revitalization of the sanctuary with focused attention and concerned efforts on wildlife conservation and management will be immediately prepared and implemented for rehabilitation of the sanctuary area. Funds for this purpose will be made available by the State Government on priority basis; and
- v) no area presently falling within the sanctuary will be used for mining purposes in future.

I.A. Nos. 863 and 905 are disposed of accordingly.

I.A. No.:	Order Date: 25.08.2006	
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I.A. Nos. 1607-1608

The application is disposed of in terms of the orders made regarding temporary working permit on 04.08.2006.

I.A. Nos. 1609-1610

The application is referred to Central Empowered Committee for its response. Respondent No. 1-Ministry of Environment and Forests may also file its response within four weeks.

I.A. No. 1615

Permission sought for by the applicant-State of Uttar Pradesh for use of the land falling within the Chambal Wildlife Sanctuary, the Tortoise Wildlife Sanctuary and the Sohagi Barwa Sanctuary is accorded subject to the following conditions, as stipulated in the CEC report dated 24.07.2005;

- i) in each of the four projects 5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking the conservation and protection measures of the Sanctuary;
- ii) the State Government in each of the four cases will take all the mitigative measures suggested by the Chief Wildlife Warden. In addition, appropriate measures for the safety of the wildlife will be taken by the State of UP in consultation with the Wildlife Institute of India, Dehradun;
- iii) the requisite approval under the FC Act for the use of the forest land for the construction of a bridge over River Rohini will be obtained before undertaking the construction work. The NPV as per the applicable rate will be deposited. In the other three projects no forest land is involved and therefore payment of the NPV or obtaining approval under the FC Act is not required. On the special facts and circumstances, the recommendation for initiating action against the officer for allowing construction in violation of Court's order is not accepted hoping that the officer will be careful in future.

The application is disposed of accordingly.

I.A. No. 1623

Permission sought for in the application is allowed subject to the conditions contained in the report of the CEC dated 09.08.2006.

The application is disposed of.

I.A. Nos. 1413, 1414, 1428, 1440, 1441, 1454, 1459 & 1460

List the application on 08.09.2006

I.A. No. 4 in Contempt Petition (C) No. 193/2001

List the application along with the Contempt Petition which shall be listed for hearing in the third week of September, 2006.

I.A. No. 1530

The permission sought for by the applicant is granted subject to the applicant complying with the conditions stipulated in the report of the CEC dated 05.04.2006.

The application is disposed of accordingly.

I.A. No. 1265 in I.A. Nos. 1258-1259 and 1260-1263, 1269, 1288, 1306, 1307, 1539, 1540

We have heard learned counsel appearing for the applicants. The Units have been closed on the reports/orders of the CEC. Having regard to the facts and circumstances, we see no ground to take a different view. The applications filed by the Units (IA Nos. 1259-59, 1260-63, 1307, 1539 & 1540) are, accordingly, rejected. All other applications are disposed of in view of this order.

I.A. No. 1381

Learned counsel for the State of Haryana Seeks for and is granted two weeks' adjournment to take instructions whether units established after 30.10.2002 which are said to be more than 300 in number are still operating or the same have been closed down. An affidavit shall be filed by the Chief Secretary, within two weeks, stating as to how many units established after 30.10.2002, are still operating explaining the circumstances granting permission for establishment of those units despite the order of this Court dated 30.10.2002.

Adjourned for three weeks.

SLP (C) No.24951-24954/2005

To come up along with I.A. No. 1381.

I.A. Nos. 1429, 1519-1520

We have perused the report of the CEC dated 17.10.2006 (IA No. 1429) in respect of issue of license to the wood based industries pursuant to the order dated 30.10.2002 passed by this Court. Before we make an order on the recommendations, it seems to be reasonable that the CEC may examine the mechanism for working out the surplus timber and file a brief supplementary report within three weeks. Ordered accordingly.

Adjourned for four weeks.

I.A. No.1626-1627

Exemption from filing OT is allowed.

The CEC shall look into the matter and file its response within four weeks. The respondents, if need be, may also file their response within the same time.

I.A. No.:	Order Date: 01.09.2006	
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I.A. Nos. 1624-1625

The interlocutory applications shall be taken up along with IA No. 1287

In the meanwhile, the applicant may file an application making substantive prayers.

I.A. Nos. 1628-1630

What the applicant, in fact, seeks is the implementation of the communication of the Deputy Conservator of Forests dated 23.05.2006. It would be appropriate if the applications are prosecuted by the learned amicus curiae. The State of Rajasthan shall file reply within four weeks. In the meantime, the Central Empowered Committee may also look into the matter and file its response. The applicant henceforth, if comes in possession of any document, may supply the same to the learned amicus curiae.

I.A. Nos. 542-543

The response to the recommendations of the CEC may be filed within four weeks.

I.A. No. 1000 with 982-984, 1026-1028, 1123-1124, 1210-1211, 1197-1199, 1250-1251 and 1512

The State of Rajasthan is permitted to file additional affidavit within eight weeks.

List after eight weeks.

I.A. Nos. 1601-1603

The matters are stated to be listed before the CEC on 11.09.2006. The Madhya Pradesh Development Corporation and the State Government may appear before the CEC and file requisite documents as well.

List the interlocutory applications after receipt of the report from the CEC.

I.A. No. 1383

List the interlocutory application after four weeks.

I.A. Nos. 1397-1398 in I.A. Nos. 1289 in I.A. Nos. 1238-1239

I.A. No. 1397

The Oil India Limited is permitted to conduct the survey, subject to the conditions mentioned in the Report dated 25.08.2006, which are acceptable to the applicant.

The interlocutory application is disposed of.

I.A. Nos. 1398.

Response to the recommendations of the CEC may be filed within two weeks.

The interlocutory application is adjourned for two weeks.

I.A. No.1399 & I.A. No. 1569 with I.A. No. 946 in I.A. Nos. 301-382 and I.A. Nos. 1327-1328 & 1526

The CEC, in its report dated 01.09.2005, after noticing in the Report how 1607 saw mills have been re-opened in the garb of renewal of the old licenses, has made the following recommendations:

(a) "suspending the functioning of all the 1607 saw mills to where licenses have been renewed after 04.03.1997".

The further recommendation of the CEC is that the Report in respect of each of 1607 saw mills shall be filed by the State Government giving details of old licenses and other particulars in the recommendation, i.e. paragraph 13(b) of the Report which reads as under:

"directing the Chief Secretary, Uttar Pradesh to file a report of each of the 1607 saw mills giving details of the old licenses, were issued, the year upto which the old licenses were renewed, the date on which the saw mill was closed, the number of years for which the saw mills had run illegally, the officer who had verified and cross-verified the genuineness of the old licenses, the basis of reopening of the saw mill, the details of the machinery and electric connection at the time of the renewal of the old license and whether the delay in the renewal was due to administrative reasons or due to lapse on the part of the saw mill owner".

The learned counsel appearing for the State of Uttar Pradesh submits that, having regard to the facts of the case, the aforesaid recommendations may be accepted. In this view, we direct the suspension of all 1607 saw mills in respect of which licenses were renewed after 04.03.1997. The State Government would ensure that the said saw mills do not operate. The Chief Secretary, Uttar Pradesh, is directed to file a report in terms of paragraph 13(b), which recommendation we have accepted, within a period of eight weeks. We also accept the third recommendation contained in paragraph 13(c) to the effect that after receipt of the report, the saw mills in respect of which regular renewals have been given, the renewal of licenses were delayed due to administrative/technical reasons and not due to default on the part of the applicant saw mills may be permitted to be reopened. The CEC has also made the following recommendations:

- (a) a seniority list of plywood /veneer units operating in the Sate of UP and Uttaranchal (part of undivided UP) on the strength of No Objection Certificate' issued by the Forest Department prior to 04.03.1997 may be prepared after verifying the validity and genuiness of such 'No Objective Certificate";
- (b) after accessing timber availability qua capacity of existing licenses saw mills depending upon the availability of timber the existing plywood/veneer units may be granted license on the principal of first come last go. The units found not eligible for grant of license may be closed;
- (d) the electricity connection of all unlicensed units shall be disconnected, their mechanery's shall be dismantled and the various registration etc. issued to such units shall be cancelled by the respective authorities."

The State Government has no objection to the acceptance of the aforesaid recommendations. We order accordingly.

Another recommendation made by the CEC is:

“(c) as far as feasible, the plywood/veneer units should be permitted to operate only in the industrial estates identified for this purpose. This is particularly necessary in Uttaranchal where practically all areas are within an aerial distance of 10 km. from the nearest forest.”

As prayed, we permit the State Government to file an affidavit placing on record the difficulty, if any, in accepting the aforesaid recommendation.

The recommendation for fixing the responsibility against the officials responsible for allowing large number of wood based industries to re-open/continue in violation of this Court's orders would be considered at an appropriate stage.

I.A. Nos. 1415-1416 and I.A. Nos. 1417-1419

The State Government is granted four weeks' time to file reply. The CEC may look into it and file its response, if necessary.

I.A. Nos.1404, I.A. No. 1495 and Contempt Petition No. 202 of 1995 and Contempt Petition No. 442/2004 with I.A. No. 1400

We do not propose to proceed with the contempt petition and the interlocutory applications in view of what is stated in the report of the CEC dated 31.08.2006. The interlocutory applications and the contempt petition are dismissed.

I.A. Nos. 1408 and 1457 and I.A. No. 1462

The State of Kerala is granted two weeks' time to file its response to the report of the CEC.

I.A. Nos. 827

List the matters on 15.09.2006.

I.A. No.:	Order Date: 08.09.2006	
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I.A. No. 1631

Issue notice.

The CEC may also file its response.

I.A. No. 1632

The permission sought for by m/s. Power Grid Corporation Ltd. For use of forest land falling in Ratapani Wildlife Sanctuary for laying of Optical Fiber Cable (PFC) is allowed subject to the applicant's complying with the conditions recommended in the report of the CEC dated 31.08.2006. However, in respect of the third condition which requires five per cent of the project cost for laying of OFC between Itarsi and Bhopal to be deposited, we direct that the amount be calculated not on the distance between Itarsi and Bhopal but on the distance of 12.8 km

which falls within the Ratapni Wildlife Sanctuary area.

I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1441, 1454, 1459 & 1460

Adjourned, to be listed on 15.09.2006.

I.A. No. 1634

For non-compliance of the condition of payment of cost of Penal Compensatory Afforestation and amount of Net Present Value (NPV) subject to which in-principal approval was granted, the Ministry of Environment and Forests, has issued a communication dated 24.08.2006, inter alia, stating that if the applicant fails to comply with the stipulations and this Court's orders, the State Government may take necessary steps to prevent the violation of the Forest (Conservation) Act, by the applicant. The applicant has not paid the NPV payable by it. Be that as it may, for the present, on the applicant's depositing a sum of Rs. 100 Crores within a week the mining operation may be permitted to continue forthwith, subject to further orders to be passed on the application. In addition, the applicant will deposit another sum of Rs. 200 Crores within a period of two months.

In case the amounts are not deposited within one week or two months as above, the mining operation shall be stopped forthwith.

Reply to the application be filed within four weeks and rejoinder within two weeks thereafter.

List the application in the month of November, 2006.

I.A. No. 1170 in I.A. Nos. 948-948A

The report of the CEC dated 16.06.2004 is accepted. The State may permit shifting of saw mill from one place to another keeping in view the optimum distance from the forest and also keeping in view the other guidelines issued in this regard.

The I.A. is disposed of accordingly.

I.A. No. 1412 in I.A. 887

The State of Maharashtra is directed to file its response within four weeks.

I.A. Nos. 1424-1425

Such of the respondents who have not filed reply affidavits shall file the same within four weeks.

I.A. Nos. 1433 with I.A. No. 1477

The CEC shall also look into the application and file its response within four weeks.

I.A. No. 1442

Mr. Mukul Rohtagi, learned senior counsel, states that the High Power Committee (HPC) has cleared many cases before and after the order was passed in the case of the applicant granting permission to those who crossed the

bench mark of more than 80%.

In the present case the order of the HPC was made on 24.07.2003. We, therefore, permit the applicant to file an additional affidavit along with supporting material, within two weeks. Response may be filed by the CEC within two weeks thereafter.

I.A. Nos. 1450-1452 in I.A. No. 1310

The applicant shall serve the State of Rajasthan through the Chief Secretary as also through the Director Mines, Department of Mines and Geology, besides the standing counsel for the State of Rajasthan. The notices be also given dasti, in addition.

The application filed by the State of Rajasthan shall also be listed along with this application.

I.A. No.:	Order Date: 15.09.2006	
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I.A. No. 1633

The interlocutory application is dismissed.

I.A. Nos. 1635-1636

The Central Empowered Committee may look into the matter and file its response within four weeks. In case the Railway Administration needs conservation of other land from Chambal Wildlife Sanctuary, that may also be intimated within one week to the Central Empowered Committee so that it can also be examined.

I.A. Nos. 827, 1122, 1337 & 1473, 1620 & 1612-1613

I.A. No. 827

Having considered the Report dated 31.08.2006, we permit the S.I.T. to utilize the amount of Rs. 1.51 lakhs out of the penalty/sale proceeds of the confiscated timber for giving award of amounts to the persons named in Annexure 'B'. The remaining amount shall be transferred to the Central Empowered Committee.

I.A. No. 1122

The matter is adjourned.

I.A. No. 1337

In terms of order dated 05.05.2006, ad-hoc body has been set up, as stated in the affidavit of the Director General of Forests and Special Secretary of the Ministry of Environment and Forests dated 21.08.2006. The affidavit also states that the ad-hoc CAMPA may be authorized to disburse funds for funding site-specific schemes and incur other expenditures. It also states that, as on 19.08.2006, a sum of Rs. 1094.58 crores have been received from various States/Union Territories, in addition to Rs. 30 crores received from Singareni Collieries Company Limited. Andhra Pradesh. Before we consider the prayers made in the affidavit, we direct the filing of the Schemes so far received by Ad-hoc CAMPA along with brief synopsis thereof. Let the same be filed within

three weeks.

However, we allow prayers made in Paragraphs 3(iii) and 3 (iv), which are as under:

- (iii) The services of Shri Sandeep Kumar, presently working as Assistant Inspector General of Forests in the Ministry of Environment and Forests, may be continue to be utilized in Ad-hoc CAMPA after completion of his tenure in the Ministry of Environment and Forests.
- (iv) Ad-hoc CAMPA may be authorized to engage additional officials required for its proper and efficient functioning, as provided in paras 2.4 and 3 of the Notification dated 23.04.2004 or MoEF regarding constitution of CAMPA.

I.A. Nos.1473 and 1620

We have perused the orders dated 29/30.10.2002, and 01.08.2003. There is no ambiguity whatsoever in those orders. It has been clearly stipulated therein that while according transfer under the Forest (Conservation) Act for change of user from forest to non-forest purposes, the user agency shall pay Net Present Value (NPV) of the forest land. Clearly, therefore, NPV is required to be recovered in all cases approved by the Ministry for change of user under the Forest (Conservation) Act after 29/30.10.2002, irrespective of the date on which, in principle (Stage one) clearance may have been granted. In principle (Stage one) approval cannot amount to grant of permission under the Forest (Conservation) Act. The view-point of the Central Empowered Committee, as reflected in its Report dated 31.07.2006, is wholly in accord with the above-referred orders passed by this Court and the stand taken in the affidavit dated 14.09.2006, filed by Mr. Sandeep Kumar, Assistant Inspector General of Forests, is clearly erroneous. Infact, in terms of these orders, approval under the Forest (Conservation) Act could not have been granted without payment of NPV. The Ministry is directed to forthwith take steps to recover from the user agency the NPV in terms of orders dated 29/30.10.2002 and 01.08.2003 and file a report within eight weeks. The matters are adjourned for eight weeks.

I.A. Nos. 1612 and 1613

No orders.

I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1441, 1454, 1459, 1460

The Forest Advisory Committee (FAC) is required to be constituted in terms of the Forest (Conservation) Rules, 2003. The said Committee shall be constituted within two weeks and an affidavit be filed in this Court. We are unable to comprehend the reason of constituting the FAC in terms of amended Rules which were stayed by this Court in the year 2004. The stay, admittedly, is continuing. The affidavit shall explain the circumstances under which the FAC was not constituted under the 2003 rules and was constituted under the Rules stayed by this Court. All TWP proposals/ matters are required to be examined only by a property constituted Committee as per the 2003 Rules. The affidavit shall be filed by the Secretary, Ministry of Environment and Forests within two weeks.

The three eminent experts in forestry and allied disciplines (non-forest members) of FAC, we hope, would be appointed in consultation with the learned Amicus Curiae and the Chairperson of the Central Empowered Committee.

I.A. No. 1464

Having considered the Report of the Central Empowered Committee, in the circumstances of the case, no further orders are called for. The interlocutory application is disposed of.

I.A. Nos. 1150 in I.A. No. 1010 with I.A. No. 1458 and I.A. No. 1010 in I.A. No. 670

List the matters on 10.09.2006. No other matter shall be listed on that date.

I.A. No. 1471

In view of the order dated 24.03.2006, the interlocutory application is disposed of.

I.A. No. 1479

Perused the letter circulated by the learned advocate for the respondent.

The interlocutory application is adjourned.

I.A. Nos.1480-1482

List the interlocutory applications after the report of the Central Empowered Committee.

Writ Petition (C) No.256 of 2006

Issue notice

I.A. No.:	Order Date: 17.10.2006	
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I.A. Nos. 1156,with 1192,756,1463 &1532

1. Arijit Pasayat, J.— The present IAs relate to acceptability of the report given by the Expert Committee relating to alleged violation of the environmental norms by the respondents.

2. Background facts in a nutshell are as follows:

The Delhi Development Authority (in short the 'DDA') proposed the development of International Hotel Complex on 315 hectares of land situated in the Vasant Kunj area after the same area was identified in the Master Plan for Delhi 2001 for urban use. According to the applicants, the said area under the earlier Master Plan 1962 was identified as green area but there was a change of user to urban area under the latter Master Plan i.e. Master Plan 2001. DDA planned to develop the said area for construction of Hotels, Convention Centres etc. Initially, by an order dated 13.09.1996 this Court directed inter alia as follows:

"The proposal of the Delhi Development Authority (DDA) called International Hotels Complex (Complex on 315 hectares of prime land situated in South Delhi is before us for consideration. In the affidavit filed by Mr. Arun Khaisalkar, Commissioner (Planning), (DDA), the details of the development in respect of the said 315 hectares has been given. It is not disputed that the Master Plan of Delhi 2001 was amended on 17.06.1995 where under out of the total area of the complex the area assigned for residential purposes was reduced from 100 hectares to 49 hectares and for commercial purposes increased from 8 hectares to 65 hectares. Apart from that 39 hectares have been earmarked for public and semi-public, 15 hectares for transportation and remaining 147

hectares for recreational purposes.

It is stated in the affidavit that there is an acute shortage of tourist accommodation in Delhi and as such it is necessary to provide sites for 4/5 Star Hotels, Institutions, Hospital, Shopping Mall, etc. It is further stated that the Complex area is not a part of the Ridge. It is about 2 Km. away from Southern & South Central Ridge.

We have heard Mr. V.B. Saharya, learned counsel for DDA and also Mr. P.C. Jain, Consultant, Planner, DDA. We have heard Mr. Mehta, Dr. Rajiv Dhawan and other learned counsel assisting us in this matter.

Mr. Sunder Subramanian, Member of Citizens for the South Western Lake Wilderness & Others and of PILSARC, has filed an affidavit pursuant to this Court's order dated 04.09.1996.

It is stated in the affidavit that the area is topographically a part of the South Ridge which is to South Delhi what the Central Ridge is to Central Delhi. It is further stated in the affidavit that the area is lake studded covering over 1000 acre. The affidavit indicates that the area was kept green under the 1962 Master Plan in the Draft Zonal Plan of 1993 (ZDP Zone 121993-Z-P/F/93-52) of the DDA 2001 Master Plan. It is further stated that this area is the natural extension of Sanjay Van a notified reserve forest and a part of Ridge. Along with the affidavit, various photographs have been attached to depict the ecology of the area.

This Court in Vellore Citizens Welfare Forum v. Union of India and Ors. (JT 1996 (7) SC 375) has observed that the development and environment protection must go together. There should be balance between development and environment protection. It is, therefore, necessary that before the proposed Complex of the DDA is brought into execution, it should have environment clearance from the authorities concerned. The whole of the area has to be surveyed from the point of view of environment protection. In other words, the environment impact assessment of the area has to be done by the experts. We are of the view that the authority contemplated by Section 3(3) of the Environment (Protection) Act, 1986 ('the Act') can be the only appropriate Authority to look into the environment protection side of the present project or any other project which the DDA or any other Authority may initiate in future. Needless to say that the City of Delhi is already highly congested and has been rated by the World Health Organization as the 4th most polluted city so far as the air pollution is concerned. It is, therefore, necessary that the development in the city should have environmental clearance.

We, therefore, direct the Central Government to constitute an Authority under Section 3(3) of the Act and confer on the said authority all the powers necessary to deal with the environmental protection issue arising out of the project in hand or any other project which may in future come under its consideration. The authority shall be headed by a retired judge of a High Court and it may have other members - preferably experts in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said Authority the powers to issue directions under Section 5 of the Act and for taking measures with respect to the matters referred to in clauses (i), (iii), (iv), (vi), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3 of the Act. The Central Government shall constitute the Authority before 10.10.1996. This Authority shall have the jurisdiction over the National Capital Region as defined under the National Capital Region Planning Act, 1985.

Needless to say that the authority so constituted shall keep in view the 'Precautionary Principle' and other principles laid down by this Court in Vellore Citizens Welfare Forum's case (supra). The Authority shall lay down its own procedure.

We further direct that till the time the Complex is cleared by the Authority so constituted by the Central Government, there shall be no construction and no development of any kind in the area by the DDA or by any other authority.

The DDA can, however, clean the area and plant trees if they so wish.

The proceedings initiated on Kuldip Nayar's letter are disposed of."

3. Subsequently, on an application filed, this Court by an order dated 19.8.1997 held that 92 hectares of land out of the aforesaid 315 hectares of land was a constraint area and only in respect of the balance 223 hectares of land the constructions have to abide by the conditions of clearance. Subsequently, a Writ Petition was filed (W.P.No. 564/2003) which was dismissed by an order dated 8.3.2004. Pursuant to the directions of this Court the Committee constituted has given its report. The recommendations made by the Committee are as follows:

1. The project site has topographical features similar to that of the ridge. Various studies, including EIA documents submitted now for obtaining environmental clearance, establish the environmental value of this area, particularly as a zone of groundwater recharge. Therefore, DDA should have exercised adequate environmental precaution based on a sustainable environmental management approach. There is no evidence that the environmental impact of the construction of malls was assessed beforehand and that the development of this area for commercial activities is in accordance with the Master Plan.
2. DDA's advertisement (Hindu 12.12.2003) states: "purchaser would be required to obtain necessary clearance for the project from the EPCA and/or DPCC before submitting the plans for sanction to the Building Dept of DDA". There is no confirmation that this requirement was fulfilled by the allottees.
3. DDA has mentioned that FAR for the projects under reference is pegged at 1.0. However, it is seen that for all the buildings proposed in Plot no. 1 to 5, DDA has permitted a higher FAR which works out to 1.25 to 1.29.
4. In hindsight it is evident that the location of large commercial complexes in this area was environmentally unsound. Now many proponents have constructed very substantially and really speaking awarding clearances even with conditions is largely a compromise with de-facto situation. The Expert Committee is of the opinion that at this stage only damage control is possible by strict implementation of effective EMP and resource conservation measures in the project construction and operational stages.
5. As stated earlier in the interim report, the Committee suggests that the Ministry of Environment & Forests and the Supreme Court may consider imposing a penalty on the project proponents who commenced construction works without obtaining environmental clearance in contravention to the Notification in July 2004.
6. Existing vacant plots (no. 6 and 7) of the shopping mall complex should not be auctioned by DDA for more malls or commercial activities. They may be kept open as a fringe of the bio-diversity park or earmarked for development of any common facilities that may be needed in the area.
7. Treated sewage from Vasant Kunj Sewage Treatment Plant must be utilized as much as possible for such purposes as water cooled chillers, toilet flushing, gardening and horticulture and floor washing. This will reduce the requirement of fresh water.
8. The aforesaid purposes will need tertiary treatment of sewage. Since the allottees of offices and

malls have proposed to carry out entire treatment up to tertiary level on their own, it should be possible for them to treat the treated sewage received from Vasant Kunj sewage treatment plant to the required level.

9. While rainwater harvesting should be done, the withdrawal of ground water should not be permitted in the shopping mall area.
 10. For construction, use of ready-mix concrete (RMC) should be made compulsory so as to reduce movement and storage of materials and generation of dust.
 11. Utilization of solar energy must be maximized in all these proposals both for heating water and generating power to light up corridors and parking.
 12. A Monitoring Committee may be constituted for overseeing the project so as to ensure effective implementation and compliance to environmental safeguards".
4. In support of the applications, learned counsel has submitted that it has never been held by this Court that 92 hectares of land are not a part of the ridge. On the contrary, the first order itself made the position clear. The clarification by order dated 19.8.1997 had really expressed no opinion on the question whether the land was a part of the ridge. A report was given by the Environmental Pollution (Prevention and Control) Authority (in short 'EPCA') chaired by Shri Bhure Lai wherein it has been clearly stated that environmental factors were not in favour of urban development use of land and the entire parcel of land should be developed as green. Therefore, it is submitted that there has been clear violation of the norms fixed on 07.07.2004.
5. Per contra, learned counsel for DDA and the allottees inter alia submitted that the applicants are trying to re-open an issue which had become final about a decade back. The order dated 19.08.1997 made the position absolutely clear that 92 hectares of land was constraint area and was not an integral part of Delhi Ridge. Out of the said 92 hectares of land, only 19 hectares of said land are sought to be utilized for the purpose of construction. Learned counsel for the DDA additionally submitted that long back the 92 hectares of land have been declared constraint area and there has never been any challenge to the Notification. In a nutshell, DDA and allottees have prayed for dismissal of the applications.
6. The first order of this Court which was relied i.e. 13.09.1996 has been quoted above. It would be appropriate to quote the subsequent orders. They are as follows:

Order dated 19.08.1997

"Having heard learned counsel for the parties and the learned Additional Solicitor General, we are satisfied that this Court's Order dated 13.09.1996 on I.A. No. 18 in W.P. (C) No. 4677/85 is in effect to govern the constructions made under the proposal of the Delhi Development Authority (DDA) called 'The International Hotels Complex' in South Delhi and mention of the area of 315 hectares in relation to that complex is inadvertent since the DDA's proposal itself excluded the constraint area described at page 33 of the paper book (page 13 of the booklet) which is a total of 92 hectares including the shopping Mall and Hotel site of 25 hectares within which is located the site of the petitioner's proposed Hotel under construction in an area of 4 hectares. In other words, the proposal of the DDA called "The International Hotels Complex" in South Delhi is to be understood as that for the area of $315 - 92 = 223$ hectares as shown in the DDA's proposal itself. This clarification of this Court's order dated 13.09.1996 has become necessary on account

of the fact that the concerned authorities are construing the order dated 13.09.1996 to operate also in respect of the aforesaid constraint area of 92 hectares in addition to some other areas which are even outside the area of 315 hectares. However, it is made clear that the petitioner and all other similarly situated outside the 223 hectares of the area of the proposal of the DDA are required to abide by all the conditions of clearance from the environmental authorities including taking the measure necessary for checking pollution and other requirements of law.

In view of the manner in which this Court's aforesaid order dated 13.09.1996 is to be construed, the order of the Authority of 31.01.1997 and 07.03.1997 does not survive.

The Special Leave Petition is disposed of in these terms".

"We are satisfied that the proposed Mall is on the area measuring 92 hectares of land, which has already been excluded by the order of this Court on 19.08.1997. In that view of the matter, we do not find any merit in this petition. It is accordingly dismissed. However, this order will not preclude the petitioner from availing any remedy, which may be available to him under law."

7. The order dated 19.08.1997 makes the position clear that 92 hectares of land were kept out of consideration and in fact it was clearly declared to be a constraint area. The expression 'constraint area' has its own connotation. As has been pointed out by learned counsel for the DDA, a Notification in respect of the land in question has been issued. The said Notification has never been challenged. The EPCA's report dated 06.10.1999 nowhere indicates that the land in question was a part of the ridge. Both the EPCA and the Expert Committee's report under consideration refer to the land as "similar to ridge area". Significantly, the EPCA in its report has taken note of the fact that there is no statutory definition of "ridge". That being so, at this juncture, it would be inappropriate to reopen the whole issue as to whether the land in question was a constraint area or ridge land. A bare reading of the order dated 19.08.1997 makes the position clear that this Court had treated the land as constraint area. It has been emphasized by learned counsel for the petitioners that the Expert Committee's report is per se unacceptable because it has focused more on the aspects of regularizing the unauthorized areas rather than on the consequences flowing from the non observance of the procedure before undertaking any construction. It is stated that this Court has taken serious view of unauthorized construction and some times on the basis of permissions, wrongly granted. Various decisions in this regard are 30 relied on.
8. In response, learned counsel for the respondents have stated that their lands were allotted by the DDA. As per Notification No.SO/60(E) dated 27.01.1994 35 for the first time a provision for obtaining environmental clearance by a Central Government (MoEF) before undertaking any new project listed in Schedule-I to the Notification was introduced. The Notification did not relate to new construction projects and as such did not apply to them is the stand of the respondents. The auction was conducted by DDA. Having undertaken the project, huge investments have been made and with sanction of building plans they applied for. In some cases applications were filed before DPCC for obtaining clearance under 5 the Air and Water Acts. According to them prior to 07.07.2004 no other environmental clearance was required except clearance as afore-stated. The auction Notice of DDA dated 12.12.2003 mentions about clearance from EPCA. According to the respondents, this referred to the draft Notification dated 07.10.2003 which proposed to include new construction projects within the ambit of the parent Notification dated 27.01.1994.

According to them, the amendment by Notification dated 07.07.2004 postulates post facto clearance contemplated for new construction projects undertaken.

9. In some cases the Expert Committee after public hearing has made the recommendations with certain stipulations. It has been clearly stated that the project can be recommended for environmental clearance. The confusion arose because DDA all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional.
10. DDA had also made some constructions at the site in question. That being so, it is submitted that the recommendations made by the Expert Committee should be accepted.
11. Learned counsel for the DDA while adopting the submissions made by the other respondents submitted that the DDA proceeded on a bona fide impression that all requisite clearances had been obtained by it. There was no question of it acting in mala fide manner or irregular manner.
12. In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the respondents. We are prima facie satisfied about the bona fides of the respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken.
13. Let the MoEF take a decision within a period of 2 months from today to avoid unnecessary delay. The IAs. are accordingly disposed of.

I.A. No.:	Order Date: 18.10.2006	
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I.A. Nos. 1655-57

The matter is referred to the CEC as also the Standing committee for their response. We are informed that the term of the Standing Committee expired more than about a month back and new Standing Committee has not been constituted. WE hope that without any further delay, response is available before the next date of hearing and the matter is not required to be adjourned to await its response.

List the interlocutory application after four weeks.

I.A. No. 1656

The interlocutory application is adjourned.

I.A. No. 1659

Response on behalf of the Andaman and Nicobar Administration be filed within four weeks.

I.A. No. 1618

The matter is referred to the CEC for its response.

List the interlocutory application after six weeks.

I.A. No. 826

It is stated that I.A. Nos. 1370-1370A are wrongly connected with NPV matters. De-link it from rest of the matters and list it after two weeks.

As far as other matters are concerned, the CEC has filed its response to Kanchan Chopra Report. If any of the parties wish to file comments thereto, they may obtain a copy of the CEC report and file their comments within three weeks. These matters be listed on hearing days in the month of November, 2006, along with CAMPA matters.

I.A. No. 824

Reply to the response of the Central Empowered Committee recommendations, if any, may be filed by the State Government within four weeks.

I.A. Nos. 920 & batch

The matters are adjourned for six weeks.

I.A. Nos. 1023 and 828 & batch

List the applications after four weeks.

SLP (C) Nos.3353 of 2003

In the impugned order, the Division Bench of the High Court directed that let the learned Single Judge take up the writ petition for final disposal as early as possible and liberty was granted to seek further clarification from the learned Single Judge. The impugned order was passed on 07.08.2002. While adjourning the hearing of the special leave petition, we direct the parties to mention the matter before the learned Single Judge, if it has not been disposed of since four years have already passed since the order passed by the Division Bench on 07.08.2002.

I.A. No.	Order Date: 07.10.2005	
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I.A. No. 1408

In this case we are concerned with the depletion of forests which is ecologically fragile evergreen, with rich biodiversity, and home to many rare and endangered species of wild flora and fauna. The nature of the area is depicted in the report of CEC (I.A. No. 1408). An area of 334 sq. miles has been declared as the Cardamon Hill Reserve (CHR) and notified as a Reserve Forest in 1897 by the then Maharaja of Travancore. The Forests of this area, as per the report, is situated in the attachment area which is of vital importance as several hydro-electric

projects including Idukki dam are constructed in this area. These forests connect palani hills with the Periyar Tiger Reserve the forest to the south and form the natural corridors for the passage of wildlife especially elephants between these regions. Regarding the massive scale of encroachment, this is what the report dated 1st April 2004 made by the Additional Director General of Police (intelligence) Idukki Mr. Rajan K. Madhekar has to say:

“There is formation that large scale encroachment of revenue/ forest land an issue of forged pattayams are going on in Idukki district especially in Munnar, Devi Kulam, Kanandevan Hills village etc., with the active support of the concerned revenue official. It is known that about 3,000 forged pattayams were issued in Idukki district. Political parties/ religious organization/ government employees/ traders/ businessmen are also included among these illegal occupants. Some of these illegal occupants obtained huge amounts from Banks/Financial Establishments, as loan, by producing these forged pattayams. Though cases are being registered in this regard, the action is not being continued allegedly due to political influence”.

According to the report, the list of encroachers is said to have included powerful and influential persons, including a member of parliament and other relatives of some ministers. As can be seen from the aforesaid, about 3,000 forged pattas were issued. 19 officers have been identified for issue of those forged pattas between 1992 to 2003. 13 persons have been named as agents. Copy of CEC report dated 07.09.2005 was given to the learned counsel for the State of Kerala about a month ago. Counsel will seek further time to file response thereto. Let the response be filed within four weeks.

I.A. No.	Order Date: 20.10.2005	
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List the application tomorrow, i.e., 21.10.2005.

I.A. No.	Order Date: 21.10.2005	
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I.A. No. 1412 in I.A. 887

Adjourned, to be taken up on the next date of hearing.

I.A. No. 1415-1416 & 1417-1419

Response to the applications be filed within three weeks. List along with I.A. No. 946.

I.A. No. 1420

None is present for the B.S.N.L. The application is adjourned.

I.A. No. 1424-1425

Issue notice.Learned counsel appearing for the State of Chhattisgarh accepts notice for respondent Nos.2 and 3. Mr. A.D.N. Rao, learned counsel, accepts notice for the Union of India. Notice to issue to respondent Nos. 4 to 7 only.

I.A. No. 1359 in I.A. No. 745

As prayed in the application, repatriation of Sh.Loknath Behera to the parent cadre is allowed. If required, at any later stage the matter may be brought to the notice of this Court for posting of the officer in C.B.I. again.The application is disposed of accordingly.

I.A. No. 1169 in I.A. Nos. 949-950

On request of Mr.B.S.Banthia, learned counsel appearing for the respondents, to file response, the matter is adjourned. Let the response be filed within four weeks.

I.A. No. 1170 in I.A. Nos. 948-948A

The application is adjourned.

I.A. No. 1171

No further orders are required.

I.A. No. 1173 in I.A. Nos. 77-78, 83 & 92

Response may be filed within four weeks. List thereafter.

I.A. No. 1426 & 1428

The CEC and MoEF may file response to these applications within four weeks. Till the decision of these applications, the directions contained in our order dated 16.09.2005 that no mining activity would continue under any Temporary Working Permit or Permission would not be applicable to the applicants for the reasons disclosed by them in their applications.

I.A. No..... (For directions filed by the Amicus Curiae) *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*

Taken on board. Issue notice to the State of Chhattisgarh.

I.A. No.	Order Date: 17.11.2005	
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I.A. No. 1435-1437 in I.A. No. 566

List the applications along with the main matter after receipt of the report from the Committee constituted under the order dated 26.09.2005.

I.A. No. 1441 in I.A. No. 566

List the application on 18th November 2005 before the Forest Bench.I.A. Nos.1315-1316 be also circulated along with this application.

I.A. No.:	Order Date: 05.01.2007	
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I.A. Nos. 827,1122 & 1337, 1473, 1620 and 1693 in 1473

By order dated 28.11.2006, we directed that appointment of CEO, CAMPA, shall be made forthwith and compliance reported. It is stated that acting CEO has been appointed and appointment of regular. CEO shall be made once the CAMPA is constituted.

I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1441, 1454, 1459, 1460, 1662-1663, 1675 in 1413 and 1634

Pursuant to our order dated 15.12.2006, Dr. Pradipto Ghosh, Secretary, Ministry of Environment and Forests, Government of India, has filed an affidavit dated 03.01.2007, inter alia, stating therein that for appointment of non-official experts to various decision making bodies under the Ministry of Environment and Forests, guidelines require possession of formal qualifications under the field whereof expertise is claimed and relevant professional experience. It is further claimed that the guidelines are public documents and are available on the Ministry of Environment and Forests' website since their adoption in April, 2004. The Ministry of Environment and Forests is directed to place on record a copy of the said guidelines. According to the affidavit, the F.A.C is a decision making committee since it is an integral part of a statutory regulatory process. On the other hand, it is sought to be contended by Mr. U.U. Lalit, learned amicus curiae, that there is substantial difference between a decision making body and an advisory body as contemplated under the Act and Rules under consideration. Before we hear submissions on these aspects and other related matters, it would also be necessary to know whether before April, 2004, there were any guidelines for appointment to such body or not. If the answer is in the affirmative, a copy of those guidelines shall also be placed on record. In our last order, reference has been made to some of the suggested members being appointed on various committees by the Government of India, including the office of the Prime Minister, besides on the committees appointed by the State Government for protection of the environment.

While explaining the aforesaid aspects, the Ministry shall also state whether such appointments either by the Central Government or by the State Government or by the office of the Prime Minister were made or not and, if so, the particulars thereof, including the dates of appointment and the nature of the committees. This shall be done by the Ministry within a period of two weeks. Within one week thereafter, C.E.C./amicus curiae may respond to the affidavit of Dr. Pradipto Ghosh dated 03.01.2007, and/or that may be filed pursuant to this the order dated 15.12.2006, and protection granted there under is extended till further orders. List these matters after three weeks. An affidavit dated 03.01.2007, has been filed on behalf of Sandur Manganese and Iron Ores Limited [I.A. Nos.1662-1663] to work on already broken-up areas, as per paragraph (6) of the affidavit. The Ministry and C.E.C may response within five days. List I.A. Nos.1662-1663 on 10.01.2007 at 10.30 a.m.

I.A. No. 1697 in I.A. No. 548

Ministry of Environment and Forests and C.E.C may response to the application within two weeks. I.A. No.1681 in Writ Petition (C) No.202 of 1995. The C.E.C has filed its report. Learned counsel for the State of Haryana prays for a short adjournment to file its response. Let that be done within two weeks. In Re.: N.P.V. Matters. Mr. U. U. Lalit, learned Amicus curiae, states that direction may also be issued for hearing N.P.V. matters. List these matters in the month of February, 2007.

List all these matters and other forest matters before a Bench of which Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice S.H. Kapadia are members.

I.A. No. 1000 with 982-984, 1026-1028 and 1123-1124, 1197-1199 and 1210-1211, 1250-1251, 1512

Though arguments have been heard and judgment reserved but we think it appropriate if these matters are decided along with I.A. No.1485. It is ordered accordingly. List the matters before a Bench of which Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice S.H. Kapadia are members.

I.A. No.:	Order Date: 12.01.2007	
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I.A. No.1662

We have perused the report of the Central Empowered Committee, dated 9th January, 2007, in particular, paragraph 5 thereof. In this view, no separate order is necessary except to reiterate that the order dated 15.12.2006 and protection granted thereunder is extended till further orders.

I.A. No.:	Order Date: 01.02.2007	
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I.A. No. 1676 in I.A. No. 566

List on 15.02.2007.

I.A. No.:	Order Date: 05.02.2007	
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I.A. No. 1719-20 of 2007

List on 09.02.2007.

I.A. No.:	Order Date: 21.02.2007	
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Diary Nos. 3715, 3714, 3805, 3806, 3807, 3809, 3810 of 2006 in I.A. No.1399 in W.P.(C) No. 202 of 1995
List with I.A. No. 1399 in W.P. 202/95 on 23.02.2007.

I.A. No.:	Order Date: 23.02.2007	
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I.A. No. 1579 & 1580

The State Government has not filed its affidavit so far as directed by this Court. Four weeks further time is granted to the State as a last opportunity to file the same. Post thereafter immediately.

I.A. No. 1698

This I.A. has been filed by the State of Rajasthan seeking permission to draw water from Chambal River. The C.E.C. Will file its response within three weeks..

I.A. No. 1699

The Ministry of Environment and Forest (MoEF) is directed to file its response within Three weeks.

I.A. No. 745, 926, 996 & 1288

As regards the killing of Sanjay Kumar Singh, a Senior Forest Officer, in Bihar the C.B.I. has filed a Status Report stating that earlier two persons were apprehended and were put on trial and they were found guilty and were sentenced to undergo imprisonment for life and subsequent to that four more were arrested and recently one more has been arrested and investigation has been conducted against them and a final report has been filed.

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

The trial will be completed against these accused as early as possible. 16 other accused are still at large. The C.B.I. is directed to take urgent steps to apprehend them with the help of the Bihar State Police. Adjourned by eight weeks.

I.A. No. 1324 & 1474

Adjourned by six weeks in re: FAC Matters. List on 20.03.2007.

I.A. Nos. 1485 & 1000, 982-984, 1026-1028, 1123-1124, 1210-1211, 1197-1199, 1250-1251 & 1512

Post these matters on non-miscellaneous days i.e. on 24.04.2007 and 25.04.2007.
Written submissions, if any, shall be filed in the meanwhile.

I.A. No. 1676 in 566

The Ministry of Environment and Forest will file its response within four weeks. Meanwhile, in the peculiar circumstances, the interim order passed in I.A. Nos.1595-1596 on 21.07.2006 would apply to the petitioners/applicants so far it relates to the petitioner. For the time being, the petitioner would pay 50% of the NPV with an undertaking to pay the balance amount later. In re: All I.As connected with saw mills.
List on 14.03.2007.

I.A. No. 1719 & 1720

The petitioner will pay whatever NPV amount demanded by the authorities. Subject to that, the I.As are allowed.

I.A. No. 1677-1678 & 1679-1680 in 566 & 1713 in 1441

As regards the under-ground mining the applicants shall pay 50% of the NPV amount with an undertaking to pay the balance amount later. As regards overground mining, 100% amount of the NPV shall be paid by the applicants. Subject to that the I.As are allowed. SLP(C) No. 18030/2003: Six weeks time is granted to file the reply to the additional affidavit by the respondent. Mr.Haris Beeran, advocate, is permitted to receive all the connected papers on behalf of the Ministry of Environment and Forests.

I.A. No.:	Order Date: 07.03.2007	
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Post on 09.03.2007 along with the Forest matter.

I.A. No.:	Order Date: 30.03.2007	
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I.A. No. 1442

Stand over for three weeks

I.A. No. 1715-1716

C.E.C. to submit its report within four weeks. I.A. Nos. 1710-1712: List on 27.04.2007. Meanwhile, the State is directed to file its reply.

I.A. No. 1768

In view of the further contentions of the applicant, the C.E.C. to file its response within three weeks. List on 24.04.2007.

I.A. No. 1655-1657

This is a matter where the Power Grid Corpn of India Ltd seeks permission for construction of two transmission lines for evacuation of power from the Rajasthan Atomic Power Plant through the Jawahar Sagar Wildlife Sanctuary. The C.E.C. has filed its report and the report has been produced wherein various conditions have been put. Subject to certain conditions, the request has been sanctioned. But as regards Condition No. 3, 5% would be of the cost of laying up the transmission lines through the Jawahar Sagar Wildlife Sanctuary, shall be deposited for the time being in the CAMPA Fund, subject to later determination of the issue. As regards condition no.5, i.e. the actual felling of trees would be subject to the description given in paragraph 12 of the recommendations of the C.E.C. I.A.s are disposed of accordingly.

I.A. No.1429

Ms.Shobha, counsel seeks time for consideration of the Report. Four weeks time is granted for doing so.

I.A. No. 1519-1520

The State Government has not so far filed any response. Four weeks time is granted for doing so Meanwhile, the State Government shall not issue any license till further orders.

I.A. No. 1652-54

Earlier there was an application in the same proceedings to cancel the report of the C.E.C. But the same was rejected by this Court. The applicant has filed the fresh applications seeking fresh relief. The same is referred to the learned Amicus Curaie for his consideration. List these applications on 24.04.2007.

I.A. No. 1782-83

Let the State of Uttarakhand (Uttaranchal) file its response. List on 24.04.2007.

I.A. No. 828 with 833, 834-835, 837-838, 839, 840, 846-847, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 893-894, 900, 901-902, 903,904, 905, 1276-1277, 1310-1310A in I.A. No. 833 in I.A. No. 828, 1329, 1330, 1331-1332, 1465, 1488 in I.A. No. 891-892, 1590, 1612-161 &1700-1703

List these matters on 15.05.2007 along with I.A. No. 1785 in W.P.(C) No. 4677/1985.

I.A. No. 828

The C.E.C. has filed its report. The State of Rajasthan has to file its response. Four weeks time is granted for doing so. List on 15.05.2007.

I.A. No. 941

Let the copy of the I.A. be given to the learned Amicus Curaie for his consideration. List on 16.05.2007.SLP(C) No.3353/03: Let the copy of the SLP paper book be given to the Ld. Amicus Curiae for his consideration. Adjourned. W.P. (C) No. D6564/07. This petition be treated as I.A. List on 15.05.2007 along with U.P. Saw Mill Matters.

I.A. No.:	Order Date: 05.04.2007	
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I.A. No. 1780-1781

Issue notice to MoEF and C.E.C. Let their responses be filed within four weeks.

I.A. No. 735

In view of the report of the C.E.C. the I.A. is dismissed without prejudice to the right of the applicant to pursue his remedy, if any, by way of arbitration proceedings.

I.A. No. 1635-1636

Application for exemption from filing O.T. is granted Earlier in I.A. No.1011, vide this Court's order dated 16.12.2005, an extent of 12.764 ha of land in the Chambal National Wildlife Sanctuary was transferred to the Ministry of Railways for laying down the new railway lines. In the present application the Ministry of Railways seek transfer of 8.87 ha of land for the same project. The matter was examined by the C.E.C. and the C.E.C. recommended acceptance of the prayer, subject to the following conditions:

- (a) Approval under the F.C.Act.
- (b) Payment of 5% of the project cost in the compensatory afforestation fund.
- (c) Payment of NPV with an undertaking that additional NPV, if determined by this Hon'ble Court will have to be paid by the Railways.
- (d) Other conditions stipulated by MoEF while granting approval under the F.C.Act will be fulfilled.
- (e) Railways will construct pucca retaining walls of suitable dimension of 500 mt. Width on each side of the railway line on both banks to prevent any damage to the high banks through soil erosion.
- (f) Railway Authorities should carry out stone pitching on both sides of the railway embankment through its entire length within the Sanctuary area of MP & UP.
- (g) Railway Authorities would pay cost of penal compensatory afforestation of locally occurring species over 50 ha of forest land in the area adjoining the railway line in the Sanctuary of MP which is a revenue land.
- (h) Substantial component of work should be under the eco-development of the villages falling within 1 km. of the railway line within the Sanctuary area.
- (i) Railway to ensure that no garbage is thrown into the Chambal Sanctuary from any train passing through the Sanctuary. The learned Addl. Solicitor General, appearing for the applicant Ministry of Railways submitted that the conditions are agreeable to the Ministry of Railway. Subject to the fulfillment of the above conditions, we direct that 8.87 ha. Of land be transferred to the Ministry of Railways. I.A. Nos.1635-1636 are disposed of accordingly.

I.A. No. 1637-1638

The Karnataka Urban Water Supply & Distribution seeks permission to diversion of 0.3 ha. of forestland falling within the Cauvery Wildlife Sanctuary for water supply to the Malai Mahadeswara Hills. The matter has been

examined by the C.E.C. and the C.E.C. recommended acceptance of the prayer, subject to the fulfillment of the following conditions:

- (i) Approval under the FC Act.
- (ii) Payment of 5% of the Project cost in the Compensatory afforestation fund for the conservation and protection of the Cauvery Wildlife Sanctuary.
- (iii) Payment of NPV with in undertaking that additional NPV, if determined will have to be paid.
- (iv) Conditions imposed by the Chief Wildlife Warden will be strictly complied with.
- (v) No labour camps to be established within the forest are. According to condition No.2, the applicant shall deposit 5% of the project cost in the CAMPA Fund. Learned counsel for the Department points out that the total cost of the project is about 12 crores and 5% of it would be on a higher side. Having regard to the extent of land involved in the Scheme, we modify the condition and direct that the Department shall deposit Rs.25 lacs in the CAMPA fund for the conservation and protection of the Cauvery Wildlife Sanctuary. Subject to the fulfillment of the above conditions, the I.A.s are disposed of.

I.A. No. 1666

The Applicant State of Tamil Nadu seeks permission for felling of 58 trees of spontaneous growth in the Reserved Forests of Suranganar Forest in Theni Forest Division for construction of an irrigation project. The C.E.C. has examined the matter and the C.E.C has recommended acceptance of the prayer, subject to the fulfillment of the following conditions.

- (i) Before any felling of the trees is undertaken, the approval under the FC Act for the non forest use of the forest land involved in the project will be obtained.
- (ii) The Project Authorities will deposit the NPV of the forest land at the present rate in the Compensatory afforestation fund with in undertaking that additional NPV, if determined will have to be paid. Learned counsel submits that the State of Tamil Nadu is agreeable to the said conditions. Subject to the fulfillment of the above conditions, the application is allowed.

I.A. No. 1609-1610

The State of Andhra Pradesh has sought permission for temporary diversion of forest land to an extent of 7 ha situated in the Rajiv Gandhi Wildlife Sanctuary and permission to carry out construction of Weir at 14.675 km. Downstream of Srisailem Dam. But even before the permission was obtained, the concerned officers had already carried out a portion of the work. The C.E.C. had examined the matter and found that a total number of 180 trees have to be cut from the forest and directed that NPV at the present rate has to be paid. The C.E.C. had also suggested that as the officers have already initiated the work even before the permission of this Court, a penalty of Rs.2 crores should be imposed on it. We have heard the learned Amicus Curiae and the learned senior counsel for the State. Learned counsel for the State submitted that 5% of the total project cost would be a substantial amount and a further penalty of Rs.2 crores would put the State in a difficult situation. It is pointed out that the construction of Weir itself a water body and only 168 trees are to be cut and for afforestation total cost would be around Rs.6.5 lacs and therefore, the conditions 2 to 4 may be modified. We have examined the various facts and having regard to these facts, we direct that towards NPV and the 5% project cost the applicant shall deposit Rs.50 lacs in the CAMPA Fund and as regards penalty of Rs.2 crores is concerned, we reduce it to Rs.one crore and in total the applicant shall deposit Rs.1.5 crores in the CAMPA Fund. Subject to the deposit of the above amount, the prayer is accepted. I.A. is disposed of accordingly.

I.A. No.1166 in 896-898

The applicant-State of Tamil Nadu accepts the conditions imposed/recommendations of the C.E.C. and the project has already been sanctioned. No further orders are required. The I.A. Is disposed of accordingly.

I.A. No.1167 in I.A. Nos. 695-696 & 706

Application for exemption from filing O.T. is granted. The applicant has alleged that an extent of 580.2 acre of Reserve Forest land in Bandhavgarh National Park was being transferred to a private party for development of a trust. The matter was referred to the State Government and the State Government emphatically stated that this land was not given to the private party. This Court on an earlier occasion passed an order on the basis of the affidavit furnished by the State. Said affidavit of the State states that the 580.2 acres had never been given to the private party and is still in possession of the forest department of the State. Accordingly, no orders are required on this I.A. and the same is disposed of accordingly. The Reliance Telecom Limited sought permission of the M.P. Forest Department to lay the optical fibres through the Madhav National Park. Even before the matter was examined by the C.E.C. and/or before the approval of the forest authorities, the then Chief Wildlife Warden of the State of M.P. Vide his letter dated 16.05.2001 granted permission to the laying the Optical Fiber Cable through the forest land. The conduct of the Chief Wildlife Warden, M.P. has to be deprecated. The Reliance Telecom Ltd had laid down the cable without obtaining mandatory approval under the F.C. Act and the permission of this Court and so the C.E.C. has recommended for a direction to the Reliance Telecom Ltd for depositing Rs.1 crore in the CAMPA Fund. We approve the suggestion and direct the Reliance Telecom Ltd. to pay a sum of Rs.1 crore in the CAMPA Fund. The amount shall be paid within a period of one month, failing which the C.E.C. would be at liberty to recover this amount as arrears of land revenue under the relevant Land Revenue Act through appropriate proceedings.

I.A. No. 4994/04

Delink the matter. Post the appeal and the I.A. separately in the last week of April 2007. SLP(C) No18973/05 Learned counsel for the petitioners submits that the contesting respondent no.1 has died and there are no legal heirs and so the matter has become in fructuous. The special leave petition is dismissed as having become in fructuous.

I.A. No.:	Order Date: 27.04.2007	
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I.A. No. 259 in I.A. Nos. 182-183 in W.P.(C) No. 13029/1985

This matter relates to Western Peripheral Expressway. The applicant submits that the contract was given to the applicant and it appears that there are various disputes between the applicant-M/s. Mudhucon Projects Ltd. on the one hand and respondents M/s. Apollo and M/s. D. S. Construction on the other hand and the matter is pending consideration in C.W.P. No.7162/06 on the file of the High Court of Punjab and Haryana and because of this litigation the project was also held up and not progressing well. We are told that the Monitoring Committee has also supervised the work. We request the High Court of Punjab and Haryana to dispose of the writ petition pending before it so that the work may be progressed at the earliest. The applicant would be at liberty to produce the copy of this order before the High Court of Punjab & Haryana. I.A. Nos.259 & 261 are disposed of accordingly.

I.A. Nos.229, 227, 230 and 253-254 in W.P.(C) No. 13029/1985

These matters relate to hoardings in the city. The Delhi Government has come up with a comprehensive policy after taking experts opinion from the School of Planning & Architecture. M.C.D and N.D.M.C. have prepared similar policies as to how the future plans should be regarding the hoardings in the city. The above authorities will submit their projects within four weeks to the Bhure Lal Committee and the Committee will examine the same and file its opinion within four weeks and thereafter a final decision will be taken in the matter. List these applications in the 3rd week of August, 2007.

I.A. Nos. 1413, 1414, 1426, 1428, 1440, 1441, 1454, 1459, 1460, 1662-1663 & 1675, 1717-18 in 1413

The above I.A.s cover several aspects, one such aspect being the constitution and composition of the Forest Advisory Committee (F.A.C.) under Rule 4 of the Forest (Conservation) Rules, 2003 ("2003 Rules"). In this regard the facts are as under When the above I.A.s came for hearing on 15.9.2006 one of the items which this Court had to consider was concerning constitution of F.A.C. under the said 2003 Rules. On that date, this Court found that F.A.C. constituted in terms of the Amended Rules which were stayed by this Court in 2004. Therefore, it was directed to file affidavit explaining the circumstances under which F.A.C. was not constituted under 2003 Rules. Therefore, the matter had to be adjourned. On that date, however, this Court was told that there were several matters concerning Temporary Working Permit (TWP) which were required to be examined by duly constituted committee under the said 2003 Rules. Accordingly, the matter was adjourned by two weeks to enable the MoEF to file its affidavit. On that date, this Court directed three experts in forestry and allied disciplines to be appointed in consultation with the learned amicus curiae and the Chairperson of C.E.C.

On 14.12.2006 an affidavit was filed by Assistant Inspector General of Forests, MoEF stating that on 12.12.2006 F.A.C. has been reconstituted. In that affidavit it was stated that the names suggested by the Chairperson of C.E.C. did not qualify for appointments as experts and, therefore, they were not eligible to be members of F.A.C. This has given rise to the question regarding the eligibility of the members appointed by MoEF in the F.A.C. as well as the objection to the inclusion of the names suggested by C.E.C. in the F.A.C. We have made certain suggestions for incorporation of some names out of the names suggested by C.E.C. However, learned A.S.G. Submitted that members once appointed cannot be removed except under the procedure prescribed by law. Today, it is not possible to decide this larger question. This question is to be decided at a later date as indicated herein below. It will require detailed arguments in the light of the provisions of Forest (Conservation) Act, 1980 with the Rules framed there under. Unfortunately, in the process large numbers of Projects (200) have accumulated for clearance. Broadly, we find that post 15.09.2006 F.A.C. has given clearance to certain Projects there are cases, which have not been vetted at all till today (fresh cases). Lastly, there are cases where post 15.09.2006 the Projects have been cleared by the F.A.C and the response has also been filed by C.E.C. but they are pending approval by this Court. List of such cases be filed in the Registry before the next date of hearing. In the circumstances, we hereby give the following directions, pending our decision on the larger question indicated hereinabove.

- (a) The F.A.C. as it stands today will give priority to Projects which need immediate clearances. In this regard, it may be stated that fresh cases may be cleared Project-wise by the F.A.C. and thereafter such clearances shall be placed before this Court for approval. 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.
- (b) Post 15.09.2006, the former F.A.C. has given clearances to Projects and, therefore, in such cases it would not be necessary to place those clearances before the existing F.A.C. once again. In such cases, C.E.C.

is required to file its response at the earliest. Such cases may be placed before this Court along with the response from C.E.C. so that the approval of this Court could be obtained expeditiously.

- (c) There are certain Projects on lands in parks and sanctuaries where this Court has passed orders relaxing certain conditions. In such cases, F.A.C. and Central Government may pass appropriate orders without reference to C.E.C. or to this Court.
- (d) In respect of certain Projects, F.A.C. has given their clearance after 15.09.2006, C.E.C. has also given its response. Such matters may be posted in the second week of July, 2007 for approval of this Court.
- (e) Pending the decision of this Court on the abovementioned larger issue regarding constitution of F.A.C., our order dated 30.11.2006 stands extended till the decision, as we have decided to examine each clearance by F.A.C. and the response of C.E.C. In that regard, our order dated 15.12.2006 staying reconstitution of F.A.C. (vide order dated 12.12.2006 annexed to the affidavit dated 14.12.2006 filed by MoEF) shall stand modified to the extent indicated hereinabove.

I.A. No. 826 in 566 with 955 in 566, 958, 985, 1001-1001. I.A, 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, 1371, 1384, 1385-1386, 1387, 1434, 1435-1437, 1438, 1441 with 1635, 1475-1476, 1513, 1573, 1639 in 1135-1136, 1664, 1665, 1671, 1676, 1677-1678, 1679-1680, 1707, 1785-1786 in I.A. No. 1441, 1779 in 1164 in 566 1721 in 1597 in 566 in W.P.(C) No. 202/1995 (NPV Matters): I.A. No. 826 in 566

Pursuant to report submitted by Prof. Kanchan Chopra Committee, the C.E.C. has filed a supplementary report. Issue notice to MoEF. MoEF shall file its response within four weeks to the same. The matter may be placed for argument in the 3rd week of July, 2007. The parties, who wish to file any objections to the supplementary report, may also file their response within three weeks. We are told by learned Amicus Curiae that there is another report of the C.E.C. in I.A. 955 and connected I.As. As regards this report also issue notice to MoEF and the MoEF shall file its response within four weeks. The respective parties may also file their responses within three weeks.

List in the 3rd week of July, 2007. All the matters covered by the C.E.C. report upto 20.11.2006. Issue notice to MoEF. The MoEF and the concerned parties may file their response within four weeks. List in the 3rd week of July, 2007.

I.A. No. Matters relating to EPCA (3031, 3032 & 3033)

Issue notice to MoEF. MoEF to file its response within four weeks.

I.A. No. 1137

The State of Kerala may file its response to the report of C.E.C. within three weeks.

I.A. No. 1164

No further orders are necessary for the present.

I.A. No. 1180-81 & 1435-37

The C.E.C. has given its report. The parties may file their response, if any, within four weeks.

I.A. No. 1441

No further orders are necessary for the present.

I.A. No. 1438

Issue notice to MoEF. The MoEF shall file its response within four weeks.

I.A. No. 1475-76 & 1513

C.E.C.'s report has been filed. The parties may file their response within four weeks.

I.A. No. 1573

Issue notice. MoEF shall file its response within four weeks.

I.A. No. 1639 in 1135-36

Issue notice. MoEF and the parties may file their response within four weeks.

I.A. No. 1664, 1665, 1671 in 1639 in 1135-36, 1676

Issue notice. MoEF and the parties may file their response within four weeks.

I.A. No. 1677-78, 1679-80, 1707, 1721 in 1597, 1779 in 1664, 1785-86

Issue notice to CEC. CEC shall file its response within four weeks. As regards coal field. We are told that the mining companies have paid 50% of the NPV and in cases where 50% of the NPV has already been paid, appropriate authorities may give necessary. Permission/approval for carrying on the mining activities in the various coalfields in terms of the orders passed by this Court on 15.12.2006 and 23.02.2007

I.A. No. 1707, 1791, 1798, 1789, 1788, 1787, 1791-92

Issue notice to CEC. CEC may file its response within four weeks.

I.A. No. 1324 & 1474

List these applications on 15.05.2007.

I.A. No.:	Order Date: 17.05.2007	
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I.A. No.1399 in 946 in 301-382 & 1569 & 1642-1643, 1644-1645, 1646-1648, 1649-1651, 1694-95,1714, 1725-1727, 1728-1730, 1731-1733, 1734-1736, 1737-1739, 1740-1742, 1743-1744, 1745-1746, 1747-1748,

1749-1750, 1751-1752, 1753-1754, 1755-1756, 1759-1761, 1763-1764 & 1765-1767, 1769, 1770-1772, 1773-1775, 1776 & 1777, 1803, 1805-1807, 1808-1810, 1813-1854 & 1855-1857 in I.A. No.1399 in W.P.(C) No. 202/1995 & C.P. (C) No. 65/2007 in W.P.(C) No. 202/1995 and I.A. Nos. 1327-1328 & 1526 in W.P.(C) No. 202/1995 1415-1416 & 1417-1419 in W.P.(C) No.202/1995 and W.P.(C) No. D 4942/2007 (With office report)
W.P.(C) No. D 7286/2007 (With office report)
W.P.(C) No. D 7313/2007 (With office report)
W.P.(C) No. D 7449/2007 (With office report)
W.P.(C) No. D 28371/2006 (With office report)
W.P.(C) No. D 30277/2006 (With office report)
W.P.(C) No. D 28263/2006 (With office report)
W.P.(C) No. D 28369/2007 (With office report)
W.P.(C) No. D 30276/2006 (With office report)
W.P.(C) No. D 28601/2006 (With office report)
W.P.(C) No. D 28875/2006 (With office report)
W.P.(C) No. D 31404/2006 (With office report)
W.P.(C) No. 897/1996 (With for interim relief and office report) and I.A. No. 1485 & 1507 in W.P.(C) No. 202/1995.
I.A. Nos. 828 with 833, 834-835, 837-838, 839, 840, 846-847, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 893-894, 900, 901-902, 903, 904, 905, 1276-1277, 1310-1310A in I.A. No. 833 in I.A. No. 828, 1329, 1330, 1331-1332, 1450-1452 in 1310, 1465, 1488 in 891-892, 1590, 1612-1613 & 1700-1703 with I.A. No.1785 in W.P.(C) No.4677/1985 1967 in I.A. No.1785 in W.P.(C) No.4677/1985 I.A. No.1500 in W.P.(C) No.202/1995 and I.A. Nos. 941 in I.A. No. 754 - 755 with 777 and 1131-1133, 1138-1146 & 1148, 1184, 1272, 1361 & 1579-1580 in I.A. No. 941 in W.P.(C) No.2 . I.A. No. 260 in W.P. (C) No. 13029/1985. I.A. No. 9 in SLP (C) No. 24951-24954/2005

List on 18.05.2007.

I.A. No.:	Order Date: 18.05.2007	
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I.A. No.1324 & 1474

Post on a non-miscellaneous day i.e. 07.08.2007.

I.A. No.1485 & 1507

Post on a non-miscellaneous day i.e. 16.08.2007. In the meantime, parties will be at liberty to file additional documents/affidavits, if any.

I.A. No.1399 in 946 in W.P.(C) 1644-45, 1646-1648, 1649-1651, 1694-95, 1714, 1725-1727, 1728-NO.301-382 & 1569 & 1642-1643, 1730, 1731-1733, 1734-1736, 1737-39, 1740-1742, 1743-1744, 1745-1746, 1747-1748, 1749-1750, 1751-1752, 1753-1754, 1755-1756, 1759-1761, 1763-1764 & 1765-1767, 1769, 1770-1772, 1773-1775, 1776 & 1777, 1803, 1805-1807, 1808-1810, 1813-1854 & 1855-1857 in I.A. No. 1399 and I.As 1327-1328 & 1526 and I.A s 1415-1416 & 1417-1419 with W.P.(C) No. D 4942/2007 W.P.(C) No. D 7286/2007 W.P.(C) No. D 7313/2007
W.P.(C) No. D 7449/2007
W.P.(C) No. D 28371/2006
W.P.(C) No. D 30277/2006 W.P.(C) No. D 28263/2006

W.P.(C) No. D 28369/2007
W.P.(C) No. D 28262/2006
W.P.(C) No. D 30276/2006
W.P.(C) No. D 28601/2006
W.P.(C) No. D 28875/2006
W.P.(C) No. D 31404/2006

(Item- 303) I.A. 9 in SLP (C) No.24951-24954/2005 M/s Oriental Plywood Industries and ors.vs. State of Haryana and others. The matters relate to Saw Mills, Plywood and Veneer Units. The CEC has considered the availability of wood for the industries, which was assessed as 43.70-lakh cu.mt from trees outside forests and 02.00-lakh cu.mt from Government Forests. It has also assessed the units into four categories. We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licenses may be given by the State Level Committees. If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration. The I.A.s as well as the writ petitions are disposed of.

I.A. No. C.P.(C) No.65/200 in W.P.(C) No. 202/1995
And I.A. No.1799 in W.P. (C) No. 202/1995 and
W.P.(C) No. 897/1996 and I.A. Nos. 828 with 833, 834-835, 837-838, 839, 840, 846-847, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 893-894, 900, 901-902, 903, 904, 905, 1276-1277,1310-1310A in I.A. No. 833 in I.A. No.828, 1329, 1330, 1331-1332,1450-1452 in 1310, 1465, 1488 in 891-892, 1590, 1612-1613 & 1700-1703 in W.P.(C) No. 202/1995 with I.A. No. 178 in W.P. (C) No. 4677/1985 with I.A. No. 1967 in I.A. No. 1785 in W.P.(C) No. 4677/1985 and I.A. No. 1500 in W.P.(C) No.202/1995 and I.As 941 in I.As 754-755 with 777 and 1131-1133, 1138-1146 & 1148, 1184,1272, 1361 & 1579-1580 in I.A. No. 941

All these matters were not taken up.

I.A. No.:	Order Date: 08.06.2007	
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I.A. No..... of 2007 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)
List on 18.06.2007.

I.A. No.:	Order Date: 16.06.2007	
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I.A No. 1868 Issue notice to respondents and the C.E.C.The respondents 2, 3, 4, 5 and C.E.C shall reply, if any, within a period of two weeks.

t up before the bench hearing environment matters.

I.A. No.:	Order Date: 17.07.2007	
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I.A. No.____/2007 (D.No.2905/07) (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

I.A. be listed along with Forest Matter, subject to availability.

I.A. No.:	Order Date: 20.07.2007	
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I.A. No. 1710-1712 in I.A. No. 209-209

The CEC has already filed its report but no response has been filed by the State. The State of Uttarakhand is directed to file an affidavit giving all the details as to the installed capacity of the units, the availability of raw materials required for running these units and all other relevant information within a period of four weeks. The State shall also give details of the plywood stock/saw mills functioning in the State, and the distance from the nearest forest. List on 10.08.2007.

I.A. No. 826 in 566 with 9955 in 566, 9958, 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 in 1252, 1364, 1365-1366, 1370-1370A, 1371, 1384, 1385-1386, 1387, 1435-1437 in I.A. 566, 1664, 1671, 1676 in I.A. 566, 1707, 1721 in 1597 in 566, 1779 in 1164 in 566, 1785 - 1786 in I.A. No. 1441, 1438, 1441 with 1634, 1475-1476, 1513, 1573, 1639 in 1135-1136

As regards fixation of NPV, CEC has filed a final report and for having an expert opinion Prof. Kanchan Chopra Committee was appointed to find out the basis on which the NP V payable has to be fixed. Learned Amicus Curiae points out there are some differences of opinion indicated in the report of CEC and report of the expert committee. The Counsel for the parties pointed out that in certain cases the expert committee was of the view that certain nature of work in the forests are to be completely exempted from the payment of NPV CEC is of the view that such exemption is not permissible. As there are differences of opinion between these two reports, the matter will have to be heard in detail, by hearing the parties and since several projects are pending consideration, the matter requires urgent consideration. List only the NPV matters on 17.08.2007. Parties are at liberty to file their written submissions by 10.08.2007.

I.A. No. 1665 and I.A. No. 1434

List next week. Meanwhile MoEF' s affidavit shall be filed.

I.A. No. 1412 in I.A. No. 887

Post along with I.A. No.1000

I.A. Nos. 1572 & 1578

List next week.

I.A. No. 1862/07 in I.A. No. 971 No. 202/95 with I.A. No. 1641 in I.A. No. 548 in W.P.(C) No. 202/95 in I.A. No. 864-865 in W. P. (C)

List SLP (C) CC No. 6426/2007 along with SLP (C) No. 9241/07 next week. List the remaining matters next week. I.A. No.1572 & 1578

List after three weeks.

Contempt Petition 114/07

List this petition after three weeks with I.A. Nos. 1572 & 1578.

I.A. No. 1977 in I.A. Nos. 718 & 1015

The Government of Jammu & Kashmir proposes to construct a road of 83.90 km. Long and 10 m. wide Mughal Road between Bafliaz (Poonch) to Shopian (Phulwama). The C.E.C. has examined the feasibility of the proposed construction and has recommended grant of permission, subject to the following conditions:

- (i) Complete ban on the movement through the sanctuaries and conservation areas by graziers and their livestock.
 - (ii) Sanctuary/conservation areas, which are in the neighborhood areas of human settlement should be fenced to prevent poaching and other illegal activities.
 - (iii) The areas of the 3 continuous P.As (Lachipora Wildlife Sanctuary, Limbar Wildlife Sanctuary and the Naganari Conservation Areas) falling in the Kaji-nag Range should be upgraded as a National Park. The management of the entire area should be transferred from the Forest Department to the Wildlife Protection Department.
 - (iv) An addl area of 149 sq.km. Located on the eastern side of the sanctuary and under the possession of the Peer Panjal Forest Division should be included in the Hirpora Wildlife sanctuary.
 - (v) Requisite Environment clearance for the project will be obtained as per the prevalent rules/guidelines.
 - (vi) 5% of the project cost to be deposited in CAMPA.
 - (vii) Monitoring Comm. To be set up the Chairmanship of the Chief Secretary with PCCF and Chief Wildlife Warden as members. Committee shall be responsible for strict compliance of the stipulated conditions."
- Learned counsel for the State of Jammu & Kashmir stated that the recommendations are acceptable. Permission is granted to go-ahead with the project, subject to fulfillment of the aforesaid conditions. The I.A.s are disposed of accordingly.

Contempt Petition 81/07 in I.A. No.553

The matter pertains to outstanding payments for the legal fees and expenses of the counsel Mr.K.R.Nagaraja, since deceased. The learned Advocate General for the State Government submits that a sum of Rs.10,54,060/- after deducting T.D.S. is made available to the counsel for the applicant. Learned counsel for the applicant submits that still there is some outstanding amount from the State Government and without prejudice to the right of the applicant to approach the State Government for the outstanding amount, if any, the payment is accepted. The Contempt petition as well as the I.A. are disposed of..

I.A. No. 1873, 1874-79, 1880-89, 1890-92, 1893-1900, 1901-05, 1906-13, 1914, 1915-20, 1922-42, 1943, 1944-46, 1947-49, 1952-53, 1954-55, 1956-57, 1958, 1959-60, 1961-62, 1964, 1965-70, 1971-76A, 1982-87, 1988 & 1994 :

These applications relate to the various Saw Mills in the State of Uttar Pradesh. This Court by order dated 18.05.2007 permitted the Saw Mills to function, subject to the availability of wood and fulfillment of other conditions. These applications are disposed in terms of the order passed by this Court on 18.05.2007. The appropriate authorities may permit the saw mills to run, subject to the order passed by this Court on 18.05.2007. Learned counsel appearing in some of the Saw Mills which were allegedly functioning from 1983-85 and thereafter, submit that they have been functioning as saw mills but they were not having proper licenses and their applications, in some cases, are pending since long with the authorities. In some cases, we are told that they have filed applications and those saw mills have been included in category IV of the C.E.C. report and they were now denied their right to operate their saw mills. Counsel appearing for these applicants submit that those saw mills may be

permitted to file fresh applications for running their units, subject to availability of wood and that they will also follow the norms prescribed in the order passed by this Court on 18.05.2007, if they are granted licenses for which they shall make necessary applications. Under the above circumstances, those saw mills which have been functioning right from 1983 and some of them who claim to be functioning from 1985 to 1997 and which are included in category IV of the C.E.C. report, may submit fresh applications before the appropriate authorities for running their saw mills and the appropriate authorities shall consider the availability of wood and if sufficient wood is available they may be granted fresh licenses, subject to such terms and conditions as are and/or may be prescribed. We are told that some other saw mills have made grievance that there was wrong categorization. These applicants may approach the C.E.C. and the C.E.C. may hear them and appropriate directions be issued by the C.E.C., subject to the order passed by this Court on 18.05.2007. All these applications are disposed of accordingly.

I.A. No.1950-51, 1989-90

List on 10.08.2007.

I.A. No. 1147

Learned counsel for the applicant states that Rani reserve forest area is near the city of Gauhati in Assam. We are told that there is large scale felling of trees which has been going on for quite a long time. The applicant alleges that the de-forestation is continuing. The Regional Chief Conservator of Forests, having his office at Shillong, will urgently give the report regarding the nature of felling of trees in this area, if any, within a period of four weeks and a copy of this order be sent to the Regional Chief Conservator of Forests, Shillong urgently. Meanwhile, MoEF and the State of Assam shall also file their response.

I.A. No. 1618

The State of Madhya Pradesh seeks permission to complete the work of Right Bank Canal upto Mahuar river, which is within the area of sanctuary "Karera Abhayaranya" and the C.E.C. has approved the project subject to the following conditions:

- "(1) an amount of Rs.2 crores will be deposited by the Project Authorities in CAMPA for the protection and conservation of the sanctuary.
- (2) Safeguards and conditions recommended by Shri S.C.Sharma will be strictly complied with"

Learned counsel for the State submits that the conditions proposed by C.E.C. are acceptable and that they would make the payment within a period of four weeks. Subject to the fulfillment of the above conditions, permission is granted. The I.A. is disposed of accordingly.

I.A. No. 1692

List on 10 August, 2007. The State shall file its response in the meanwhile. I.A. NO.1862 in 971, 864-865: The Government of Madhya Pradesh was earlier granted permission to construct the water scheme of Kolar water supply augmentation project. The C.E.C. had given its recommendations and the State Government was directed to deposit NPV amount. We are told that the said money has already been deposited by the appropriate authorities. Subject to the fulfillment of the conditions of the C.E.C., the State Government may go-ahead with the project. The I.A.s 1862 in 971 and 864-865 are disposed of accordingly.

I.A. Nos. 1641 & 1921

It appears that the State of Madhya Pradesh wants to have another water supply project from the river Narmada as the water problem in the city of Bhopal is acute. The C.E.C. is directed to report about the project. As the matter is of urgent nature, the C.E.C. shall consider and file its report within a period of three weeks. I.A. No.1921 -application for filing additional documents is allowed. List the I.A. No.1641 on 17.08.2007.

I.A. Nos. 1665, 1387 & 1434

Post along with the NPV matters on 17.08.2007.

I.A. Nos. 1980-81:

List on 17.08.2007.

I.A. No. 1992, SLP (C) No. 9241/07 & SLP (C)...CC 6426/07

List next week.

I.A. No. 1993

List on 17.08.2007.

I.A. No.SLP(C)No.15796/06

List on 10.08.2007.

I.A. No. 1963

Delink.

I.A. No. 77 in W.P.(C) No.337/95

List along with the connected matter.

I.A. No. 1757 in W.P.(C) No.202/1995

List on 17.08.2007 with the main forest matter.

I.A. No..... DY. No. 3001/07 in I.A. Nos. 1399 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

List after two weeks with the main forest matter.

I.A. No.:	Order Date: 27.07.2007	
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I.A. Nos. 1572 & 1578

List after three weeks.

Contempt Petition 114/07

List this petition after three weeks with I.A. Nos.1572 & 1578.

I.A. No.1977 in I.A. Nos. 718 & 1015

The Government of Jammu & Kashmir proposes to construct a road of 83.90 km. Long and 10 m wide Mughal Road between Bafliaz (Poonch) to Shopian (Phulwama). The C.E.C. has examined the feasibility of the proposed construction and has recommended grant of permission, subject to the following conditions:

“(i)Complete ban on the movement through the sanctuaries and conservation areas by graziers and their livestock.
(ii)Sanctuary/conservation areas which are in the neighbourhood areas of human settlement should be fenced to prevent poaching and other illegal activities.

(iii)The areas of the 3 continuous PAs (Lachipora Wildlife Sanctuary, Limbar Wildlife Sanctuary and the Naganari Conservation Areas) falling in the Kaj-nag Range should be upgraded as a National Park. The management of the entire area should be transferred from the Forest Department to the Wildlife Protection Department.

(iv) An additional .area of 149 sq.km. Located on the eastern side of the sanctuary and under the possession of the Peer Panjal Forest Division should be included in the Hirpora Wildlife sanctuary.

(v)Requisite Environment clearance for the project will be obtained as per the prevalent rules/guidelines.

(vi) 5% of the project cost to be deposited in CAMPA.

(vii)Monitoring Committee to be set up the Chairmanship of the Chief Secretary with PCCF and Chief Wildlife Warden as members. Committee shall be responsible for strict compliance of the stipulated conditions.” Learned counsel for the State of Jammu & Kashmir stated that the recommendations are acceptable.

Permission is granted to go-ahead with the project, subject to fulfillment of the aforesaid conditions. The I.A.s are disposed of accordingly.

Contempt Petition. 81/07 in I.A.No.553

The matter pertains to outstanding payments for the legal fees and expenses of the counsel Mr .K. R. Nagaraja, since deceased. The learned Advocate General for the State Government submits that a sum of Rs.10,54,060/- after deducting T.D.S. is made available to the counsel for the applicant. Learned counsel for the applicant submits that still there is some outstanding amount from the State Government and without prejudice to the

right of the applicant to approach the State Government for the outstanding amount, if any, the payment is accepted. The Contempt petition as well as the I.A. are disposed of.

I.A. Nos. 1873, 1874-79, 1880-89, 1890-92, 1893-1900, 1901-05, 1906-13, 1914, 1915-20, 1922-42, 1943, 1944-46, 1947-49, 1952-53, 1954-55, 1956-57, 1958, 1959-60, 1961-62, 1964, 1965-70, 1971-76A, 1982-87, 1988 & 1994

These applications relate to the various Saw Mills in the State of Uttar Pradesh. This Court by order dated 18th May, 2007 permitted the Saw Mills to function, subject to the availability of wood and fulfillment of other conditions. These applications are disposed in terms of the order passed by this Court on 18th May, 2007. The appropriate authorities may permit the saw mills to run, subject to the order passed by this Court on 18th May, 2007.

Learned counsel appearing in some of the Saw Mills which were allegedly functioning from 1983-85 and thereafter, submit that they have been functioning as saw mills but they were not having proper licenses and their applications, in some cases, are pending since long with the authorities. In some cases, we are told that they have filed applications and those saw mills have been included in category IV of the C.E.C. report and they were now denied their right to operate their saw mills. Counsel appearing for these applicants submit that those saw mills may be permitted to file fresh applications for running their units, subject to availability of wood and that they will also follow the norms prescribed in the order passed by this Court on 18th May, 2007, if they are granted licenses for which they shall make necessary applications. Under the above circumstances, those saw mills which have been functioning right from 1983 and some of them who claim to functioning from 1985 to 1997 and which are included in category IV of the C.E.C. report, may submit fresh applications before the appropriate authorities for running their saw mills and the appropriate authorities shall consider the availability of wood and if sufficient wood is available they may be granted fresh licenses, subject to such terms and conditions as are and/or may be prescribed. We are told that some other saw mills have made grievance that there was wrong categorisation. These applicants may approach the C.E.C. and the C.E.C. may hear them and appropriate directions be issued by the C.E.C., subject to the order passed by this Court on 18th May, 2007. All these applications are disposed of accordingly.

I.A. Nos. 1950-51, 1989-90

List on 10th August, 2007.

I.A. No. 1147

Learned counsel for the applicant states that Rani reserve forest area is near the city of Gauhati in Assam. We are told that there is large scale felling of trees which has been going on for quite a long time. The applicant alleges that the de-forestation is continuing. The Regional Chief Conservator of Forests, having his office at Shillong, will urgently give the report regarding the nature of felling of trees in this area, if any, within a period of four weeks and a copy of this order be sent to the Regional Chief Conservator of Forests, Shilling urgently. Meanwhile, MoEF and the State of Assam shall also file their response.

I.A. No. 1618

The State of Madhya Pradesh seeks permission to complete the work of Right Bank Canal upto Mahuar river, which is within the area of sanctuary "Karera Abhayaranya" and the C.E.C. has approved the project subject to the following conditions:

"(1) an amount of Rs.2 crores will be deposited by the Project Authorities in CAMPA for the protection and conservation of the sanctuary.

(2) Safeguards and conditions recommended by Shri S.C.Sharma will be strictly complied with"

Learned counsel for the State submits that the conditions proposed by C.E.C. are acceptable and that they would make the payment within a period of four weeks. Subject to the fulfillment of the above conditions, permission is granted. The I.A. is disposed of accordingly.

I.A. No. 1692

List on 10th August, 2007. The State shall file its response in the meanwhile.

I.A. No. 1862 in 971, 864-865

The Government of Madhya Pradesh was earlier granted permission to construct the water scheme of Kolar water supply augmentation project. The C.E.C. had given its recommendations and the State Government was directed to deposit NPV amount. We are told that the said money has already been deposited by the appropriate authorities. Subject to the fulfillment of the conditions of the C.E.C., the State Government may go-ahead with the project. The I.A.s 1862 in 971 and 864-865 are disposed of accordingly.

I.A. Nos. 1641 & 1921

It appears that the State of Madhya Pradesh wants to have another water supply project from the river Narmada as the water problem in the city of Bhopal is acute. The C.E.C. is directed to report about the project. As the matter is of urgent nature, the C.E.C. shall consider and file its report within a period of three weeks. I.A.no.1921-application for filing additional documents is allowed.

List the I.A. No.1641 on 17th August, 2007.

I.A. Nos. 1665, 1387 & 1434

Post along with the NPV matters on 17th August, 2007.

I.A.Nos.1980-81

List on 17th August, 2007.

I.A.Nos.1992, SLP(C) No.9241/07 & SLP(C)...CC 6426/07

List next week.

I.A. No. 1993

List on 17th August, 2007.

SLP (C) No.15796/06

List on 10th August, 2007.

I.A.No.1963

Delink.

I.A.No.77 in W.P.(C)No.337/95

List along with the connected matter.

I.A. No.:	Order Date: 01.08.2007	
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I.A. No. 2000, 2000A

List next week with the main forest matter.

I.A. No. 77 in W.P.(C) No.337/1995

Heard learned AAG for the State. The State of Uttarakhand proposes to lay down pipeline for supply of drinking water to the Askot Wildlife Sanctuary in district Pithoragarh and permission is sought for transfer of 3.40 ha. of reserve forest land for this purpose. The C.E.C. was directed to go through the proposal and propose the terms and conditions as it may deem fit. The C.E.C.'s recommendations have been received. Subject to the fulfillment of the conditions as contemplated by C.E.C., this application is allowed.

I.A. No. 277

The matter pertains to some of the saw mills in the erstwhile State of Uttar Pradesh, now a part of the State of Uttarakhand. This I.A. has become infructuous and dismissed as such since a new State (Uttarakhand) had already been carved out of U.P. The State of Uttarakhand, if so advised, may move a fresh application, if they think fit.

I.A. No. 717-719

These applications are already covered by the orders passed by this Court earlier, based on the recommendations of the C.E.C. The applications are disposed of accordingly.

I.A. No. 1804

Issue notice to MoEF, C.E.C. and the State of Karnataka. Reply, if any, may be filed within four weeks.

I.A. No. 1812

Post along with I.A. No. 1429.

I.A. No.1992 & SLP(C)..... /07 CC 6426

Issue notice on the application as well as on the special leave petition. C.E.C. to file its response within four weeks.

I.A. No.1967

The applicants herein sought for mining lease for an extent of 516.518 ha. of land out of which 481.985 ha. is claimed to be barren, rocky and wasteland. The property lies in the Aravali range and this Court passed a detailed judgment in this connection on 18 March, 2004 reported in 2004(12) SCC p.118. Learned counsel for the applicants submit that the Ministry of Environment & Forests (Government of India) by its letter dated 28.07.2006 has granted permission to the present applicants subject to certain conditions which are stated in the said order. Learned senior counsel appearing for the State of Haryana, though has not filed any affidavit but on instructions submitted that the State of Haryana has also no objection in granting permission to these licensees to go-ahead with the mining activity. As per the directions contained in the judgment, this Court has not received any report from the concerned Monitoring Committee which is appointed by this Court in the said judgment. Issue notice to the Monitoring Committee. Ministry of Environment and Forests will take notice, as the Nodal Agency as per paras 91 and 92 of the said judgment, and shall see that the Committee shall file its response at the earliest, within a period of four weeks. List on 07.09.2007.

I.A. No.1785 in W.P.(C) No. 4677/1985

List on 07.09.2007.

I.A. No.1331-32 in 1310

Issue notice. C.E.C. to file its response within four weeks. List on 07.09.2007.

I.A. Nos. 837-838, 839, 840, 846-847, 850, 853-854, 855, 866-68, 869-70, 871-72, 873-74 with 1700, 875-76 with 1701, 877-78 with 1702, 879-80 with 1703, 881-82 with 1703, 891-92, 893-94, 900, 905

Issue notice. C.E.C to file its response within four weeks. List on 07.09.2007.

I.A. No. 1276-77

List on 07.09.2007.

I.A. No.1329-30

State of Rajasthan is directed to file its response, if any, to the report of C.E.C within four weeks.

I.A. No.1450,1451 & 1452

List along with I.A. Nos.1331-32.

I.A. No.:	Order Date: 03.08.2007	
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I.A. No.1488 in 891-92, 1590, 1612-13 with 2007-08

Issue notice. C.E.C. to file response within four weeks. List on 07.09.2007.

I.A. No.SLP(C)No.3353/2003

The State seeks to vary the interim order passed by this Court. The State shall file an affidavit as to whether the area under question falls within the forest or not within four weeks. A copy of the special leave petition be furnished to the learned Amicus Curiae.

I.A. No.1037 in 1008 & 1009

The applicants in these applications allege that there was large scale felling of trees in and around the area of Tehri Hydro Development Corporation near Tehri Dam. The matter was referred to the C.E.C. and approval has been granted under the F.C.Act for the rehabilitation of the Tehri Dam oustees and it was necessary to find out a suitable place where the trees have to be cut. The applicants have made certain wild allegations in the application implicating the Forest Minister and also a Member of the C.E.C. When the application is called, the applicants are not present either in person or through counsel and the allegations made in the complaint are apparently not true. Learned AAG for the State submits that one of the applicant/petitioner no. 9 has been involved in series of offences and is in custody under the Wildlife Act. The applications are dismissed accordingly.

I.A. No.1174

The State is directed to file its response within four weeks

I.A. No. 1178

In this application, a public interest litigant, has alleged that there is large scale illegal mining operations in the District of Shivpuri district of Madhya Pradesh and the applicants allege that because of this illegal mining, there is a serious threat to the ecology and the C.E.C. has inspected in that background and has given certain recommendations. It is recommended that the Chief Conservator of Forests and the Chief Secretary of Madhya Pradesh should periodically review the status of effectiveness of protective measures taken in Shivpuri. The status of implementation of various measures for controlling illegal mining in Shivpuri should be placed through an affidavit to be filed by the Chief Secretary, M.P., every six months. No mining lease including renewal of mining leases should be permitted upto 250 mtrs from the boundary of any forest area. All existing mining leases, including mining leases renewed, should be cancelled forthwith. It was also suggested that no mining leases should be sanctioned/renewed without the Forest Department issuing 'No Objection Certificate' to the effect that the mine is located at least 250 mtrs away from the forest area and that the proposed mining lease is not likely to adversely affect conservation and protection of forest. It was further suggested that because of large scale illegal mining operations if any damage has been caused, the State should take appropriate steps to recover damages from the persons who are responsible for it and it has also made certain other recommendations. The State is directed to file its response to the various recommendations of the C.E.C. within four weeks.

I.A. No.1179

List after four weeks

I.A. No.1699 & 1797

List on 24.08.2007 with the forest matter.

I.A. No.:	Order Date: 24.08.2007	
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I.A. No. 1699

List on 7th September, 2007. MoEF shall file its reply within two weeks.

I.A. No. 1797

List on 7th September, 2007. C.E.C. to file its report within two weeks.

I.A.Nos.208-209, 241-242, 245, 268-269 & I.A.Nos.1710-1712 in I.A.No.208-209

C.E.C. has already filed its report.

List on 21st September, 2007. The applicants may file their response within two weeks.

I.A. No. 1692 in I.A.No.385

MoEF and the State are directed to file their respective replies within two weeks. List on 21st September, 2007.

I.A. Nos. 1950-1951 in I.A. No.1399

Issue notice to C.E.C.. C.E.C. to file its report within four weeks. List on 21st September, 2007.

I.A. Nos. 1989-1990 in I.A. No.1399

Issue notice to C.E.C. C.E.C. to file report within four weeks. List on 21st September, 2007.

I.A. No. 1979 and 2001

Learned senior counsel for the applicant(s) seeks permission to withdraw the applications. Permission sought for is granted. The applications are dismissed as withdrawn.

I.A. Nos. 2000-2000A

Issue notice to the State.

Forest Department and Director of Survey are impleaded as parties, as prayed for. Issue notice to the impleaded parties.

SLP (C) No.15796/2006

Issue notice.

W.P.(C) No.356/2007

Issue notice.

I.A. No.:	Order Date: 14.09.2007	
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I.A.No.1802/2007 in W.P.(C) No.202/1995

Taken on Board.

The matter relates to the setting up of a Technical Research Centre by the Defence Research and Development Organisation (DRDO) under the Union Ministry of Defence. The CEC has filed a report stating that the area wherein the proposed construction is to be made is not part of National Park or a Wildlife Sanctuary. The MOEF has to take decision as regards the use of forest land for non forest purposes. The proposal may be considered by the MOEF and decision be taken and the decision may be communicated to this Court.

I.A. is disposed of accordingly.

I.A. Nos. 828 with 833, 834-835, 837-838, 839, 840, 846-847, 850, 853-854, 855-856, 866-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 891-892, 893-894, 900, 901-902, 903, 904, 905, 1276-1277, 1310-1310A in I.A.No.833 in I.A.No.828, 1329, 1330, 1331-1332, 1450-1452 in 1310, 1465, 1488 in 891-892, 1590, 1612-1613, 2007-2008 & 1700-1703 in W.P.(C) No. 202/1995

All these matters relate to mining activities in Aravalli Hills in Rajasthan and Haryana. The CEC has filed a monitoring report. The CEC will make available a copy of the report to the various parties. The parties would be at liberty to file their response to the CEC report in the form of affidavits within a period of four weeks.

I.A.No.1785 in W.P. (C) 4677/12985 and I.A.Nos.1967 & 2152 in I.A.1785 and I.A.No.2143 in IA 1785 in W.P.(C)4677/12985 be also posted along with these matters.

MOEF has not filed any fresh report. MOEF may file fresh report in response to the averments made in the I.A. Post only these matters on 25.10.2007 by constituting a special Bench for the whole day.

I.A.No.1186 in W.P.(C) No.202/1995

Adjourned. Post on 28.09.2007.

I.A. No. 1201 in W.P.(C) No.202/1995

Pursuant to our directions the CEC has filed a report regarding the incident that happened in August, 1999. The counsel for the State of M.P. would like to file response to the report filed by the CEC. Four weeks time is granted for the same.

List on 12.10.2007.

I.A.Nos.1202 & 1206 in W.P.(C) No.202/1995

Adjourned. Post on 5.10.2007.

I.A. No. 1220 in I.A. No. 548 & 994 in W.P.(C) No.202/1995

The CEC has filed an interim report wherein it has stated that this Court passed an order dated 14.2.2000 by which certain activities were expressly prohibited and that included:

- (i) felling of trees and their removal;
- (ii) removal of bamboo or grasses for any purpose whatsoever;
- (iii) removal of corals and other living forms from marine national parks/sanctuaries;

(iv) construction of tourist complexes, hotels and restaurants, zoos and safari parks or any other building not for direct use for protection and management of wildlife and its habitat; and other non-forest activities. But it was not specifically stated as to what permitted activities could be done in the forest which may not have any commercial concern. In the CEC report it has been stated that the removal of weeds, clearing and burning of vegetation for fire lines, maintenance of fair weather roads, habitat improvement, digging, temporary water holes, construction of anti-poaching camps, chowkies, check posts etc. may be essential for maintenance of forests and for the prohibition and supervision of the forests for the Forest Department.

We permit all these activities to be done though they do not come within the purpose of Order passed on 14.2.2000. It is also stated that the following activities may also be permitted:

- (i) laying of underground drinking water pipelines up to 4 inch diameter;
- (ii) laying of 11 KV distribution lines for supply of electricity to rural areas;
- (iii) laying of telephone lines or optical fiber for providing communication facilities in rural areas;
- (iv) wells, hand pumps, small water tanks etc. for providing drinking water facilities to villagers, who are yet to be relocated from the protected area.

In addition to the above, the Anganwadies, government schools and government dispensaries which are essential for the inhabitants of people who are nearer to these forest areas shall continue and the Government may carry out construction activities in the forest area for the said purposes without there being any cutting or falling of trees. The States may file application for clarification, if any of the States have any other other difficulty. It is open to them to make any appropriate suggestion in this regard.

I.A. is disposed of accordingly.

I.A. No. 1226 & 1231 in W.P. (C) No.202/1995

MOEF is granted two weeks time to file a report.

Conmt. Pet.(C) No.65/2007in W.P.(C) No.202/1995

Contempt petition be treated as I.A.

Issue notice.

The CEC to file a report within a period of four weeks.

Conmt. Pet.(C) No.133/2007in W.P.(C) No.202/1995

Contempt petition be treated as I.A.

Issue notice to the State of Rajasthan.

The CEC to file a report within a period of four weeks.

I.A.No.1870-1872 in W.P.(C) No.202/1995

Adjourned.

I.A. No. 1978 in W.P. (C) No.202/1995

Issue notice.

Post along with I.A. No. 1287.

The CEC to file response within a period of three weeks.

List thereafter.

I.A. Nos. 229, 227,230 & 253-254 in W.P.(C) No.13029/1985

The Committee under the name Environment Pollution (Prevention & Control) Authority has filed a report regarding the Outdoor Advertisement Policy. The concerned authorities may file response within a period of three weeks. List on 12.10.2007. Copy of the report be supplied to the concerned authorities.

I.A. No. 260 in W.P.(C) No.13029/1985

Learned counsel submitted that the I.A has become infructuous. The I.A. is dismissed as having become infructuous.

I.A. No. 266 in W.P.(C) No.13029/1985

Learned counsel appearing for the applicant submits that pursuant to the directions issue by this Court, steps are being taking by the applicant to have CNG in 100 buses purchased by the Haryana Government. But there is lack of CNG. It is submitted that at least 20,000 cubic meters CNG is required for use in the buses. Issue notice to GAIL and Ministry of Petroleum and Natural Gas. Learned counsel appearing for UOI accepts notice. Union of India to file report how they can access to the request of the allotment of gas.

I.A. Nos. 250 & 251 in W.P.(C) No.13029/1985

These I.As relates to the CNG buses in Faridabad and NOIDA.

Issue notice.

The applicant contends that in NOIDA the land has not been allotted to the applicant so that to make it feasible for supply of CNG to the customers. NOIDA will file its response in this regard.

I.A. No.:	Order Date: 21.09.2007	
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I.A. No. 826 in 566 with 9955 in 566, 9958,985, 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 in 1252, 1364, 1365-1366,1370-1370A, 1371, 1384, 1385-1386, 1387, 1435-1437, 1438, 1441 with 1634, 1475-1476, 1513, 1573, 1639 in 1135-1136 in IA 566, 1664, 1671, 1676 in IA 566, 1707, 1721 in 1597 in 566, 1779 in 1164 in 566, 1785-1786 in I.A. No.1441,2013 in 566

The C.E.C. has filed a Report regarding the NPV Matters. Learned counsel appearing for the various parties state that they have not received the C.E.C.Report as yet. C.E.C. is directed to give a copy of the complete report to the Learned Solicitor General for India as well as to Mr.Mukul Rohtagi, learned senior counsel.The MoEF will put the Report on its website and Mr.Mukul Rohtagi, learned senior counsel would also give copies to the parties, who have not received the report.Issue notice to MoEF in I.A. Nos.1046 & 2013. Reply, if any, may be filed within four weeks.Post the matters for directions on 12.10.2007.

I.A. No.208-209, 241-242, 245, 268-269 & I.A. No.1710-1712, 2024-2026, 2027-2029, 2030-2032, 2033-2035, 2036-2038, 2039-2041, 2042-2044, 2045-2047, 2048-2050, 2051-2053, 2055-2056 in I.A. No.208-209 in W.P.(C) No.202/1995

List on 12 October, 2007. Meanwhile, the State shall file its reply.

I.A. No.1692 in I.A. No.385,I.A. No.1950-1951 & I.A. Nos.1989-1990

As requested, four weeks' time is granted for filing the reply.List on 12.10.2007 with the Saw Mill matters.

I.A. No.2019

The matter is referred to C.E.C. for instructions and report, if any.

I.A. No.2023 in I.A. No.1483

Learned counsel for the State seeks some time. Three weeks' time is granted.

I.A. No.2054

Learned Solicitor General is not pressing the Application. The application is dismissed as not pressed.

I.A. No.1412 in I.A. No.887

List along with the Buffer matters i.e. I.A. Nos.1000 etc.etc. on 30.10.2007.

I.A. No.1717-1718

List before the Forest Bench on 28.09.2007.

W.P.(C) No.551/1995

List before the Forest Bench on 28.09.2007.

I.A. No.1715-1716 in I.A. No.548

List before the Forest Bench on 28.09.2007.

I.A. No. 266/07 in Writ Petition (Civil) No(s). 13029 of 1985

List this matter along with all the matters arising from Bhure Lal Committee on 02.11.2007.

I.A. No.1485

List this I.A. with the Diamond Mines matters & Buffer matters i.e. I.A.1000 etc. on 30.10.2007.

I.A. No.:	Order Date: 28.09.2007	
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I.A. No.1868

The petitioner is said to have a lime stone quarry in the State of Meghalaya.It is stated to be covering an extent

of 100 ha. and it is in the border of India and Bangladesh. It is alleged by the learned amicus curiae that the lime stone quarry is in the forest area and the applicant started the mining operation and had not obtained any previous sanction, whereas the petitioner company says that in the mining area there is no forest and the mining operation itself is as a result of agreement between India and Bangladesh. Learned amicus curiae would file a fresh application in this regard within a week and a copy of the same may be given to the learned Solicitor General. The response of CEC/MoEF may be filed within a period of three weeks thereafter. As regards mining operation, the same shall not be carried out for a period of four weeks. The State of Meghalaya would also file its reply within a period of three weeks. List on 02.11.2007.

I.A. No.1186

None appears for the State of Kerala. Dismissed as such.

I.A. No.1715-16

The matter relates to the Bariyarpur Project falling within the territory of Ken Ghadiyal Sanctuary. The CEC has examined the matter and has recommended subject to the following conditions:

- (i) The labour camp will be located outside the Panna Tiger Reserve/forest area at a convenient place approved by the the FD, PTR;
- (ii) As far as possible only local unskilled labourers will be used from the villages around the PTR;
- (iii) Adequate arrangement for the supply of fuel wood from outside the boundary of the PTR to the labourers in the camp shall be mad
- (iv) Feeling of trees, blasting of any type, digging of soil, or removal of tone from the PTR/adjoining forest area shall not be permitted. However salvaging of stones from the damaged structure and use of silt obtained by desilting the reservoir may be permitted by the FD, PTR;
- (v) The details of the staff, the number of unskilled/skilled labourers, vehicles, machinery etc. to be used in the repair works along with the time frame for the report will be be made available in advance to the FD, PTR for his approval;
- (vi) The repair works shall be carried out only between dawn in dusk. There shall be no movement of vehicles during the night;
- (vii) For regulating the movement of vehicles, staff, labourers etc. and to control poaching in the impact area of the PTR, the construction of boundary wall along with the entry gate, a forest post, appropriate anti poaching measures, river patrolling etc. will be undertaking at the cost of the user agency. The funds for this purpose, not exceeding Rs.10 lakhs, will be made available by the project authorities to the FD, PTR; and
- (viii) in case of violation of any of the above conditions, the project work will be liable to be suspended by the FD, PTR, with prior approval of the Chief Wildlife Warden, Madhya Pradesh Forest Department. The report of CEC is acceptable to the State of M.P. The project is cleared subject to the fulfillment of the above conditions. I.A. 1717-18 and I.A. No. 2067 IN I.A. Nos. 1413, 1414, 1426 and other related IAs regarding the constitution and composition of the Forest Advisory Committee (FAC). I.A. No.2067 is taken on board. These applications involve 55 projects sponsored by the various government agencies. Some of them are power projects and some relates to other activities. The CEC has examined the matters and has given approval to all these projects. MoEF may examine if there are any violations and thereafter pass appropriate orders regarding clearance at the earliest. I.A. No. 1717-18, I.A. No. 2067 in I.A. No.1413, 1414, 1426 and other related I.As. are disposed of accordingly.

I.A. No.532-34

No orders are required. I.A. is disposed off.

I.A. No.749-50

Applicant is not present. The project is cleared subject to the conditions imposed by the CEC. If the applicant is aggrieved by the conditions imposed, he would be at liberty to approach this Court. I.As. are disposed of accordingly.

I.A. No.2011

Adjourned by four weeks.

I.A. No.2021

The project is cleared subject to the conditions imposed by the CEC. If the applicant is aggrieved by the conditions imposed, he would be at liberty to approach this Court. I.A. is disposed of accordingly.

I.A. No.2022

By this Court's order dated 14.09.2007, we have exempted the laying of optical fiber cable through wildlife sanctuary, as it does not involve any deforestation. The project is cleared. I.A is disposed of accordingly.

W.P.(C) No.551/97

The Respondent nos. 2, 3 and added respondent Sudha Devi have contended that the mining operations had been carried out in a place where there is no forest. The MoEF will file a report within a period of three weeks as to whether the mining activity carried out by the respondents involved any intervention in the forest area. List after three weeks.

I.A. No.1500/2006

List on 12.10.2007

I.A. No.1784/2007

List after three weeks.

I.A. No.1398/2005

List on 26.10.2007.

I.A. No.:	Order Date: 26.10.2007	
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I.A. No. 1324 & 1474 & I.A. No. 2081-2082 @ W.P.(C) No. 549/2007

Heard both sides. Arguments concluded. Judgment reserved. Parties are permitted to file their written submissions, if any, within a week.

I.A. No.1398

List next week

I.A. No.:	Order Date: 16.11.2007	
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I.A. No. 4401

Taken on board. Issue notice to C.E.C. and MoEF.

I.A. Nos. 2070 & 2071

Taken on board. Issue notice to C.E.C. and MoEF.

I.A. No. 2020 in I.A. Nos.742-743 Contempt Petition (C) No. 238/2007 in I.A. Nos.742-743

Issue notice in C.P.(C) No.238/2007.Presence of respondent(s) dispensed with for the time being.

I.A. No. 92 in Conmt. Pet. (C)No.193/2001, 1127 & I.A. No. 4 in Conmt. Pet. (C)

Adjourned by eight weeks.

I.A. No. 1868 & 2091 in 1868

List next Friday i.e. on 23.11.2007 before mining matters.

I.A. No. 442-446, 1204, 1245 & 1357

As regards the mining activity in Lalitpur, the State of Uttar Pradesh has not filed its response in this matter and this Court is waiting for the report. It is alleged that despite the orders passed by this Court, some people are doing/carrying mining activities and those who have applied through regular channel are not given permission by the State Government. The State is directed to give its reply at the earliest through the Principal Secretary, (Forests), U.P.W.P.(C) No.202/1995 etc. Registry shall furnish a copy of this order to the Principal Secretary (Forests),U.P. In view of the reports appearing in the press, the Principal Secretary (Forests),U.P. is directed to appear before this Court on 07.12.2007 and shall furnish the reply/report, as referred above, on that day. List on 07.12.2007.I.A. Nos.442, 444, 445 and 446 are allowed, subject to fulfillment of the terms and conditions stipulated by the State.

I.A. No. 991, 1004, 1185, 1273, 1280, 1294, 1443, 1611, 2018 & 2073

List on 07.12.2007.

I.A. No.990 in 860 & 863

Adjourned to last week of January 2008.

I.A. No.993 in 836 & 895

The C.E.C. has already filed its report. MoEF may file its response within three weeks.

I.A. No. 2060-2061

Issue notice to C.E.C. and MoEF.

I.A. No.2062-2063 in 1220 IN 548

Issue notice to C.E.C. and MoEF

I.A. No. 2064.

Issue notice to C.E.C. and MoEF.Reply, if any, be filed within four weeks.

I.A. No.1000 with 982-984, 1026-28 & 1123-24, 1197-99 and 1210-11, 1250-51, 1512 with I.A.1485 & 1507, 1412 in I.A. No.887

List on 22.01.2008.

I.A. No.2016

List on 07.12.2007.

EPCA Report Nos.30-37 in W.P.(C) No.13029/1985

List on 18th January, 2008. Mr.Siddharth Chaudhary, advocate will assist Mr.Harish N.Salve, Sr. Advocate and Amicus curiae, in these matters.

I.A. No.:	Order Date: 30.11.2007	
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I.A. No. 1024/2003

Taken on board. List next Friday.

I.A. No.1424 & 1425

These applications have been filed by the applicants stating that there were violations of conditions for laying of pipe line in Forest Land. Learned counsel for the State of Chhattisgarh submitted that she would be filing the counter affidavit during the course of the day. Rejoinder/reply thereto, if any, may be filed within four weeks. We are told by learned Amicus Curiae that the C.E.C. has filed a report dated 17.10.2007 in W.P.(C) No.469/2005 relating to similar issue. A copy of the report of C.E.C. be given to the parties in these applications. List the W.P.(C)No.469/05 also along with these applications in the month of January, 2008.

I.A. No.1798

The applicant-Power Grid Corporation, by way of this application, seeks permission for diversion of 3.19 ha. of forest land in the Gudaloor Forest Division in Chengalpattu. We are told that the C.E.C. has approved the same, subject to fulfillment of the following conditions:

"i) approval under the F.C. Act for the use of the forest land for the project will be obtained;

- ii) Net Present Value (NPV) of the forest land involved in the project at the existing rate will be deposited in the Compensatory Afforestation Fund; and
- iii) The felling/trimming of the trees will be carried out under the supervision and direction of the Forest Department and will be kept to the barest minimum;”

If the above conditions are fulfilled by the applicant, it may go-ahead with the project.
The I.A. is disposed of accordingly.

I.A. No.1240 with 1266, 1299 and 1382

The Andaman & Nicobar administration seeks extension of permissions by way of these applications for felling of trees etc. for rehabilitation of victims of Earthquake and Tsunami.
Learned senior counsel appearing for the Administration submits that he is not pressing for the I.A.s and prays for withdrawal of the same. The I.A.s are dismissed as withdrawn.

I.A. No.1267-1268 with I.A. No.1395

These applications have been filed contending issuance of license allegedly to M/s.Hills Trade Agencies for collecting Bamboos from Assam was for oblique motives. The applicants have suggested that the license is given for petty amounts. Respondents 2,4 and 5 may file their counter/response, if any, within six weeks.

I.A. No.1297

These applications have been filed by the State of Rajasthan regarding release of water from Panchana Dam to the Keoladeo National Park. The State shall file a fresh affidavit within six weeks.

I.A. No.1300

No orders are required. I.A. is disposed of accordingly.

I.A. No.432 in W.P.(C) No.13381/1984

Adjourned.

I.A. No.1308, 1323, 1455, 1468 & 1478

Adjourned to February, 2008.

I.A. No.1322

No orders are required. I.A. is disposed of accordingly.

I.A. No.1326

Adjourned

I.A. No. 1335, 1356, 1388 in 989

A report has been filed by C.E.C. alleging that one M/s.Aryan Coal Benefication (Pvt.) Ltd. has been given the right to wash coal under the control of M/s. South Eastern Coalfields Ltd. It is pointed out that as per the direction,

there can be only treatment of the coal and an agent shall not sell any produce after the washing process is over. It is specifically directed that the agent cannot sell the coal under the garb of reject. It is pointed out that there has been gross violations by M/s.Aryan Coal Benefication (Pvt.)Ltd. by selling the coal under the garb of reject, after the washing process is over. Issue notice returnable within four weeks to M/s.Aryan Coal Benefication (Pvt.)Ltd. and Ministry of Coal through its Secretary.

I.A. No.1336 in 1254

The State of Rajasthan has filed this application seeking directions for declaring compact and contiguous tracts of land measuring 5 ha. and above and having 200 or more trees per ha. as "deemed forest area" and norms to be applied for making such a declaration. The C.E.C. has filed its report. Earlier, the State of Rajasthan has appointed the Kapur Committee for the same and the report of the Kapur Committee is also available. The State may examine both the reports and suggest the course to be adopted and report back within six weeks.

I.A. No.2108-09

List on 14.12.2007

I.A. No.1784 In 703

List on 11.01.2008

I.A. No. 30.11.2007

List on 14.12.2007.

I.A. No.:	Order Date: 07.12.2007	
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I.A. No. 2016

List on 14.12.2007.

I.A. No. 979 in I.A. No. 443, 1204, 1245, 1357 & 2110 with I.A. No. 991, 1004, 1185, 1273, 1280, 1294, 1443, 1611, 2018 & 2073

List after four weeks. Principal Secretary (Forests), Government of U.P. shall appear and submit a report regarding the proposed policy on the next date of hearing.

I.A. No.1024 in 502

List on 14.12.2007.

I.A. No.1214-1215

In view of the CEC Report and also the statement given by learned Solicitor General of India, no orders are required. I.As. are disposed of accordingly.

I.A. No.1274-1275

Issue notice to CEC and to the Secretary, Department of Forests, State of Bihar.

I.A. No.1291-1292

Adjourned. List after winter vacation.

I.A. No.1333

List after eight weeks.

I.A. No. 2090 in Application Nos.1020 & 2113

By way of these applications, permission has been sought for use of 0.683 ha of forest land on permanent basis and 2.15 ha. of forest land on temporary basis for the construction of Express Metro Link to the Airport through the Central Ridge. CEC has examined and granted approval subject to fulfillment of the following conditions:

- (i) Approval under FC Act to be obtained.
- (ii) Clearance from the Ridge Management Board to be obtained for use of both forest land and non-forest land in Ridge Area.
- (iii) NPV to be deposited in Compensatory Afforestation Fund.
- (iv) 5% of the project cost i.e. Rs.18.8. crores will be deposited with the Ridge Management Board.
- (v) Area falling within the Ridge should not be used for commercial purpose.
- (vi) As far as feasible, the compensatory afforestation should be carried out near the impact area itself.
- (vii) Instead of felling of trees, the translocation of trees as may be feasible should be restored to by the Delhi Forest Department.

We are told that the above conditions are acceptable to the Delhi Metro Rail Corporation. The proposal is approved and the permission is granted for use of 0.683 ha. of forest land on permanent basis and 2.15 ha. of forest land on temporary basis for the construction of Express Metro Link to the Airport through the Central Ridge, subject to fulfillment of the

W.P. No. 522/2007

Issue notice to the respondents and to the CEC.

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 & 1700-1703

I.A. No.1785 in Writ Petition (Civil) No(s). 4677 of 1985 and I.A. No.1967 in I.A. No.1785 IN W.P.(C) No, I.A. No. 2152 in I.A. No. 1785 in W.P.(C) No. 4677/1985 I.A. No. 2143 in I.A. No. 1785 in W.P.(C) No.4677/1985 and, I.A. No. 2186 in I.A. No. 1785 in W.P.(C) No. 4677/1985, I.A. No. 2198 @ CONMT. PET. NO. 125/2006 vide Court's order dated 25.10.2007 in W.P.(C) No. 4677/1985

On 25.10.2007, this Court had directed the Ministry of Environment and Forests (MoEF) to file a report regarding certain crucial factors to be considered for granting mining leases especially water shortage, effect and impact on ground water level in case mining licences are granted. We are told that about 31 applicants had already submitted;

some of them were eligible and some of them found deficient in some respects. The report submitted by MoEF does not give full details. We would like to have a comprehensive report. We are told that some of the applications are for minor minerals. Permission is sought for in respect of minor minerals and their cases should be indicated separately. In this regard CEC has given two report dated 12.09.2007 and 05.12.2007. MoEF to look into these reports and file a final report within a period of six weeks. List on 08.02.2008.

I.A. No. 2198

Two weeks time is granted for filing response.

I.A. No. 1179

List on 14.12.2007.

I.A. Nos. 1413, 1414, 1426 and other related I.As regarding proposals examined by the FAC

It is brought to our notice that 18 Temporary Working permissions have been given for mining leases by the Ministry of Environment and Forests (MoEF) in the State of Goa between 01.09.2007 to 30.11.2007. Learned amicus curiae points out that in these 18 cases opinion of CEC was not sought for nor the matter was brought to the notice of this Court and the entire mining area comes within the forest area of Goa. Learned Solicitor General appearing for MoEF may give its response within a week. Post the matter on 14.12.2007

All these parties - V.M. Salgaocar & Bros. P.Ltd., Halder Kassim Khan, V.S. Dempo & Co. Ltd., Rajesh Timblo, Badrudin Mavani, Sova, M.S. Talaulicar & Bros., Hiru Bambo Gauns, Sociedade Timblo Irmaog, Emco Goa Ltd., G.N. Agarwal, and A.V.S.Velingkar be impleaded as respondents and notice be given to these parties who are granted Temporary Working Permissions. Till such time these respondents are directed not to carry out any work under the Temporary Working Permission.

I.A. No.:	Order Date: 14.12.2007	
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I.A. No.2016

Heard learned Solicitor General and learned A.C. They have been contemplating all formalities and terms and conditions. After discussing the learned Solicitor General and learned Amicus curiae, for the time being we agree with the following terms and reference of CEC:

1. In supersession of all the previous orders regarding constitutions and functioning of the Central Empowered Committee (hereinafter called the "Empowered Committee") is constituted for the purpose of monitoring and ensuring compliance with the orders of this Court covering the subject matter of forest and wild life and related issues arising out of the said orders.
2. The Committee shall exercise the following powers and perform the following functions:
 - (i) To monitor the implementation of this Court's orders and place reports of non compliance before the Court and Central Government for appropriate action.
 - (ii) to examine pending Interlocutory Applications in the said Writ petitions (as may be referred to it by the Court) as well as the reports and affidavits filed by the States response to the orders passed by the Hon'ble Court and place its recommendations before the Court for orders:
 - iii) To deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf

- iv) For the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can:-
 - (a) call for any documents from any persons or the government of the Union or the State or any other official;
 - (b) undertake site inspection of forest area involved;
 - (c) seek assistance or presence of any person(s) or official(s) required by it in relation work;
 - (d) co-opt one or more persons as its members or as special invitees for dealing with specific issues;
 - (e) co-opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular state;
 - (f) To suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court.
 - (v) To examine and advise/recommend on any issue referred to the Committee.
- 3. The Ministry of Environment & Forests shall provide suitable and adequate office accommodation for the Committee and shall bear all the expenses of the working of the CEC.
- 4. The jurisdiction of the Committee shall extend to the whole of India.

I.A. No. 1413, 1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006 In 1413 and 2121-2132 in I.A. 1413

Heard learned AC and learned Solicitor General. This is regarding 18 Temporary Working Permissions (TWP) granted to various parties in Goa. The A.C. points out that these TW.P.s have been granted contrary to the Order passed by this Court on 30.11.2006. Learned Solicitor General, however, points out that TW.P.s have been granted in accordance with the directions of this Court Order on 04.08.2006 by which various conditions have been laid down for grant of TW.P.s. It appears that there is some dispute. Let the holders of TW.P.s approach the CEC and satisfy that TW.P.s have been granted in accordance with the orders passed by this court dated 04.08.2006 and 30.11.2006, by fulfilling all the conditions laid down by this Court. This Court had stayed TW.P.s by Order dated 07.12.007. The holder of TW.P.s would be at liberty approach the CEC by 17.12.2007. If the CEC is satisfied that the TW.P.s are in accordance with the conditions laid down by this Court by order dated 04.08.2006, the CEC would be at liberty to permit the holder of TW.P.s to carry on work in the instant case, and will submit a report on 04.01.2008 in this Court.

I.A. No. 1024 in 502

List in January, 2008.

I.A. No.1179 in 675-676 & 957

List in February, 2008.

I.A. No. 2108-2109

Issue notice. CEC to file response within three weeks. List in January, 2008.

I.A. No. 2116-2117

Issue notice. CEC to file response within three weeks. List in January, 2008.

I.A. No. 2105-2107

Issue notice. CEC to file response within three weeks. List in January, 2008.

I.A. No. 1344

CEC Report has been filed . State of Uttranchal has any objection regarding the CEC Report, file response within a period of three weeks. List in February, 2008.

W.P. (C) 356/2007

Four weeks time is granted for filing counter affidavit. List in February, 2008.

W.P. (C) No.36/2003 & W.P.(C) 85/2007

List in February, 2008.

I.A. No. 1029

The CEC has submitted that the Ministry of Defence has filed a report seeking permission for upgradation/ construction of Road between Track Junction-Bheem Base-Doka La and for an alternate road between Flag Hill-Doka La passing through the Pangolakha Wildlife Sanctuary in Sikkim. The CEC has examined the needs of the project. No cutting of trees is involved but only bushes and jungle clearance along the trace would be required. Therefore, no conditions have been imposed by the CEC. We permit the Army to carry on the project. I.A. is already disposed of.

I.A. No.....D. No.4862 *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. D is the diary number not the I.A. number. This is as per the order of the Supreme Court.)*

Taken on Board. Issue notice returnable on 25.01.2008.

I.A. No.....D. No. 4861 IN I.A. No. 1413-1414, 1426 & other related I.As *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. D is the diary number not the I.A. number. This is as per the order of the Supreme Court.)*

List in the month of January, 2008.

I.A. No.:	Order Date: 04.01.2008	
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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 in W.P.(C) No. 202/ 1995

With SLP(C) No. 3353/2003, C.A. No. 7363/2000, C.A.No. 7364/2000, C.A. No. 7365/2000

State of Rajasthan has filed Annual Progress Report 2006-07. The CEC 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 25.01.2008.

I.A. No. 1413,1414,1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 1796, 2005-2006, 2121-2132 & 2133 in 1413 in W.P.(C) No. 202/1995

18 Temporary Licences were granted in the State of Goa and the licensees were doing mining activities. CEC has examined the viability of the functioning of these mining activities and found that out of the 18 Temporary Licensees, 16 Licensees are working properly. CEC has stated that subject to fulfilment 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 licensees and the compensatory afforestation work is under way. Therefore, we permit the 16 Temporary Licence Holders to carry out the mining activities, subject to fulfilment 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 20.06.197 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 (TW.P. application by Rajesh Timblo) and T.C.No.67/52 of M/s. A.V.S. Velingkar, according to CEC there are procedural lapses in granting the licences. These parties may reply to the Report of CEC 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 CEC 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 CEC 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 CEC report within a period of four weeks.

I.A. No.1345 in 1252

No orders are required to be passed for the time being.

I.A. No.1346 in 1227-1228

As requested by the learned counsel for the applicant, list after one week.

I.A. No.1348 in 1036

Applicant is not present. The I.A. is disposed of accordingly.

I.A. No.1349 in 1246-1247, 1378-1380, 1446-1447 & 1502

The CEC 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 01.02.2008.

I.A. No. 2065 @ Contempt Petition No. 61/2007 in 21145-2115 in W.P.(C) No. 202/1995

List on 01.02.2008.

I.A. No.2120 in 1360 in 1130 & 1152 in W.P.(C) No. 202/1995

Issue notice.

Notice to CEC.

Learned counsel appearing for State of West Bengal accepts notice.

The State and the CEC to file reply within a period of four weeks.

I.A. No. 1429 (Saw Mills of West Bengal) be also posted along with this matter.

I.A. No. 3 in W.P.(C) No. 314/2006

Issue notice.

Copy to be supplied to learned Amicus Curiae who shall examine the matter.

I.A. Nos. 979 in W.P.(C) No. 202/1995

These appln.(s)/petitions were mentioned today. The personal appearance of the Principal Secretary (Forests), Government of U.P. may be dispensed with for the time being.

I.A. No.:	Order Date: 11.01.2008	
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These applications were called on for hearing today. UPON hearing counsel the Court made the following

ORDER

List the Bhure Lal Matters on 25.01.2008.

Adjourn the matters originally listed for 25.01.2008 by a month.

I.A. No. 2016/2007 in W.P.(C) No. 202/1995

Learned Solicitor General for India and the learned Amicus Curaie will file their memorandums in sealed covers by Tuesday the 15.01.2008.

Orders reserved.

I.A. No.2143: (Report of the CEC reg. the non-utilization of funds received towards the Net resent 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 in W.P.(C) No. 202/1995:

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 in W.P.(C) No.202/1995

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 in W.P.(C) No. 202/1995

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 15.02.2008.

I.A. No.1354 in 1154 in W.P.(C) No.202/1995

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 in W.P.(C) No.202/1995

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.

I.A. Nos.1362-1363 in W.P.(C) No.13381/1984

As requested by Learned ASG, list after six weeks.

I.A. Nos.1373, 1389 & 1696 in W.P.(C) No.202/1995

List after four weeks. Reply, if any, be filed within four weeks in I.A. No.1696.

I.A. No.1383 in W.P.(C) No.202/1995

As requested by learned ASG, eight weeks time is granted for filing a reply.

List after eight weeks.

I.A. No.1433 & 1477 in W.P.(C) No.202/1995:
List after eight weeks.

SLP (C) No. 25068/2005

A copy of the petition be given to the learned Amicus Curaie.

SLP(C)No.21322/2007

Delay condoned.

Issue notice to CEC and MoEF. A copy of the petition be given to the learned Amicus Curaie.

SLP(C)No. 22718/20

A copy of the petition be given to learned Amicus Curaie.

I.A. No.2142 in 2071 in W.P.(C)No.202/1995:

No orders.

I.A. No.:	Order Date: 01.02.2008	
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I.A. Nos. 1000 with 982-984, 1026-28 & 1123-24, 1197-99 and 1210-11, 1250-51, 1512, 1485 & 1507 & 1412 in W.P.(C)NO.202/1995

List on 27.03.2008.

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, 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 I.A. 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

List the NPV Matters and Buffer matters on 27.03.2008, 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. Nos.2145-2146, 2147-2148, 2149-2150 & 2153-2154 in I.A.566

These applications relate to the National Highway Projects through forest land. Issue notice to CEC and MoEF. CEC and MoEF may file their report/response within a period of four weeks.

RAJASTHAN (MINING)

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 in W.P.(C) No. 202/1995 with SLP(C) No. 3353/2003, C.A.Nos. 7363- 7365/2000.

List on 29.02.2008.

HARYANA (MINING)

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 in W.P.(C)No.202/1995

List Haryana Mining matters with M.C.Mehta matters on 15.02.2008.

I.A. No. 2101 in W.P.(C) No. 202/1995

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. Nos. 2136, 2137, 2140 in W.P.(C) No. 202/1995

Issue notice to CEC and MoEF.

CEC and MoEF to file their report/response within a period of four weeks.

I.A. No.2157-2159 in W.P.(C) No.202/1995

None present. Applications are dismissed for default.

I.A. No.1349 in 1246-1247

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 14.03.2008.

I.A. No.1378-1380 in W.P.(C) No.202/1995

These applications have been filed making certain allegations regarding the manner in which mining leases have been granted to various persons in the State of M.P. CEC may examine the matter and file a report within a period of six weeks.

1446-1447 & 1502 in W.P.(C) No.202/1995

No orders are necessary.

I.A. No. 2065 @ Contempt Petition No. 65/2007 & 2114-2115 in W.P.(C) No.202/1995

No orders necessary.

I.A. No. 2162 in Application No. 1065

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.

SLP(C)..CC 12541/2007

Issue notice on the application as well as on the application for stay.

The petitioner will supply a copy of this application to CEC.

CEC may file its report.

I.A. No. 1796/2007 in W.P.(C) No. 202/1995

Taken on board.

Learned counsel for the applicant seeks permission to withdraw the application. Permission is granted. The application is dismissed as withdrawn.

I.A. No.:	Order Date: 14.02.2008	
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These applications/Petitions were called on for hearing today. Upon hearing counsel the Court made the following order

I.A. Nos. 2164, 2165, 2166, 2167, 2168, 2169, 2170 in I.A. No. 1413, 1414, 1426, 1428, 1440, 1454, 1459, 1460, 1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127, 2128, 2130-2132, 2133, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2188-2189 in 1413 in W.P.(C) No.202/1995 and I.A. No.2163 in I.A.1413 (CEC 4th Report):

List these matters tomorrow i.e. on 15.02.2008.

I.A. Nos. 2116-2117 in W.P.(C) No.202/1995:

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

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 07.03.2008.

List on 07.03.2008.

I.A. No.:	Order Date: 15.02.2008	
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These applications/Petitions were called on for hearing today. UPON hearing counsel the Court made the following order.

I.A. No. 2166

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 Kadthal (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) in W.P.(C) No. 202/1995

List the I.As. on 07.03.2008. 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 28.03.2008, 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 AC.

List the I.As. on 11.04.2008, 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. No. 2133

Issue notice. CEC may file its report within a period of three weeks.

W.P.(C) No. 651/2005

Copy of the report may be supplied to CEC. CEC may file its response regarding the prayer made by the petitioner within a period of four weeks.

I.A. No. D 472/2008 in W.P.(C) 202/1995

Taken on board.

Issue notice.

CEC to file its response within a period of four weeks after examining the matter.

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 in W.P.(C) No. 202/1995

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. No.1785 in W.P(C) NO. 4677 of 1985

I.A. No.1967 in I.A. No.1785 in W.P. (C) No. 4677 of 1985

I.A. No. 2152 in I.A. No.1785 in W.P. (C) No. 4677 of 1985

I.A. No. 2143 in I.A. No.1785 in W.P. (C) No. 4677 of 1985

I.A. No. 2198 @ CONMT.PET.NO.125/2006 vide Court's Order dated 25.10.2007 in W.P.(C) NO.4677/1985
AND

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 IN W.P.(C)No.202/1995

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.

List on 25.04.2008.

I.A. 2186 in I.A. No. 1785 in W.P.(C) No.4677/1985

Issue notice. Copy of the I.A. may be supplied to learned amicus curiae.

I.A. No. 1572 & 1578 & I.A. 2190 in W.P.(C) No. 202/1995 with CONMT. PET.(C) No. 114/2007 in I.A. Nos.1572 & 1578 in W.P.(C) No. 202/1995

List on 28.03.2008 with Original Suit, SLP filed against the Judgment of the High Court of A.P., Writ Petition and other connected matters In the meanwhile, CEC may also file its report regarding flooding.

I.A. No.2134

CEC may file its report within a period two weeks. List after three weeks.

I.A. No.:	Order Date: 21.02.2008	
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I.A. 2016 in W.P.(C) No. 202/1995

This Petition was called on for judgment today.

Hon'ble Dr. Justice Arijit P a s ayat pronounced order of the Bench comprising Hon'ble the Chief Justice of India, His Lordship and Hon'ble Mr. Justice S.H. Kapadia. Considering the suggestions given by learned Solicitor General and learned Amicus Curiae CEC is constituted in terms of the signed order.

1. We have considered the suggestion 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. Jayakrishanan, 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. Mathew
 - (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 31.03.2009
 3. Term of office of CEC would be three years or until further orders, whichever is earlier.

I.A. No.:	Order Date: 29.02.2008	
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These applications/Petitions were called on for hearing today.

RAJASTHAN (MINING)

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 in W.P.(C)No.202/1995 with

SLP(C) No. 3353/2003, C.A. No.7363/2000

C.A. No. 7364/2000, C.A. No. 7365/2000

CEC has filed its supplementary report dated 26.2.2008. Learned amicus curiae submitted that the State be asked to file response to the CEC Report. The State is required to indicate the details as to how many mining leases which are in operation. Learned counsel for the State seeks and is granted two weeks time to file an affidavit giving the above mentioned details.

List on 28.03.2008.

I.A. NO.208-209,241-242, 245, 268-269, 1704-1706 & I.A. NO.1710-1712, 2024-2026, 2027-2029, 2030-2032, 2033-2035, 2036-2038, 2039-2041, 2042-2044, 2045-2047, 2048-2050, 2051-2053, 2055-2056 in I.A.208-209 IN W.P.(C) NO.202/1995 with

I.A. No.1692 in I.A. No.385 in W.P.(C) No.202/1995

I.A. No. 1950-1951 in W.P.(C) No. 202/1995

I.A. No. 1989-1990 in W.P.(C) No. 202/1995

I.A. No. 1652-1654 in W.P.(C) No. 202/1995

As regards 134 saw mills/plywood units in the State of Uttarakhand, CEC has filed supplementary report dated 26.02.2008 categorizing them into three categories and in case of one as a special category. Learned counsel representing the State would like to give response. Two weeks time is granted for the State to give its response.

Saw mills/plywood units which are already closed may file further affidavit.

List on 28.03.2008.

I.A. Nos.1381 in W.P.(C) No. 202/1995

CEC has filed its report and indicated therein that the wood-based industries after 30.10.2002 will be closed immediately and State will frame saw mill rules for regularizing wood-based industries after saw mills notified/ established by 30.10.2002, are regularized by giving them licences. The State would be at liberty to pass appropriate orders having regard to the Report given by CEC, and availability of wood. As regards penalties already collected by CEC, a separate report may be filed by CEC.

I.A. 1429, 1519-1520, 1782-1783, 1812, 1995-1996, 1998-1999, 2014 and 2120 in W.P.(C) No.202/1995

The State of West Bengal seeks time for hearing parties who according to it have not been heard before filing a report as regards Wood-based industries. Four weeks time is granted for filing additional report.

I.A. No.1640 in W.P.(C) No.202/1995

Issue notice to the State and CEC. CEC to file its report within a period of four weeks. Dasti service, in addition, is permitted.

I.A. No.1797 in W.P.(C) No.202/1995

The matter relates to manufacturing of Medium Density Fiberboard (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF/Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests.

The lops and tops and small wood available from the plantations of eucalyptus, poplar etc. raised on the non-forest area can be used by MDF/Particle Board plants. The CEC has approved these units, subject to the following conditions:

- i. the applicant will deposit an amount of Rs.30.00 and Rs.50.00 lakh respectively for the establishment of MDF/Particle Board plant and for composite plant for the manufacture of MDF and Particle Board respectively. This amount will be kept in a designated account outside the Consolidated Fund and will be used by the Forest Department for activities identified and related to conservation and protection of forest;
- ii. the purchase/lease of the land and order for the plant and machinery will be placed within a period six months failing which the approval will automatically be deemed to have been canceled;
- iii. the ownership of the unit will not be transferred including by way of transfer of majority shareholding or change of partners before the unit starts commercial production; and
- iv. in addition, for the State of Uttarakhand it has been stipulated that the said unit should be located in an approved industrial estate. For Karnataka it has been further stipulated that;
 - a. it will be confirmed by the Government of Karnataka in the Forest Department that as per the existing rules/guidelines there is no restriction on the establishment of MDF/Particle Board plants within a distance of 10 km. from the boundary of nearby forest;
 - b. the unit will be located in an industrial estate;
 - c. as recommended by the State Level Committee, presently, grant of permission upto five MDF/Particle Board units in Kolan/Chikkaballapur Districts and upto 10 units in the remaining Districts will be considered for clearance on the principle of first come first serve with a view to ensure spatial distribution to the extent practical and feasible; and
 - d. the follow up action on the above decisions will be taken only after a decision in the present IA is taken by this Hon'ble Court.

Learned counsel representing these units submitted that all the conditions are acceptable to them and they would deposit the amount given in the report within a period of four weeks. We also make it clear that the units shall be located in the approved industrial estates.

Subject to fulfilling the above conditions, the above stated State Governments would be at liberty to grant licences for manufacturing MDF/Particle Board.

I.A. is disposed of accordingly.

I.A. No. 2143 in W.P.(C) No. 202/1995

List on 27.03.2008.

MoEF to file its response in the meantime.

I.A. Nos. 1424-1425 & 2118 in W.P. (C) No. 202/1995 with with W.P.(C) No. 469/2005

CEC has filed its report only qua BALCO. It is alleged that BALCO is in possession of illegal encroachment to the extent of forest land/Revenue forest land, they are using the forest land for non- forest purpose. BALCO may file its response about the report of CEC. Meantime, BALCO shall not cut/remove trees, if any. Forest Department/ Revenue Department shall not permit to remove the trees which are already cut.

Learned counsel appearing for BALCO seeks time to file its response.

It is also alleged that illegal mining activities are being done in the State of Chhattisgarh. CEC may file its response to the counter affidavit filed by the State.

Mr. Anil Lunia may file his response to the counter affidavit filed by the State Government. Meanwhile, no forest land shall be used for non-forest purpose. It is alleged that there are violation of conditions for laying of pipelines for 63 km. in forest land in Bastar. CEC may also file its report in the meanwhile.

List on 11.04.2008.

I.A. No. 2155 and I.A. No. 2156

Issue notice.

CEC to file its response.

W.P.(C) No. 251/2006

Going by the allegations made in the writ petition, we do not think that the same can be entertained by this Court. Learned counsel for the petitioner seeks permission to withdraw the petition with liberty to avail appropriate remedy against the State of Assam, if any. The writ petition is dismissed as withdrawn.

I.A. No.:	Order Date: 07.03.2008	
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UPON hearing counsel the Court made the following

ORDER

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 28.03.2008 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 In W.P.(C) No.202/1995:

In re :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.

I.A. No.2163

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 28.03.2008.

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 28.03.2008.

I.A. Nos.1866-67 and 2060-61

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.1024 in 502:

Adjourned by six weeks. The C.E.C. and the Andman & Nicobar Administration to file their respective response in the meanwhile.

I.A. No. 1789

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.

I.A. No. 1804

Reply, if any, may be filed within four weeks. List thereafter.

I.A. No. 1992

List along with I.A. No.1000 etc. (buffer matters)

I.A. No. 2144

List after four weeks.

I.A. No. 2176

Issue notice to C.E.C. A copy of the application may also be given to C.E.C.

I.A. Nos.170 to 175 in W.P.(C)NO.460/04

Issue notice.

Respondent/applicant would be at liberty to approach the National Board for Wildlife to consider the feasibility of having the mining operation near the sanctuary area. If any such matter is placed before the Wildlife Board, the Board may examine the same and take a decision within a period of six weeks. The decision be placed on record.
W.P.(C)No. 91/05

Learned counsel for the petitioner seeks permission to withdraw the writ petition. Permission sought for is granted. The writ petition is dismissed as withdrawn.

I.A. No.:	Order Date: 27.03.2008	
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NPV Matters:

Heard learned counsel at length.

List tomorrow, the 28.03.2008.

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 28.03.2008.

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

I.A. No.:	Order Date: 28.03.2008	
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I.A. Nos.1000 with 982/984, 1026-28 & 1123-24, 1197-99 and 1210-11, 1250-51, 1512

List on 23.07.2008 and 24.07.2008 (whole day).

NPV Matters:

List the transmission lines, wind energy, Government project matters, public utility project matters, Hydro-electric power project matters, hydel and irrigation projects, construction of the roads on acquired land, railways on 24.04.2008 at 2.00 p.m.

Rest of the NPV Matters (including Mining)- list after two weeks thereafter.

FAC Matters including 2167 and 2217-2218:

List on 04.04.2008.

I.A. No. 2163

List on 04.04.2008 as first item.

The report of the CEC be considered by the MoEF and it may give its response before the next date of hearing.

I.A. No.2143:

List on 04.04.2008.

W.P.(C) Nos.50/2008 and 109/2008:

Issue notice.

Rest of the matters on board today: Adjourned.

I.A. Nos. 826 in 566 with 955 in 566, 958, 985,1001-1001A, 1013-14, 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, 167I, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in I.A. No. 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 IA 566 in W.P.(C) No. 202/1995.

1. It is an undisputed fact that the forest in this country is an important and vital component to sustain the life support system this planet. For various reasons, our forest is being slowly depleted. At the same time, as part of our developmental activities, some areas of the forest have to be used for non-forest purposes. The economic development shall not be at the cost of complete degradation of the forest or the environment and eco-system provided by the green area of the forest. Therefore, it was considered whether the user agency of such land which is required for developmental activities to compensate for the diversion of the forest and on the recommendations of the Central Empowered Committee (hereinafter being referred to as "CEC"), it was decided by this Court that the user agency shall be required to make payment of net present value (NPV) of such diverted land so as to utilize this for getting back in the long run which are lost by such diversion. A scheme was submitted by Ministry of Environment and Forests (MoEF) alongwith an affidavit dated 22.03.2002. The CEC considered all relevant aspects including the scheme submitted by MoEF and filed a report on 09.08.2002. These reports were accepted by this Court. This Court in 'T.N. Godavarman Thirumulpad Vs. Union of India 2006(1) SCC 1 finally directed that the question as to what amount of NPV is required to be paid and to achieve these objectives, it was directed that the question is to be examined by experts. A Committee comprising of three experts including Mrs. Kanchan Chopra was appointed and this Court gave the following directions:-
 - (i) To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be estimated.
 - (ii) To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.
 - (iii) To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.
 - (iv) To determine on the basis of established principles of public finance, who should pay the costs of restoration and/or compensation with respect to each category of values of forests.
 - (v) Which projects deserve to exempted from payment of NPV
2. On the basis of the directions issued by this Court, a Committee consisting of Mrs. Kanchan Chopra gave a report and the same was examined by the CEC.
3. The report contains detailed study of the relevant factors. The Forest Survey of India, has since last two decades, been undertaking forest cover mapping of the country using satellite data obtained by NRSA, Hyderabad. The methodology of mapping involves the geo-rectification of the satellite imagery using the Survey of India toposheets followed by the digital interpretation of the same and extensive ground truthing. It was found that the forest cover maps depicts mainly three tree canopy density classes, viz., very dense, moderately dense and open. There were other classifications in the Forest of India and "Champion and Seth" have classified the forests of India into 16 major groups. The major basis of classification included the climate, the soil and the past treatment as these factors determine the vegetation type of a given locality. CEC has classified the forest taking in view the ecological role and vale the forests and for the purpose of the report 16 major forest types have been further grouped into 6 ecological classes depending upon their ecological functions.

Eco-Class 1 - Consisting of Tropical Wet Evergreen Forests, Tropical Semi Evergreen Forests and Tropical Moist Deciduous Forests

Eco- Class II -Consisting of Littoral and Swamp Forests

Eco-Class III -Consisting of Tropical Dry Deciduous Forests

Eco-Class IV -Consisting of Tropical Thorn Forests and Tropical Dry Evergreen Forests

Eco-Class V -Consisting of Sub-tropical Broad Leaved Hill Forests, Sub-Tropical Pine Forests and Sub Tropical Dry Evergreen Forests

Eco Class VI - Consisting of Montane Wet Temperate Forests, Himalayan Moist Temperate Forests, Himalayan Dry Temperate Forests, Sub Alpine Forest. Moist Alpine Scrub and Dry Alpine Scrub

4. Based on the ecological importance of forest falling in different eco-value and canopy density classes, relative weightage factors have also been taken into consideration. By using these relative weightage factors, the equalized forest area in eco-value Class I and very dense forest corresponding to forest falling in different eco-value and density classes have been compiled. For example, 17,997 sq. km. of open forest of Eco-Class IV has been calculated to be equivalent to 7,558 sq. km. of very dense forest of Eco-Value Class I. Accordingly, the entire forest area of the country has been calculated and found to be equivalent to 5.2 lakh sq. km. forest area having highest, ecological significance as that of forest falling in eco-value Class I with density above 70%.
5. The net present value per hectare of forest has been fixed based on this data. For calculating the average net percent value per hectare of forest in India, the following monetary value of goods and services provided by the forest have been considered:-
 - (i) Value of timber and fuel wood
 - (ii) Value of Non Timber Forest Products (NTFP)
 - (iii) Value of fodder
 - (iv) Value of Eco-tourism
 - (v) Value of bio-prospecting
 - (vi) Value of Ecological services of forest
 - (vii) Value of Flagship Species
 - (viii) Carbon Sequestration Value
6. Based on this, the NPV was fixed and the following recommendations have been made:-
 - (i) for non-forestry use/diversion of forest land, the NPV may be directed to be deposited in the Compensatory Afforestation Fund as per the rates given below (in Rs.):-

Eco-Valueclass	Very Dense Forest	Dense Forest.	Open Forest
Class I	10.43,000	9,39,000	7,30,000
Class II	10,43,000	9,39,000	7,30,000
Class III	8,87,000	8,03,000	6,26,000
Class IV	6,26,000	5,63,000	4,38,000
Class V	9,39,000	8,45,000	6,57,000
Class VI	9,91,000	8,97,000	6,99,000

- (ii) the use of forest land falling in National Parks/Wildlife Sanctuaries will be permissible only in totally unavoidable circumstances for public interest projects and after obtaining permission from the Hon'ble Court. Such permissions may be considered on payment of an amount equal to ten times in the case of National Parks and five times in the case of Sanctuaries respectively of the NPV payable for such areas. The use of non-forest land falling within the National Parks and Wildlife Sanctuaries may be

permitted on payment of an amount equal to the NPV payable for the adjoining forest area. In respect of non-forest land falling "within marine National Parks/Wildlife Sanctuaries, the amount may be fixed at five times the NPV payable for the adjoining forest area;

- (iii) these NPV rates may be made applicable with prospective effect except in specific cases such as Lower Subhanshri Project, mining leases of SECL, Field Firing Ranges, wherein pursuant to the orders passed by this Hon'ble Court, the approvals have been accorded on lump-sum payment/no payment towards the NPV; and
- (iv) for preparation and supply of district level maps and GPS equipments to the concerned State/UT Forest Departments and the regional offices of the MoEF, the Ad-hoc CAMPA may be asked to provide an amount of Rs. 1.0 crore to the Forest Survey of India out of the interest received by it.

7. Ministry of Environment and Forests also has filed its response and has accepted the recommendations made by CEC. Various user agencies have filed its objections. We heard the learned senior Counsel Mr. Nariman and other learned senior Counsel who appeared before us. The main contention raised is that the NPV value was fixed on the basis of the net flow accruing over 20 years at a 5% social discount rate. This, according to the applicants, is too low. It has been contended that the Economic and Research Department of the Asian Development Bank is of the view that a survey of the social discount rate policies of individual countries show significant variations and the developing countries apply higher social discount rate. The paper published by Asian Development Bank shows that India should have a social discount rate of 12%. It may be noted that the Expert Committee under the leadership of Mrs. Kanchan Chopra recommended 5% social discount rate but the CEC has reduced further and accepted 4% social discount rate. It may be noted that the CEC had made consultation with eminent economists and it was of the view that the social discount rate should be around 2% in India. We do not find much force in the contention advanced by the learned Counsel who appeared for the user agents. The 10% suggested by them cannot be applied to the present case because 10% is the rate linked to assumptions about the opportunity cost of capital. One cannot apply that rate for social time preference in evaluating the benefits from an environmental resource such as forests. In project evaluation the horizon is compatible with the life of the project whereas in forest matters, the horizon spans over several generations. Therefore, the rate of 10%, as suggested by the user agency cannot be accepted.
8. Another contention raised by the applicant (FIMI) is that the NPV is not fixed on site specific and, therefore, the fixation of the rate is based on surmises and conjectures and the same rate cannot be applied to the large extent of area covered by the forests. This question was elaborately considered by the CEC. Considering the large extent of this country and the forest being spread over in various parts of the State, it is difficult to fix the NPV based on the specific area. It is not feasible to fix NPV in each and every individual case. The entire forest area in each of the State/UT is calculated by considering the monetary value of the services provided by it. The average NPV per hectare of the forest area in the State has also been calculated. If NPV is to be calculated on the specific area, the process would be time consuming and in most of the cases, it may be beyond the capability of the Range Forest Officers or other officials posted at the grassroot level. Moreover, the NPV is linked with the type of the forest and no useful purpose would be served by carrying out NPV calculations in each case involving the diversion of forest areas.
9. We are of the view that the NPV now fixed is more scientific and is based on all available data. We accept the recommendations and we make it clear that the NPV rate now fixed would hold good for a period of three years and subject to variation after three years. The following exemptions have been recommended:-
 - (i) public works such as schools, hospitals, children play grounds of non-commercial nature and the public welfare projects such as community centres in rural areas which require forest land upto 2 ha;

- (ii) rural infrastructure and basic services such as the construction of the overhead tanks, village roads, etc;
- (iii) the minor irrigation projects upto 10 ha. of storage area, municipal water supply projects, drinking water supply pipelines;
- (iv) activities necessary for the ecological management, relocation of the villages from the sanctuaries and the national parks, regularization of pre-1980 eligible encroachers;
- (v) housing for the rehabilitation of tribals; laying of the underground optical fibre cables;
- (vi) laying of the pipelines for the underground gas transportation;
- (vii) the district and rural roads;
- (viii) shifting cultivation;
- (ix) roads constructed by Defence in border areas;
- (x) construction of the transmission lines.

10. The above recommendations for exemptions are accepted. If, in any case, exemption is required by nature of the peculiar circumstances of the case, the same would be decided as and when necessary on a case to case basis.

I.A. No.:	Order Date: 04.04.2008	
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UPON hearing counsel the Court made the following

ORDER

Mr. A.D.N. Rao, learned counsel is appointed as amicus curiae.

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 (CEC 4th Report) in W.P.(C) No. 202/1995

List on 25.04.2008 along with the matters of M/s. Lanco, Teesta, Jindal and POSCO i.e. I.A. Nos.2167 in I.A. 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 02.05.2008.

I.A. NO.2143 in W.P.(C) NO.202/1995

List on 02.05.2008. In the meanwhile learned Solicitor General may file response.

I.A. No. 990 in 860 & 863 in W.P.(C) No. 202/1995

Learned counsel for the State of Karnataka seeks and is granted three weeks time for filing affidavit.

I.A. No.2105-2107 & 2206-2207 in W.P.(C) No.202/1995

Application for substitution is allowed.

I.A. No. 2108-2109 in W.P.(C) No. 202/1995

These applications are filed seeking permission for establishment of MDF/Partical Board Plant in the State of Karnatka. This Court had disposed of similar matters on 29.02.2008 in I.A. No.1797. These applications are also disposed of in terms of the order passed on 29.02.2008 in I.A. No.1797.

I.A. No. 2155-2156 in W.P.(C) No. 202/1995

Response of CEC be filed within four weeks.

I.A. No. 2223 in W.P.(C) No. 202/1995

CEC seeks and is granted four weeks time to file reply.

I.A. No. 2160-2161 in 1399 in W.P.(C) No. 202/1995

Adjourned to 09.05.2008.

I.A. No. 2171 in Application No. 940 in W.P.(C) No. 202/1995

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.

I.A. No. 2172-2174 in W.P.(C) No. 202/1995

Learned counsel for the State seeks and is granted four weeks time to file counter affidavit. The State shall not pass any application pending before it for regularization or encroachment.

I.A. No. 2185 in I.A.728 in W.P.(C) No.202/1995

List on 09.05.2008. In the meanwhile CEC to file its response.

I.A. No. 2212 in W.P.(C) No. 202/1995

Issue notice. Learned Additional Solicitor General accepts notice.

Two weeks time is granted for filing response. List on 25.04.2008.

In the meanwhile, in respect of Golf Driving Range and Children Corner areas status quo as on today shall be maintained.

I.A. No.:	Order Date: 09.04.2008	
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I.A. No. 2191-2193 in W.P.(C) No.202/1995 etc.etc.

These applications/Petitions were called on for hearing today.

UPON hearing counsel the Court made the following.

Item Nos. 301 and 302 listed on 11.04.2008 is adjourned to 25.04.2008.

I.A. No.:	Order Date: 24.04.2008	
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I.A. No.1137

Taken on Board.

List on 09.05.2008.

I.A. No.1019

State of Uttaranchal has filed application for exemption for certain projects such as drinking water supply, hospitals, dispensaries, schools, transmission lines, small hydro-electric projects etc. Most of these projects are exempted as per our order dated 28.03.2008. If there are any specific prayer for exemption from requirement of paying NPV, then the State to seek exemption regarding that project and file a separate application. I.A. is disposed of accordingly.

I.A. Nos.1135 & 1136, 1224 & 1225, 1233, 1385-1386 and 1438 with 1639, 1671, 2098

These applications have been filed by Indian Wind Turbine Manufacturers' Association and other applicants who are engaged in the production of Wind Energy by developing of wind farming on forest land. Ms. Kanchan Committee Report recommended that these sort of wind projects be given exemption from payment of Net Present Value (NPV) to the extent of 90% and they may be allowed to start these projects on payment of 10%. CEC has examined the matter and suggested that these Wind Energy Projects be given exemption to the extent of 50% of the Net Present Value at the minimum rate, provided no tree felling is involved. Learned counsel appearing for the applicants contended that these Wind Energy Projects should have been completely exempted as they are producing electricity by Non Conventional Energy Sources and they are not causing damage to the forest. It is also argued that for similar projects CEC has recommended exemption and this Court has accepted.

Learned Solicitor General and also learned amicus curiae supported recommendation of CEC that there should be payment of 50% of the NPV at the minimum rate provided no tree felling is involved. All these Wind farming projects producing electricity are profit motive projects. In order to have these projects, they have to erect various components namely turbine, corridors, transmission lines, sub-stations and erection platforms in the forest land. All these activities have to be carried out in the forest, so naturally forest land is being used for non-forest

purposes. It is also be taken note of that after use of Wind farming for generation of electricity, the said forest cannot be restored to in its original form and there should not be forest activities in these areas. Of course, for production of electricity, the Wind Energy Projects should be encouraged as they are using non-renewable energy sources like fossil fuels for production of energy.

Nevertheless, these forest areas are being used, they shall be given exemption for 50% NPV. We accept the recommendations of CEC that these projects should pay 50 % of the NPV at the minimum rate charged, provided minimal tree felling is involved.

I.As are disposed of accordingly.

I.A. No.1222-1223

The question raised in these applications are covered by Order of this Court dated 28.03.2008. I.As. are disposed of as having become infructuous.

I.A. Nos. 1229, 1248-1249, 1253 & 1371, 1435-1437, 1313, 1164, 1779,1707, 1364 and 1664.

List the applications on 09.05.2008.

I.A. No. 1384

Learned counsel for the Northern Railway is not present.

Adjourned.

I.A. No.1312

State of Uttaranchal has filed application for exemption for use of forest land for construction of rural roads in the State of Uttaranchal particularly 'katcha' roads in hilly area.

Most of these projects are exempted as per our order dated 28.03.2008. If there are any specific prayer for exemption from payment of NPV, then the State to seek exemption regarding that project and file a separate application. I.A. is disposed of accordingly.

I.A Nos. 1314 & 1316

State of Bihar has filed applications for exemption for certain projects regarding the construction of schools, dispensaries, hospitals, electric and telecommunication lines, drinking water, minor irrigation canals etc. Most of these projects are exempted as per our order dated 28.03.2008. If there is any specific payer for exemption from payment of NPV, then the State seek exemption regarding that project and file a separate application. I.As. are disposed of accordingly.

I.A. Nos.1387, 1434 & 1665

These are applications filed by Ministry of Defence through Director, Military Training. The Defence Ministry wants to make use of some forest area for the purpose of Field Firing Ranges for training their members and

submitted that no felling of trees are involved and there is no likelihood of destruction of forest, so exemption may be granted from payment of NPV.

Exemption is granted. I.As. are allowed.

I.A. No.:	Order Date: 25.04.2008	
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HARYANA(MINING)

I.A. No. 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 891-92, 2205, 1700-1703 in W.P.(C) No.202/1995 & I.A. No.1785 in W.P.(C) No.4677/1985

W.P.(C) No.202/1995 etc.

I.A. No.1967 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2152 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2143 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2186 in I.A. No.1785 in W.P.(C)No.4677/1985

W.P.(C) No. 624/2002

W.P.(C) No. 661/2002

W.P.(C) No.428/2002

Contempt Petition No. (C) No. 568/2002

Contempt Petition No. (C) No. 542/2004

I.A. No.2198 @ Contempt Petition No.125/2006 vide Court's order dated 25.10.2007

I.A. No.2269 in I.A. No.1785 in W.P.(C) No.4677/1985

Contempt Petition (C) No.186/2003 in W.P.(C) No.4677/1985

I.A. No.1866 in W.P.(C) No.4677/1985

I.A. Nos.1858-1859 in W.P.(C)No.4677/1985

I.A. No.1886 in W.P.(C) No.4677/1985

I.A. No.1888 in W.P.(C) No.4677/1985

I.A. No.1891 to 1893 in W.P.(C) No.4677/1985

I.A. No.1895 in W.P.(C) No.4677/1985

I.A. No.1896 in W.P.(C) No.4677/1985

I.A. No.1906 in W.P.(C) No.4677/1985

I.A. No.1907-1908 in W.P.(C) No.4677/1985

I.A. No.1911-1912 in W.P.(C) No.4677/1985

I.A. No.1937 in W.P.(C) No.4677/1985 and

2168 & Contempt Petition No.186/2006

MoEF seeks further time to file a report regarding the impact of mining on water level.

Four weeks time is granted for filing the same.

List on 18.07.2008.

I.A. No.2270:

Issue notice to C.E.C. Learned Amicus Curaie may file his views within four weeks.

List on 18.07.2008.

I.A. No. 2167

List on 18.07.2008

I.A. Nos. 2177-78, 2179-80, 2181-82 & 2183-84:

The applicants who are engaged in mining, have agreed to the recommendations made by C.E.C. Learned counsel appearing for the applicants submits that they are agreeable for the following recommendations:

1. to pay the NPV (if not already paid) for entire forest area included in mining lease approved under MMDR Act; W.P.(C)No.202/1995 etc.
2. to pay Compensatory Afforestation for the entire forest area excluding the forest area broken before/ prior to 25.10.1980;
3. to pay Penal Compensatory Afforestation - if the mine has operated in past in violation of the Forest (Conservation) Act;
4. No transfer of mining lease has taken place in violation of the provisions of the MMDR Act/Forest (Conservation) Act;
5. The mine was actually in operation and not closed during the validity of mining lease; however, mines were closed and mining operations stopped as soon as the mining leases expired;
6. They agree to give undertaking to pay additional charges, if any, payable as per the conditions imposed at the time of formal approval.

We accept the recommendations. MoEF may consider the applications of the applicants and pass appropriate orders in the matter of grant of licenses to these applicants.

Applications are disposed of accordingly.

I.A. No. 2163

Teesta Hydroelectric Project Stage VI has been recommended by the Forest Advisory Committee. MoEF may examine and pass appropriate orders as regards clearance in respect of 89.4266 ha. of forest land. We accept the recommendations, subject to the clearance by MoEF.

I.A. is disposed of accordingly.

I.A. No.2166

List on 16.05.2008.

I.A. No.2126

List on 02.05.2008.

I.A. No.2212

List on 02.05.2008.

I.A. No.1500 & 2235

Applicant obtained a licence for carrying out mining activity in 263.25 acres of land. According to the applicant, out of this only 7.85 acres of land is forest land and the rest of the area is not covered by forest and for 7.85 acres of land the applicant has got clearance from the MoEF. Stand taken by the State Government is that the entire 263.25 acres are forest land.

According to applicant, there was earlier a joint survey conducted and it was found therein that whole area was not forest land. But according to the District Level Committee, the whole area is forest land. The applicant requests that the representatives from C.E.C. may make inspection of the land and give a report. Applicant may make an application for before the C.E.C. in this regard.

List on 25.07.2008.

I.A. No.2186-2187

Issue notice to C.E.C. as well as to the State of U.P. State of U.P. to file its reply/response regarding setting up of furniture units by the applicant, within four weeks.

List on 25.07.2008.

I.A. No.2191-93

Issue notice to C.E.C. as well as to the State of Haryana. State of Haryana may file its reply/response regarding setting-up of herbal park by the applicant, within four weeks.

List on 25.07.2008.

W.P.(C)No.202/1995 etc.

I.A. No.2199-2200

Learned counsel for the petitioner seeks permission to withdraw the applications with liberty to move an appropriate application. Permission sought for is granted. The applications are dismissed as withdrawn.

I.A. No.2201

Application for impleadment is dismissed.

I.A. Nos.2202-03

Issue notice to C.E.C. C.E.C. to file response within four weeks.

List on 25.07.2008.

I.A. No.2208:

Issue notice to C.E.C. C.E.C. to file its response within four weeks. The applicant is permitted to file an additional

application suggesting the ways and means by which they would prevent the illicit use of timber/forest trees.

List on 18.07.2008.

The applicant would be at liberty to file additional documents, if any, before the C.E.C.

I.A. Nos. 2213-15 in 948-48A

List on 25.07.2008.

I.A. Nos.1424-25 & 2218 & 2211

C.E.C. seeks further time to file a report/response. It is submitted that already inspection has been carried out.

List on 25.07.2008.

I.A. No.1179 in 675-676 & 957

List on 08.08.2008.

I.A. Nos.1291-92

The applicants filed a petition purporting to be public interest litigation alleging that in the State of Chhattisgarh. It was stated that there are serious violations in forest land and the State is constructing several roads by destroying the forests. The matter was examined by C.E.C., which has given the following recommendations:

- “(a) for each of the road being constructed under the PMGSY the existing width of the road, the number of trees required to be felled, the source of earth, murrum, metal etc., the legal status of the road and the other relevant details should be verified by the team(s) consisting of the representative of the Forest Department, the Revenue Department and the Panchayat & Rural Development Department under the direct supervision, and guidance of the Regional CCF, MoEF, Bhopal, Regional Office. Based on the reliable government documents, it should be decided whether this was an existing forest road or some other road such as PWD road etc.;
- (b) the construction of the road passing through the forest area should be undertaken only after obtaining the requisite approvals under the F.C.Act except in respect of the identified existing road which do not involve any widening, felling of trees, black-topping or use of earth/ murrum/metal from the forest area;
- (c) in respect of the roads passing through the National Parks/Sanctuaries the construction/upgradation work shall be undertaken only after obtaining the permission from this Hon’ble Court;
- (d) the filing of the consolidated proposal for seeking approval under the F.C.Act for the construction/upgradation/widening of the roads and the decisions thereon by the MoEF shall be taken in a time bound manner so that the construction of the roads is not unnecessarily hampered. The safeguards/conditions stipulated by the MoEF shall be strictly complied with;”

Learned counsel appearing for the State of Chhattisgarh submits that these roads had to be surfaced properly to avoid illegal land mines and it is submitted that the police and administration are not able to reach remote village areas due to the absence of these village roads. The recommendations suggested by the C.E.C. are acceptable to the State Government. It is submitted that suggestion that the State Government may be directed to take disciplinary action against the officers for construction of the roads, may not be accepted. The felling of trees have been

necessitated because of the absence of roads in these remote village areas and also because of serious internal security threats which are prevalent in these areas.

Subject to fulfillment of the above conditions stipulated by the C.E.C. except relating to action against officers, the application is disposed of.

W.P.(C)Nos.36/2003 & W.P.(C)No.85/20007

Adjourned.

I.A. Nos. 36,75,89 & 103 in W.P.(C)NO.337/1995:

List in July, 2008.

I.A. No.:	Order Date: 02.05.2008	
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I.A. No. 2224

Four weeks time is granted to CEC to file report.

I.A. Nos. 2228-2229

Adjourned.

I.A. No.2234

I.A. Nos. 112, 115, 167, 171, 285, 287, 133, 134, 387 and 388 are dismissed as having become infructuous.

I.A. No. 2236

Application is rejected.

I.A. Nos. 208-209

In the State of Uttarakhand there are 27 saw mills and 27 ply-wood units. CEC has suggested that these 27 ply-wood units have to pay penalty as given in para 5 of the supplementary report submitted. The owners of the these ply-wood units accepts the CEC Report and they are allowed to start units subject to fulfilling the conditions. These units are given six weeks time to pay penalty. These units can function only after depositing of these penalties.

I.As. are allowed as regards these ply-wood units.

As regard 27 saw mills, four are relocated in Jaspur and two in Rishikesh. There are problem regarding re-location of these six mills. Except these six saw mills rest of 21 saw mills have agreed to pay penalty as indicated in para 9 of the supplementary report. These saw mills have agreed to pay the penalty as stated in the report. On payment of these penalties as stated in this report these units may be allowed to function. As regards saw mills at Jaspur and Rishikesh re-location, matter shall be listed later.

I.As. are allowed as regards 21 units.

I.As. as regards remaining six units may be posted later.

I.A. Nos. 241, 242, 245, 268-269, 1704-1706, 1710-1712, 2024-2026, 208-209, 1710-1712, 241-242, 245, 268-269, 288-290

CEC has filed report. The saw mills in question had no valid licence as on 4.3.1997, so they are not allowed to function. The applicants are not present. All these I.As. are dismissed accordingly.

I.A. No. 2024-2026, 2027-2029, 2030-2032, 2033-2035, 2036-2038, 2039-2041, 2042-2044, 2045-2047, 2048-2050, 2051-2053, 2055-2056

For consideration of CEC Report. Adjourned.

I.A. No. 1692

CEC has filed its report. Learned counsel for the State of Uttaranchal seeks and is granted six weeks time to file objections to the Report.

I.A. No. 2219-2220

Adjourned.

I.A. No. 2164 and 2167, 2168, 2169, 2170 in I.A. Nos. 1413, 1414, 1426, 1428, 1454, 1459, 1460, 1662-1663, 1675, 1778, 2005-2006, 2121-2125, 2127-2128, 2129, 2130-2132, 2133, 2216, 2217-2218, 2222, 2232-2233 in 1413 in W.P.(C) No. 202/1995

Learned Solicitor General made a statement that the existing FAC would be re-constituted and Prof. Madhav Gadgil, Dr. Ullas Karanth and Mr. Mahesh Rangarajan would be included in the FAC in place of existing non-official members and further steps would be taken in that direction and it would be brought to the notice of CEC. Pending finalization of the new FAC, this Court had passed an order dated 27.4.2007 on the larger question indicated hereinbelow:

- (a) The F.A.C. as it stands today will give priority to Project which need immediate clearance. In this regard, it may be stated that fresh cases may be cleared Project-wise by the F.A.C. and thereafter such clearance shall be placed before this Court for approval. 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 CEC in respect of each clearance. In order to avoid delay, we direct the concerned Ministry to give a copy of the clearance to CEC so that CEC 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 above clause (a) would be deleted for future projects after reconstitution.

FOURTH REPORT

- (i) Six proposals for grant of TWP: (Section IV of The Report):
 There are six proposals for grant of Temporary Work Permits (TWP). This Court by order dated 25.04.2008 in I.A. No.2177-84 had directed MoEF to take a decision in respect of four TWP proposals subject to compliance of six conditions. The four proposals have been cleared.
 Subject to fulfillment of the conditions, the balance two TWP proposals may also be permitted to be decided by the MoEF in terms of the said order.
 I.As. are disposed of as regards six proposals for grant of TWP.

- (ii) Ten proposals for grant of the prospecting licence: (Section III of the Report):
 This is an application submitted by TATA Steel Limited for prospecting Licence. Learned counsel appearing for TATA Steel Ltd. has submitted that there is no diversion of forest land for non-forest purpose as contemplated in the Forest Act. It is submitted that for Prospecting Licence Drilling of Bore-Holes and clarification in (iii) of 1.3 of Chapter 1 Application of Forest (Conservation) Act, 1980, have been misconstrued.
 In Clause (v) of Chapter 1 - Application of Forest (Conservation) Act, 1980, it is stated that prospecting of any mineral, done under prospecting license granted under MMDR Act which requires collection/removal of samples from the forest land, would be a state between survey & investigation and grant of mining lease and as such permission under Forest (Conservation) Act 1980 would be required. However, Test drilling upto 10 bore holes of maximum 4" diameter per 100 sq. km. for prospecting, exploration or reconnaissance operations, without felling of trees, shall not attract the provisions of the Act. In all other cases involving more than 10 hectares of bore holes, prior permission of the Central Government under the Act would be required.
 Subject to the above, these applications are allowed. MoEF may pass appropriate orders as it is not diversion of forest land for non forest purpose, except for the limited purpose noted above. It is clarified accordingly.
 In view of nine other applications pending for prospecting licences, MoEF may consider these applications. The DGFA will re-consider these problems personally in the light of observations made by CEC and pass appropriate orders within a period of six weeks. I.As. are allowed as regards.

- (iii) 4 Irrigation Projects of Maharashtra: (Section V and VII of the Report):
 Four irrigation projects were pending for clearance. As regards Human River Project-it is noticed that it involved felling of very large number of trees and have serious environmental repercussions therefore for the time being this project as proposed is not cleared. One of these projects, Rajiv Sagar (Bawanthadi) Project may be cleared and implemented. In regard to two projects i.e. Lower Penganga Major Irrigation Project and Jigaon Major Irrigation Project MoEF may consider and pass appropriate orders. State may go ahead of these three projects after getting approval from MoEF. I.A. in regard to three projects is allowed.

- (iv) The proposal for extension of mining lease in favour of MP SMCL, the State has already withdrawn the project. No orders are required. I.A. is disposed of accordingly.

- (v) Already cleared.

- (vi) 11 proposals (Section IX,X,XII to XIX AND XXII of the Report):
 The MoEF may take decision in the light of the observations made by the CEC in Section IX, X, XII to XIX AND XXII of the 4th Report.

- (vii) Section XI and XXI of the Report:

Adjourned. Await report of Lok Ayukt, Karnataka.

- (viii) Prospecting licence to M/s. Jindal Power:
List on 09.05.2008.
- (ix) Remaining six proposals (Section VI, XXII & XXIV of the Report:
CEC has already filed Report. The MoEF is requested to give its response.

Therefore, it is adjourned.

FIFTH REPORT

- i) Wind power project in favour of M/S. Suzlong Energy Ltd.:
The MoEF to take fresh decision in the Wind power project in the light of the observations made by the CEC.
- ii) Four proposals of mining projects:
CEC has given its Report and the matter is now pending with the FAC. As soon as FAC give response, the MoEF will consider and take appropriate decision and give response. I.A. No. 2126 (RE:Timblo mine, Goa - 6th & 7th Report)
CEC has already approved the proposal for mining activities. It is pointed out that there is a transfer of mining lease and MoEF may take appropriate decision having regard to the transfer effected by the leaseholder. We are told that the NPV has already paid. All other conditions imposed by this Court's Order dated 04.01.2008 should be complied with. The Ministry of Mines have to take appropriate decision relating to right to continue with the mining activities.

I.A.is disposed of accordingly.

I.A. No. 2143

Adjourned.

I.A. Nos. 1516,1541-1542, 1543-1544, 1545-1546, 1547-1548, 1549-1551, 1552-1553 & 1554-1556 in W.P.(C) No.202/1995

Adjourned.

I.A. No. 2194-2196

Issue notice to State of Karnataka and also to CEC. Response may be filed within a period of eight weeks.

I.A. No. 2212

List on 09.05.2008.

I.A. No. 2237-38

List on 09.05.2008.

Rest of the I.As. are adjourned.

I.A. No.:	Order Date: 09.05.2008	
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I.A. No.1768

Post along with I.A. No.2164 on 25.07.2008.

I.A. Nos.2160-2161 in 1399

I.A. No. 2185 in I.A. 728

I.A. Nos.2248-2249 in 1694

List on 16.05.2008.

I.A. No. 2134

List on 16.05.2008.

NPV Matters.

I.A. Nos. 826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-1014, 1016-1018, 1019, 1046, 1047, 1164, 1180-1181, 1182-1183, 1196, 1208-1209, 1229, 1248-1249, 1253, 1301-1302, 1303-1304, 1313, 1314, 1318, 1319 in 1137, 1325, 1364, 1365-1366, 1370-1370A, 1371, 1384, 1435-1437, 1441 with 1634, 1475-1476, 1579, 1513, 1573, 1664, 1676, 1707, 1721, 1779 in 1164 in 566, 1785-1786 in I.A. 1441, 1980-1981, 1993, 2013, 2074-2076, 2077-2078 in 1441, 2230-2231, 2240-2241 in 1164, 2147-2148, 2149-2150 & 2153-2154 in I.A. 566 in W.P.(C) No.202/1995

List the Public Utility Project matters, Hydel and Irrigation Projects matters, Construction of road on acquired land matter, transmission lines matters, Hydro Electric Power Projects matters, Mining in the same sequence on 18.07.2008.

The order dated 28.03.2008 is corrected as recorded separately.

I.A. Nos. 826 in 566 with 955 in 566, 958, 985, 1001-1001A, 1013-14, 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 I.A. No.1441, 1980-1981, 1993, 2013, 2074-2076, 2077-2078 in 1441 & 2098 in 1233 45 in 1135-1136, 2145-2146, 2147-2148, 2149-2150 & 2153-2154 in I.A. 566 in W.P.(C) No.202/1995.

- i. On 28th March, 2008, we had passed an order regarding payment of Net Present Value (NPV) accepting the recommendations made by CEC which were more or less acceptable to MoEF. In that order we had also indicated that exemptions from payment of NPV have to be granted in respect of certain categories. However, it is brought to our notice that certain typographical mistakes had crept in that order as to categories to which such exemptions are to be granted. Therefore, we direct that as regards exemptions from payment of NPV, the last part of that order reading "*We are of the view.....(x) construction of the transmission lines*" on pages 10 to 11 shall stand substituted with the following:-

INDIA'S FORESTS AND THE JUDICIARY - THE GODAVARMAN STORY

Category	CEC
<ul style="list-style-type: none"> i. Schools ii. Hospitals iii. Children's play ground of non commercial nature iv. Community centers in rural areas v. Over-head, tanks vi. Village tanks vii. Laying of underground drinking water pipeline up to 4 diameter viii. Electricity distribution line upto 22 KV in rural areas. 	<p>Full exemption upto 1 has of forest land provided:</p> <ul style="list-style-type: none"> (a) no felling of trees in involved; (b) alternate forest land is not available; (c) the project is of non-commercialnature and is part of the Plan/Non-Plan Scheme of Government; and (d) the area is outside National Park/Sanctuary
<p>Relocation of villages from the National Parks/Sanctuary to alternate forest land</p> <p>Collection of builders/silts from the river belts in the forest area</p>	<p>Full Exemption</p> <p>Full exemption provided:-</p> <ul style="list-style-type: none"> (a) area is outside National Park/ Sanctuary; (b) no mining lease is approved/ signedin respect of this area; (c) the works including the sale of boulders/silt are carried out departmentally or through Government undertaking or through the Economic Development Committee or Joint Forest Management Committee; (d)the activity is necessary for conservation and protection of forests; and (e) the sale proceeds are used for protection/conservation of forests
Laying of underground optical fibre cable	<p>Full exemption provided:</p> <ul style="list-style-type: none"> (a) no felling of trees is involved; and (b) areas falls outside .National Park/Sanctuary
Pre-1980 regularisation of encroachments and conversion of forest villages into revenue villages	Full exemption provided these are strictly in accordance with MoBF's Guidelines dated 18.09.1990.
Underground mining	50% of the NPV of the entire area

2. The above recommendations for exemptions are accepted. If, in any case, exemption is required by nature of the peculiar circumstances of the case, the same would be decided as and when necessary on a case to case basis.

I.A. Nos. 2145-46:

These applications have been filed by the National Highway Authority of India seeking permission for use of 4.924 ha. of forest land falling in Balaram-Ambaji Wildlife Sanctuary for the widening of NH-14 on Palanpur-Swaroopganj

Section in the State of Gujarat. The C.E.C. has examined the project and recommended the same subject to acceptance of the following conditions :

1. the conditions imposed by the Chief Wildlife Warden and the Standing Committee of the National Board of Wildlife will be strictly complied with;
2. 5% of the project cost of the Palanpur-Swaroopganj Section i.e.Rs.8.255 crores, will be provided for conservation and protection measures in the sanctuary. This will included the amount required to be spent on mitigative measures proposed by the Chief wildlife Warden/Standing Committee of the NBWL;
3. no labour camps will be established within the sanctuary;
4. no construction material will be left in the sanctuary;
5. the material for the construction will be obtained from non-forest area falling outside the sanctuary; and
6. for use of forest land, approval under the F.C. Act will be obtained.

Learned counsel for the applicant stated that the conditions are acceptable. Subject to the fulfillment of the above conditions, this project is cleared.

I.A.s are disposed of accordingly.

I.A. Nos.2245-46:

Issue notice to C.E.C. C.E.C. to file its comments within four weeks.

List on 18.07.2008.

I.A. No.2247

Issue notice to C.E.C.. C.E.C. to file its comments within four weeks. The interim stay granted by the High Court of Judicature at Madras on 24.04.2008 is extended until further orders, considering the fact that the applicant is a hundred year old club.

List on 08.08.2008.

I.A. No.2272

Issue notice to all the respondents.

Commonwealth Games Authority/Committee be impleaded as a party respondent no.4.

Issue notice to newly impleaded respondent. Mr.Saharya, advocate accepts notice on th behalf of the 4 respondent.

Parties on either side will file additional documents with copy to the other side.

List on 16.05.2008.

I.A. No.2212

List on 16.05.2008.

I.A. No. 2237-2238 in I.A. No. 2212

Issue notice.

To be listed along with I.A. No. 2212 on 16.05.2008.

I.A. No.2244

Let comments of C.E.C. be filed within four weeks.

I.A. No.2254

List along with the U.P.Saw Mill Matters.

I.A. Nos. 3 and 4 in W.P.(C) No.314/2006:
Comments of C.E.C. be filed within four weeks.

List after re-opening after summer vacation.

Contempt Petition (c) No.238/2007 in I.A. Nos. 742-743 & I.A. No. 2020 in 742-743

As requested, adjourned.

I.A. Nos.12,55 & 58-59 in SLP(C) No.13658/1996:

These applications have been filed by the applicants to undertake mining activities in the State of Gujarat. An objection was raised to the effect that these are nearer to the sanctuary area of Narayan Sarovar sanctuary in the State of Gujarat. The applicants pointed out that it is beyond the 2.5 kms. of the boundary area of the sanctuary. The State Government will ascertain this fact and we grant permission only if it is beyond the 2.5 kms. of boundary area of the sanctuary. This direction regarding distance is subject to final orders to be passed later in the Buffer Zone matter.

I.A.s are disposed of accordingly.

List the connected I.A.s after 12 weeks.

I.A. Nos.1572 & 1578

List on 01.08.2008.

I.A. Nos.2138-2139 in 891-892 & I.A.1488 in 891-92

A copy of the applications be given to learned Amicus Curaie.

Comments of C.E.C. be filed within four weeks.

List on 01.08.2008.

I.A. Nos.2258-2260 & 2261-2263

Issue notice to C.E.C. C.E.C. to file its comments within four weeks.

List on 01.08.2008.

I.A. No.2167 in 1440 in 1413

Learned senior counsel for the applicant stated that the applicant is ready to pay NPV for the entire area of 206.652 ha. of land. Whatever payment has been made, may be adjusted towards NPV and the MoEF would take a decision on the revised stand on the basis of the changed circumstances within four weeks.

List on 25.07.2008.

I.A. Nos. 2264-2267 & 2268-2271

Issue notice to C.E.C.

List on 16.05.2008.

Meanwhile, C.E.C. to file its comments, if any.

I.A. No.2257 in I.A. No.1093

Taken on board.

Recommendation of C.E.C. dated 05.05.2008 be treated as I.A.

Learned senior counsel appearing for the Power Grid Corporation of India Ltd. (PGCIL) has submitted that 0.8694 ha. of forest land falling in the Peechi Vazani Wildlife Sanctuary, Kerala is required for relocation of one damaged tower of 400 KV double circuit Udumalpet-Trichur transmission line. The C.E.C. has examined the proposal and has recommended the same subject to the following conditions:

1. for use of forest land approval under the Forest (Conservation) Act, will be obtained;
2. felling of trees will be kept to the minimum possible;
3. the condition imposed by the Chief Wildlife Warden will be strictly complied; and
4. the NPV at the prescribed rate for the forest land falling within the sanctuary as well as outside the sanctuary will be deposited by the user agency.

Learned senior counsel appearing for the applicant submitted that these conditions are acceptable to them. Permission for the project is granted, subject to fulfillment of the above conditions.

I.A. is disposed of accordingly.

I.A. No.:	Order Date: 16.06.2008	
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List on 18th July, 2008 along with connected matters. Responses, if any, by the concerned authority be filed by 14.07.2008.

I.A. No.:	Order Date: 25.07.2008	
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I.A. No.2134:

Mr.K.K.Venugopal, learned senior counsel for the applicant started his arguments at 2.20 p.m. and concluded at 2.40 p.m.. Thereafter Dr. Rajeev Dhawan, learned senior counsel for the respondent-Orissa Mining Corporation started his arguments and argued for about 5 minutes. Thereafter Mr.Andhyarujina, learned senior counsel for State of Orissa argued upto 2.55 p.m. Thereafter Mr.G.E.Vahanvanit, learned Solicitor General argued for about 5 minutes. It was thereafter Mr.U.U.Lalit argued for about 10 minutes.

Arguments concluded. Orders reserved.

I.A. Nos.2308-2309:

Adjourned by four weeks.

I.A. No.2239:

The C.E.C.has filed a report in this application (certain conditions have been recommended). The said report has already been considered and accepted by the Ministry of Environment & Forests (MoEF). MoEF may pass appropriate orders in respect of the 14 projects in question.

I.A. No. 2239 is disposed of accordingly.

I.A. No. 1164 in I.A. No.566

The sum of Rs.300 crore, alongwith accrued interest, lying with the Registry be re-invested by the Registry for a period of another year.

Office report for direction is disposed of accordingly.

W.P.(C) No.301/2008 & I.A. Nos.2301-2303 in I.A. No.2079:

Issue notice. Respondents shall not take possession of the land of the petitioner Housing Society, and shall not take any action pursuant to the notices dated 02.07.2008 & 04.07.2008.

C.E.C. will be at liberty to continue with the proceedings before it.

Reply be filed within 4 weeks. List thereafter.

I.A. No.:	Order Date: 08.08.2008	
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The matters which are listed for 29th August, 2008 are adjourned. List the same on 01.09.2008.

I.A. No. 2166 in 1413

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.

I.A. Nos. 2310 in I.A. No. 2269

List on 01.09.2008. Meanwhile, reply/counter if any, may be filed.

I.A. Nos. 2273-2274:

Issue notice to C.E.C. C.E.C. will examine the matter and file its reply within a period of six weeks.

I.A. Nos. 2293-2294, 2298:

List on 26.09.2008.

I.A. Nos. 2331-32:

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.

I.A. No.2134/07

The matter was called on for orders today.

Hon'ble Mr.Justice S.H.Kapadia pronounced the order of the Bench comprising Hon'ble the Chief Justice of India, Hon'ble Dr.Justice Arijit Pasayat and His Lordship himself.

The application is disposed of, in terms of the signed reportable order.

I.A. No. 2134

1. This Interlocutory Application preferred by M/s. Sterlite Industries (India) Ltd. [SIIL] is a sequel to our Order dated 23.11.2007 in LA. Nos. 1324 and 1474 in Writ Petition (C) No. 202 of 1995 etc. in the case of T.N. Godavaraman Thirumulpad v. Union of India and Others and in the matter of: Vedanta Alumina Ltd repotted in (2008) 2 SCC 222. We need not repeat the contents of our Order dated 23.11.2007 except to state

that in our Order we suggested a Rehabilitation Package and modalities to subserve the principle of Sustainable Development.

2. For the sake of convenience we quote hereinbelow the suggestions made in our earlier order dated 23.11.2007 which read as under:
 - i. State of Orissa shall float a Special Purpose Vehicle (SPV) for scheduled area development of Lanjigarh Project in which the stake holders shall be State of Orissa, OMC Ltd. And M/s. SIIL. Such SPV shall be incorporated under the Companies Act, 1956. The Accounts of SPV will be prepared by the statutory auditors of OMC Ltd. And they shall be audited by the Auditor General for State of Orissa every year. M/s. SIIL will deposit, every year commencing from 1.4.07, 5% of its annual profits before tax and interest from Lanjigarh Project or Rs. 10 crores whichever is higher for Scheduled Area Development with the said SPV and it shall be the duty of the said SPV to account for the expenses each year. The annual report of SPV shall be submitted to CEC every year. If CEC finds non-utilisation or mis-utilisation of funds the same shall be brought to the notice of this Court. While calculating annual profits before tax and interest M/s. SIIL shall do so on the basis of the market value of the material which is sold by OMC Ltd. To M/s. SIIL or its nominee.
 - ii. In addition to what is stated above, M/s. SIIL pay NPV of Rs. 55 crores and Rs. 50.53 crores towards Wildlife Management Plan for conservation and management of Wildlife around Lanjigarh bauxite mine and Rs. 12.20 crores towards tribal development. In addition, M/s. SIIL shall also bear expenses towards compensatory Afforestation.
 - iii. A statement shall be filed by M/s. SIIL with CEC within eight weeks from today stating number of persons who shall be absorbed on permanent basis in M/s. SIIL including land-losers. They shall give categories in which they would be permanently absorbed. The list would also show particulars of persons who would be employed by the contractors of M/s. SIIL and the period for which they would be employed.
 - iv. The state government has the following suggestions on this issue:-
 1. The user agency shall undertake demarcation of the lease, area on the ground using four feet high cement concrete pillars with serial number, forward and back bearings and distance from pillar to pillar.
 2. The user agency shall make arrangements for mutation and transfer of equivalent non-forest land identified for compensatory Afforestation to the ownership of the State Forest Department.
 3. The State Forest Department will take up compensatory Afforestation at project cost with suitable indigenous species and will declare the said area identified for compensatory Afforestation as "protected forest" under the Orissa Forest Act 1972 for the purpose of management.
 4. The user agency shall undertake Rehabilitation of Project Affected families, if any as per the Orissa Rehabilitation and Resettlement Policy 2006.
 5. The user agency shall undertake Phased reclamation of mined out area. All overburden should be used for back filling and reclamation of the mined out areas.
 6. The user agency shall undertake fencing of the safety zone area and endeavour for protection as well as regeneration of the said area. It shall deposit funds with the State Forest Deptt. For the protection and regeneration of the safety zone area.
 7. Adequate soil conservation measures shall be undertaken by the Lessee on the overburden dumps to prevent

contamination of steam flow.

8. The user agency should undertake comprehensive study on hydrogeology of the area and the impact of mining on the surrounding water quality and steam flow at regular interval and take effective measures so as to maintain the premining water condition as far as possible.
9. The user agency should undertake a comprehensive study of the wild life available in the area in association with institutes of repute like Wildlife Institute of India, Dehradun, Forest Research Institute, Dehradun etc. and shall prepare a site specific comprehensive Wildlife Management Plan for conservation and management of the wildlife in the project impact area under the guidance of the Chief Wildlife Warden of the state.
10. The user agency shall deposit the NPV of the forest land sought for diversion for undertaking mining operations.
11. The user agency shall prepare a comprehensive plan for the development of tribals in the project impact area taking into consideration their requirements for health, education, communication, recreation, livelihood and cultural lifestyle.
12. As per the policy of the State Government, the user agency shall earmark 5% of the net profit accrued in the project to be spent for the development of health, education, communication, irrigation and agriculture of the said schedule area within a radius of 50 kms.
13. Controlled Blasting may be used only in exigencies wherever needed to minimize the impact of noise on wildlife of the area.
14. The user agency shall undertake development of greenery by way of plantation of suitable indigenous species in all vacant areas within the project.
15. Trees shall be felled from the diverted area only when it is necessary with the strict supervision of the State Forest Deptt. At the cost of the project.
16. The forest land diverted shall be non transferable. Whenever the forest land is not required, the same shall be surrendered to the State Forest Deptt. Under intimation to Ministry of Environment and Forests, Government of India.”

(emphasis supplied by us)

3. By our Order dated 23.11.2007 we made it clear that if SIIL is agreeable to the suggested Rehabilitation Package they were at liberty to move this Court by way of interlocutory application. Consequently, the present I.A. No. 2134 of 2007 has been preferred by SIIL.
4. In the present I.A. SIIL, state of Orissa and Orissa Mining Corporation Ltd. [OMCL] have unconditionally accepted the terms and conditions and modalities suggested by this Court under the caption “Rehabilitation Package” in its Order dated 23.11.2007. However, CEC has filed its Report dated 24.04.2008. The Report contains response/counter suggestions on certain aspects. In our Order dated 23.11.2007 we inter alia suggested formation of SPV for Scheduled area Development of Lanjigarh Project in which we suggested that the stake-holders shall be State of Orissa. OMCL and SIIL. We also inter alia suggested that the said SPV shall be incorporated under the Companies Act, 1956.

5. CEC in its response has suggested that SPI/ should work the Niyamgiri Bauxite Mine in a business-like manner and that the mining lease of Niyamgiri Bauxite Mine may be assigned to the SPV from OMCL. In other words, CEC wants that State of Orissa should participate in the mining operations and it has further suggested that the State of Orissa should transfer or assign the mining lease from OMCL to SPV.
6. There are serious problem in the above suggestion made by CEC. At the outset, it needs to be stated that under our Order dated 23.11.2007 we suggested, as a part of Rehabilitation Package, formation of SPV for Scheduled Area Development of Lanjigarh project. We wanted the State of Orissa to be associated with SPV in order to ensure implementation of proper schemes for the development of the tribal area and in our Order it has not been suggested for incorporation of SPV to take over the mines which have been leased out by State of Orissa to OMCL (lessee). The reason is obvious. We cannot change leases/MoUs/Joint venture agreements signed between the parties at earlier point of time which have been approved by the Ministry of Mines, Government of India, and other Authorities. The object for passing the Order dated 23.11.2007 was to strike a balance between development and environmental protection. The Lanjigarh Tehsil in District Kalahandi, as stated in our Order dated 23.11.2007, faces abject poverty. At the same time the area is eco-sensitive area. We have tried to strike a balance in order to subserve the principle of Sustainable Development. Under our Order we suggested Rehabilitation Package under which apart from NPV, SILL is also required to deposit 5% of annual profits before tax and interest from Lanjigarh Project or Rs. 10 crores per annum whichever is higher. The said Project covers both mining and refining. The amount is required to be deposited by SILL with SPV every year commencing from 01.04.2007 This condition has been accepted by SILL. Moreover, by reasons of acceptance of suggested Rehabilitation Package, 2090 persons (including displaced persons) would get employment as indicated in the Charts annexed to the report of CEC. In addition, 2400 more persons would earn income by support services. However, we can not change the existing structure in its entirety. If we were to accept the said counter suggestion of CEC, namely, that the mines be taken over by SPV then we would be violating the terms and conditions of the joint venture Agreement dated 05.10.2004 between OMCL and VAL (now substituted by SILL) Moreover, it may be noted that the joint venture agreement dated 05.10.2004 was executed the Government of Orissa wanted its undertaking, namely, OMCL to earn revenue on its own account. Therefore, we cannot direct a complete changeover. Under the joint venture agreement, OMCL was a lessee from Government of Orissa. We cannot modify that lease. We cannot direct the lease to be assigned by Government of Orissa to SPV as it would amount to substitution of lease earlier executed by government of Orissa on favour of OMCL.
7. CEC has further suggested pre-determined mechanism for price fixation. Under the suggested new price-fixation mechanism CEC has suggested as follows:

“The price of the Bauxite Ore in the market is not ascertainable since there is no market for this ore as such of significance, but its price can be ascertained by reducing the normative cost of conversion plus profit from the market price of Aluminium. The CEC also examined the feasibility of determining the price of the Ore by reducing the cost of conversion (plus profit) from the price of Alumina, but did not consider this an advisable option since the price of Alumina shows a great degree of variation from supplier to supplier (...) this method of calculating price is in effect a mirror image of the Cost plus Return basis adopted for determining tariff”.
8. We may state that price discovery/mechanism is a complicated exercise. Moreover, on account of economic factors, price variation takes place throughout the year. We do not wish to rule out the formula suggested by CEC. Ultimately, as stated in our order dated 23.11.2007, SILL is required to deposit 5% of its annual profits before tax and interest from Lanjigarh Project or Rs. 10 crores whichever is higher as contribution

for Scheduled area development. This contribution is to be made every year commencing from 01.04.2007. Under clause (i) of rehabilitation Package, SPV has to account for Scheduled Area Development. Further under the said Package, SILL is also required to contribute Rs. 12.20 crores towards tribal development apart from payment of NPV and apart from contribution to the Management of Wildlife around Lanjigarh Bauxite Mine (see; clause (ii) of the Rehabilitation Package). While allocating CAMPA funds the said amount of Rs. 12.20 crores shall be earmarked specifically for tribal development. Therefore, we are of the view that, at the pre-operational state, we need not apply the price mechanism suggested by CEC. It at the end of the Accounting Year of SILL, CEC finds that the annual profits before tax and interest is depressed by the pricing mechanism mentioned in joint venture agreement dated 5.10.04 vide clause 2.3.3(a) then it would be open to CEC to move this Court with the suggested price mechanism in its Report. In fact, in our Order dated 23.11.2007 we have directed that the Accounts of SPV to be audited by Auditor General for State of Orissa after they are prepared by the statutory auditors of OMCL. It would be open even to the statutory auditors of OMCL as well as CEC to inform this Court at the end of the Accounting year whether annual profits before tax and interest stands depressed for any reason and at that stage we will certainly consider the price mechanism suggested by CEC in its report placed before us.

9. For the above reasons and in the light of the Affidavits filed by SILL, OMCL and State of Orissa, accepting the Rehabilitation Package, suggested in our Order dated 23.11.2007, we hereby grant clearance – to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh. The next step would be for MoEF to grant its approval in accordance with law.
10. I.A. No. 2134 of 2007 is disposed of accordingly.

I.A. No.:	Order Date: 13.08.2008	
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The matters directed to be listed for 22.08.2008 will be taken up on 01.09.2008. Similarly, the matters which are listed on 29th August, 2008 shall also be listed thereafter.

I.A. No. 1485 & 1507

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 12.04.2006 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.

I.A. No.2019

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.

I.A. Nos. 2255-56

Issue notice. C.E.C. will examine the feasibility of reconstruction of the building sought to be constructed by the applicants and other relevant aspects and will file its reply/response within six weeks. List as soon as the report is made available.

I.A. Nos. 2278-79

Adjourned.

I.A. No. 2283

Post along with I.A. No. 2143.

I.A. No. 2296

Adjourned.

I.A. No. 2297

Adjourned.

I.A. Nos. 2299-2300

Issue notice to C.E.C. and State of M.P..

List on 05.09.2008.

Meanwhile, reply, if any, may be filed.

W.P.(C) No.356

List on 26.09.2008.

I.A. No.:	Order Date: 27.08.2008	
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List on 29.08.2008 with the similar matter before the Forest Bench.

I.A. No.:	Order Date: 01.09.2008	
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HARYANA MINING

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, 1590, 1612-1613, 1700-1703, 2007-2008, 1488, 2138-2139 IN 891-892, 2205 in W.P.(C)No.202/1995

I.A. No.1785 in W.P.(C) No.4677/1985

I.A. No.1967 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2152 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2143 in I.A. No.1785 in W.P.(C)No.4677/1985

I.A. No.2186 IN I.A. No.1785 in W.P.(C)No.4677/1985

W.P.(C) No.624/2002,W.P.(C)No.661/2002,W.P.(C)No.428/2002

Conmt.Pet.(C) No.568/2002 in W.P.(C)No.428/2002

Conmt.Pet.(C) No.542/2002 in W.P.(C)No.428/2002

With I.A. No. 2269 in I.A. No.1785 in W.P.(C) No.4677/1985

I.A. No. 2270 in I.A. No. 1785 in W.P.(C) No.4677/1985

C.P.(C)No.186/2003 in W.P.(C)No.4677/1985

I.A. No.1866 in W.P.(C) No.4677/1985

I.A. No.1858-1859 in W.P.(C) No. 4677/1985

I.A. No.1886 in W.P.(C) No. 4677/1985

I.A. No.1888 in W.P.(C) No.4677/1985

I.A. No.1891 to 1893 in W.P.(C) No.4677/1985

I.A. No.1895 in W.P.(C) No.4677/1985

With I.A. No.1896 in W.P.(C) No.4677/1985

With I.A. No.1906 in W.P.(C) No.4677/1985

With I.A. Nos.1907-1908 in W.P.(C) No.4677/1985

With I.A. Nos.1911-1912 in W.P.(C) No.4677/1985

With I.A. No.1937 in W.P.(C) No. 4677/1985

With I.A. No.2168 in I.A. No.1785 in W.P.(C) No. 4677/1985

I.A. No. 2308-2309 in W.P.(C) No. 4677/1985

I.A. No. 2310 in I.A. No. 2269 in 1785 in W.P.(C) No. 4677/1985 and I.A. No. 2334-2335 in W.P.(C) 4677/1985

As regards the mining activities in the Aravalli Range in the State of Haryana, CEC was asked to file a comprehensive report. The CEC has filed a Report. It is submitted that macro plans have to be prepared and the site specific projects of public importance such as the site for the relocation of the Trade Fair Authority, Police Training Academy, right of way for public transport systems etc. and details of sectors earlier developed by HUDA in the areas covered under Section 4 & 5 of the Punjab Land Preservation Act and further details have to be collected and it is submitted that three months time is required for the preparation of requisite macro plans.

Learned counsel appearing for 41 applicants submitted that it may cause further delay because many private and public projects, completion of the highway and other projects are already unduly delayed.

Learned counsel appearing for other mining areas falling in some villages submitted that environment clearance had already been granted. These applicants also would not be in a position to carry out the mining operation, if report is delayed.

Keeping in view the importance of macro plans, we request the CEC to submit them with all the details as suggested by the Committee. They are to be filed in the Court on 14.11.2008. The CEC shall also make available a copy of the same to the learned counsel representing the applicants by 10th November on payment of requisite charges.

I.A. No. 2306-2307 and I.A. No. D 58737 in W.P.(C) No. 4677/1985 and I.A. No. 2198 @ Conmt. Pet. No. 125/2006

List on 26.09.2008.

RAJASTHAN (MINING)

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 in W.P.(C) No. 202/1995 with SLP(C) No. 3353/2003 C.A. No. 7363/2000, C.A. No. 7364/2000, C.A. No. 7365/2000

List on 26.09.2008.

I.A. No. 1572, 1578, 2190, 2209-2210, 2328 in W.P.(C) No. 202/1995 with CONMT.PET.(C) No. 114/2007 with Suit No. 4/07, SLP(C) 958/08 & W.P.(C) No. 144/2006.

List on 19.09.2008 along with other connected matters.

I.A. No. 2344-2345 in 2319 in 1413 I.A. No. 2351 in 2344-2345 in 2319

List on 26.09.2008.

I.A. No. 2167 in 1413-1414, 1440, 2217-2218, 2232-2233, 2306-2307 IN W.P.(C) No. 202/1995 and I.A. No. 2352-2353

Adjourned.

I.A. No.:	Order Date: 11.09.2008	
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List on 26.09.2008.

I.A. No. 1967 in I.A.1785 in W.P.(C) No.4677/1985

In the record of proceeding dated 01.09.2008 in the Haryana Mining Matters, the following sentence may be read at the end:

I.As. be listed on 14.11.2008 at the top of the list.

I.A. No.:	Order Date: 26.09.2008	
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I.A. Nos. 1768 & 1426

List on 07.11.2008.

I.A. No. 2164 (1st Report of CEC)

In this matter M/s. S.K. Sarawagi and Company, in the District Kanker (Chhattisgarh) proposes to have mining of iron ore in the forest land. The CEC has filed its Report and raised certain objections. The Director General of Forests shall pass appropriate orders. Records be made available to DGF for taking appropriate decision within a period of six weeks.

I.A. as regard the applicant is disposed of accordingly.

M/s. Suzlong Energy Ltd. proposes to divert 41.78 ha. of forest land for the purpose of establishing 26.40 MW Wind Power Project. CEC has examined the matter and FAC has also given its report. MoEF is directed to pass appropriate orders in the light of the 1st report of CEC and the observations made therein. I.A. as regards the applicant is disposed of accordingly.

I.A. No.2378

M/s. Orissa Mining Corporation Ltd. proposes to divert 137.02 ha. of forest land for the purpose of coal mining. CEC has examined and filed its report and FAC has also recommended for approval of the project.

I.A. No.2378 is allowed accordingly.

Diversion of 30 ha. of forest land for mining of Iron ore of Abubaker in Bellary district in Karnataka is adjourned to 07.11.2008.

I.A. Nos. 2304-2305 and remaining cases of 1st Report of CEC be listed on 03.10.2008.

I.A. Nos. 2165 & 2166

No further orders required. I.As. are disposed of accordingly.

I.A. No. 2167 (4th Report of CEC)

List on 03.10.2008 relating to (Human River Project).

I.A. relating to Coal mining at Amelia (North Coal Block)

List on 03.10.2008.

I.A. relating to Coal mining in Amelia Coal Block by MPSMCL in Sidhi District, M.P.

List on 07.11.2008.

I.A. relating to Diversion of 125 ha. of forest land for iron ore mining in favour of M/s. Tungbhadara Minerals Pvt. Ltd., Hospt, Bellary District, Karnataka concerning this project, the Lok Ayukta, Karnataka has submitted a Report in sealed cover. Registry shall give a copy of the report to the learned counsel appearing for M/s. Tungbhadara Minerals P.Ltd. for filing objections to the Report, if any, within a period of three weeks and a copy to the A.C.

List on 07.11.2008.

I.A. relating to Diversion of 109.27 ha. of forest land for renewal of mining lease in favour of Narayan Mines (P) Ltd. in Bellary District, Karnataka for iron or mining. The Lok Ayukta, Karnataka has submitted a Report in sealed cover. Registry shall make available a copy of the Report to the learned counsel appearing for M/s. Narayan Mines (P) Ltd. For filing objections to the Report, if any, three weeks time is granted. Copy of the Report may also be given to learned A.C.

List on 07.11.2008.

I.A. relating to Diversion of 883.22 ha. of forest land for Rowghat Iron ore mining project in favour of M/s. Bhilai Steel Plant list on 03.10.2008.

I.A. relating to Two proposals for diversion of 97.486 ha. of forest land for Galikonda Bauxite mining and 54.657 ha. of forest land for Rakthakonda Bauzite mining in Paderu Forest Division and Vishakhapatnam Forest Division Respectively be listed on 07.11.2008.

I.A. Nos.1778 & 2133

No further orders required. I.As. are disposed of accordingly.

I.A. Nos.2232-33

No further orders required. I.As. are disposed of accordingly.

I.A. Nos.2306-07

List on 03.10.2008.

I.A. No.2217-18

No orders required as already disposed of on 05.02.2008.

I.A. Nos. 2293-94 and 2298

List on 03.10.2008.

I.A. No. 2168 (5th Report of CEC)
For consideration of 5th Report

List on 17.11.2008 at 2.00 p.m.

I.A. No. 2169 (6th Report of CEC),
I.A. No. 2170 (7th Report of CEC) and
I.A. No. 2239 (8th Report of CEC)

List on 03.10.2008.

I.A. Nos. 2344 & 2351

Mundra Port & Special Economic Zone matters are adjourned to 03.10.2008. I.A. No. 2319 (10th Report of CEC)

As per the 10th Report of CEC, CEC has already cleared the following projects and FAC has also recommended and approved the projects:

1. Diversion of 9.00 ha. of forest land for surface rights in favour of South Eastern Coal filed Ltd. in Katghora Forest Division in Kobra District of Chhattisgarh.
2. 2D Seismic Survey Operation over 113.50 sq km. forest area in and around Deomali and is adjoining area in Arunachal Pradesh for Petroleum Exploration by Mis. Oil India Ltd.
3. Diversion of 64.3258 ha. of forest land for laying of 220 KV transmission line from Prini to Panarsa/Banala in favour of M/s AD Hydro Power Ltd. in Kullu, Parbati and Seraj forest Divisions of Kullu District of H.P.
4. Diversion of 63.969 ha. of forest land for Bhanwermal Tank Scheme of Water Resource Dept. in sarguja ast Forest division in Sarguja District of Chhattisgarh.
5. Diversion of 49.283 ha. of forest land for construction/improvement/upgradation of Gangtok-Chungthang-Gaigong(NSH) Sector KM 30.00 to KM 84.60 in North District of Sikkim by Border Road Organisation.
6. Diversion of 56.984 ha. of forest land for the construction of Birsinghpur Tank Project in Dist. Panna, M.P. in favour of Water Resources Dept., M.P.
7. Diversion of 127.174 ha. of forest land for Chhindwara-Nagpur Gauge Conversion project in favour of M/s. South East Central Railway in Chhindwara Dist. of M.P.
8.
9. Diversion of 68.337 ha. of forest land in favour of Chhattisgarh Rajya Vidyut Mandal for construction of 132 KV Transmission line between Bishrampur-Balrampur in Sarguja Dist. of Chhattisgarh.
10. Diversion of 209.73 ha. of forest land for construction of Pandhari Medium Irrigation Project under Wardha Division Scheme in Amravati Dist. Of Maharashtra.
11. Diversion of 0.6942 ha. of addl. forest land for the construction of 111 MW Sawra Kuddu Hydro Electric Project in favour of H.P. Sate Electricity Board in Shimla Dist. H.P.
12.
13. Diversion of 175.69 ha. of forest land in Paloncha forest Division of Khammam District for open cast coal mining (OCP-II Managuru) in favour of Singareni Collieries Company Ltd.
14. Diversion of 44.60 ha. (32.51 ha. for surface use and 12.09 ha. for Under- ground mining) of forest land for Uranium mining at Mahuldih Uranium Project in favour of Uranium Corporation of India,k Jaduguda at District Saraikela in Jharkhand.
15. Diversion of addl. forest area of 4.20 ha. for surface use of forest land for Rajnagar OCP Cola Mining

Project in favour of M/s. SECL in Manendragarh Forest Division of Korba District in Chhattisgarh.

MoEF to pass appropriate orders in regard to the above projects having regarding to the report of CEC.

I.As. are disposed of as regards above projects.

8. Diversion of 105.77 ha. of forest land for construction of Engineering Industrial Development Project in Thane District of Maharashtra, the CEC has suggested that the NPV should be paid. This is accepted. MeEF to pass the appropriate orders subject to the payment of NPV by the user agency.

I.A. is disposed of as regards the above project.

12. Diversion of 90.99 ha. of forest land for installation of Wind Power Project in Nandurbar District in favour of M/s. Suzlon Energy Ltd. Pune, Maharashtra.

The CEC has filed its report. MoEF to take decision having regarding to the recommendations made by CEC.

I.A. is disposed of as regards the above project.

The balance 9 project be listed on 03.10.2008.

I.A. NO.170 IN W.P.(C) No.460/2004

Taken on Board.

List on 03.10.2008.

I.A. No. 2329-30

List on 03.10.2008.

I.A. Nos. 1413,1414,1426,1428,1440, 1454,1459, 1460, 1662-63, 1675, 1796, 2005-2006

TWP matters these matters are disposed of in the light of the order passed on 04.08.2006. No further order is required.

I.A. Nos. 1310,1331-32

Heard learned Additional Solicitor General appearing for the State of Rajasthan and learned amicus curiae. CEC has filed its report. As per the details in the report of the State of Rajasthan, there are 1008 mining leases falling in the Aravalli Hills out of which renewals of 747 mining leases are not due as on date. Out of the remaining 261 mines, in respect of 157 mining leases renewals became due after 16.12.2002 but have not been granted mining leases so far. In respect of 53 mining leases, renewals have been granted after 16.12.2002. Learned counsel for the State submitted that there was no express provision for granting renewal of mining leases as they were prior to 08.04.2005. It is submitted that MoEF has given report regarding the mining activities in these mines. Regional Office, Lucknow may file a report regarding functioning of mining activities in the Aravalli Hills in the light of CEC's Report within a period of four weeks. Post on 21.11.2008.

Rest of the matters on 13.10.2008.

I.A. No.:	Order Date : 03.10.2008	
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I.A. Nos.208-209, 1692, 1950-1951, 1989-1990, 2105-2107 & 2219-2220 in W.P.(C)No.202/1995 with SLP(C) No. 15796/2006, I.A. Nos. 1424-1425 & 2118 & 2211 in W.P.(C) No. 202/1995, W.P.(C)No.469/2005, I.A. Nos.2160-2161 in 1399, 2185 in I.A. 728, 2248-2249 in 1694, 2254, 2280, 2284, 2286, 2314-2315, 2316-2317, 2323-2324, 2325-2327, 2376-2377 in W.P.(C)No. 144/2006, W.P. (C) No. 23/2008, W.P.(C)No.24/2008 W.P. (C) No. 33/2008, W.P.(C)No. 131/2008, W.P.(C)No.522/2007, W.P.(C) No. D 33560/ 2006, W.P.(C) No. D 30339/2006, I.A. Nos.2289-2290 and 2370 in W.P.(C)202/1995, I.A.Nos. 2333-2334 in W.P.(C)No.202/1995, I.A. Nos.2335 & 2339-2341 in W.P. (C) No. 202/1995, I.A. Nos. 2337-2338 in W.P (C) No. 202, 1995, I.A. No.2364 in I.A. No.1364 in W.P.(C)No.202/1995, I.A. Nos.2367-2369 W.P.(C)No. 202/1995, I.A. Nos.1335, 1356, 1376-1377, 1388 in 989, 2197-2198 in W.P.(C)No.202/1995, C.A. No 8133/2003, C.A.No.8134/2003 C.A.No.8135/2003, I.A. Nos.2212, 2237-2238, 2277 & 2272 in W.P. (C) No. 202/1995, I.A. Nos. 2164, 2167, 2169, 2170, 2239,2319, 2129,2293-2294, 2298,2304-2305,2306-2307, 2329-2330, 2344, 2345 and 2351 in 1413 in W.P.(C)No.202/1995, I.A. No.170 in W.P.(C)No.460/2004.

I.A. Nos. 2164, 2167, 2169, 2170, 2239, 2319, 2304-05, 2306-07, 2293-94, 2298, 2329-2330, 2351, 2344-45, 2129

1. The applicant M/s. Hindalco has sought for diversion of 106.76 ha. of forest land for the renewal of the Kesarsada Mining lease in its favour. The Director General of Forests is directed to take a decision in this matter having regard to the report submitted by C.E.C. in the matter, within eight weeks.
2. Application as regards the applicant is disposed of

I.A. Nos. 2304-05

3. The applicant M/s.Ispat Godawari Ltd. In the District Rajgaon, Chhattisgarh has sought for diversion of 110 ha. of forest land for the mining of iron ore in its favour. The CEC has considered the application and has made the following additional recommendations. The FAC has also made certain recommendations. The additional conditions imposed by CEC are as under:
 - a) The mineral extracted from the mine will be exclusively for captive consumption/sale. No sale of mining will be permissible.
 - b) The forest area approved under the F.C. Act and the forest area included in the mining lease approved under the MMRD Act will be identical. The NPV will be payable for the entire forest area included in the mining lease approved under the MMRD Act and
 - c) The forest land will be handed over and allowed to be used for mining only after the Environmental Clearance is first accorded.
4. The said conditions are acceptable to the applicant. Subject to the applicant. Subject to the fulfillment of the above additional conditions, in addition to other stipulated conditions, MoEF may grant permission.
5. The application regards the applicant is disposed of accordingly.
6. The applicant M/s. Pushp Steel and Mining Pvt. Ltd. sought for diversion of 66 ha. of forest land in Kanker District for iron ore mining lease in its favour. Subject to the fulfillment of the additional conditions as in the case of M/s. Ispat Godavari Ltd.'s application noted above, MoEF may grant permission.
7. Application as regards the applicant is disposed of accordingly.

I.A. No.2378

8. List on 07.11.2008 with connected matter.
9. The Secretary, Ministry of Coal may give his views within four weeks.

IA.Nos.2293-94 & 2298:

10. F.A.C. is given four weeks time to take an appropriate decision.
11. Adjourned by five weeks.
12. The applicant-MPSMCL in Sidhi district, M.P. Sought permission for mining of coal at Amelia (North coal block). Secretary, Ministry of Coal, may file his views within four weeks.
13. List on 07.11.2008.

I.A. Nos.2306-07

14. The applicant - M/s. Bhilai Steel Plant, seeks permission for diversion of 883.22 ha. of forest land for Rowghat Iron ore mining project in its favour. CEC has filed its report. FAC has made certain recommendations. The applicant has to fulfill the recommendations made by the FAC and also with an additional condition that the NPV for the forest area will be payable as per the rate applicable for area falling in a Wildlife Sanctuary. The conditions imposed by the CEC are acceptable to the applicant. Having regard to this fact, the MoEF may take a decision within a reasonable period.
15. The applications as regards the applicant are disposed of accordingly.
16. The applicant-M/s. Madras Cements in Krishna District of Andhra Pradesh seeks permission for diversion of 160 ha. of forest land for lime stone mining in its favour. The CEC has studied the project and has made certain observations. The suggestions/ observations are acceptable to the applicant. The project may be reviewed by the MoEF in the light of the observations made by CEC in this regard.
17. The application as regards the applicant is disposed of accordingly.
18. The applicant M/s. Orissa Manganese and Minerals Pvt. Ltd, in Singhbhum (West) district of Jharkhand seeks permission for diversion of 141.447 ha. of forest land for iron ore mining in its favour. The CEC has studied the project and has made certain observations. The suggestions/observations are acceptable to the applicant. The project may be reviewed by the MoEF in the light of the observations made by CEC in this regard.
19. The application as regards the applicant is disposed of accordingly.
20. The applicant M/s. JSW in District Bellari, Karnataka seeks permission for diversion of 200.73 ha. of forest land for iron ore mining in its favour. The CEC has examined the project and has suggested that it may be reviewed by MoEF in view of suggestions made by CEC. The applicant accepts the suggestions made by CEC. MoEF may give its decision keeping in view the suggestions made by the CEC and after the report of the Lok Ayukt, Karnataka regarding Bellari-Hospat mining is received.

21. The application as against the applicant is disposed of accordingly.
22. Application In re: M/s. V. M. Salgaocar Brothers Pvt. Ltd.: No orders.
23. The applicant M/s. Orissa Mining Corporation in Keonjhar district of Orissa seeks diversion of 117.9648 ha. of forest land (fresh area 76.7206 ha. and broken up forest land 41.2442 ha.) (our of 216.3617 ha. of forest land proposed) in Gandhamardan Block-A in its favour for first renewal of mining lease. The CEC has examined the same and has laid down the following conditions:
 - a) The Wildlife Institute of India should prepare a Wildlife Management Plan for the area which should be implemented at the project cost. The diversion of forest land for mining should be considered only if with appropriate remedial measures the adverse impact of mining on wildlife conservation and protection is found to be containable within reasonable limits;
 - b) Approval under the FC Act should be restricted to 117.9648 ha. of forest area. The possession of the balance forest area should be taken over by the Forest Department. Before grant of the formal approval under the FC Act, the mining lease granted under the MMRD should be revised so that the total forest area included in the mining lease and the forest area approved under the FC Act are identical;
 - c) Compensatory Afforestation charges should be payable for the entire forest area after deducing the forest area legally broken up during the validity of the mining lease;
 - d) For carrying out the mining operations between 1993 to 1997 in violation of the FC Act an amount equal to the NPV payable in the present case should be imposed as a penalty on the user agency; and
 - e) The approval under the FC Act should be granted only after the environmental clearance for the project is accorded."
24. The MoEF may take an appropriate decision having regard to the recommendations made by CEC.
25. The application as regards the applicant is disposed of accordingly.
26. The applicant M/s. K.N. Ram & Co. in Keonjhar district of Orissa seeks temporary working permission (TWP) over already brokenup forest area of 27.10 ha. in Noida mining lease of 74.867 ha. in its favour.
27. The application as regards the applicant is disposed of in terms of the orders passed by this Court on 25.04.2008 and 02.05.2008.

I.A. No. 2329-30

28. The application filed by M/s. Bonai Industrial Co. Ltd. In Nadidihi Iron and Manganese Mining Lease Area is also disposed of in terms of the orders passed by this Court on 25.04.2008 and 02.05.2008.
29. I.A. Nos.2329-2330 are disposed of accordingly.
30. M/s. Jaypee Power Grid Ltd., Sholtu within the jurisdiction of Kinnaur, Rampur, Tehog, Rajgarh and Nahan Forest Divisions in Kinnaur, Shimla and Sirmour districts of Himachal Pradesh seeks permission for diversion of 322.6538 ha. of forest land for 400 Kv D.C Karcham Wangtoo-Abdullapur transmission line in its favour. The CEC has made certain observations after the considering the project. The suggestions made by CEC are acceptable to the applicant. MoEF may take a decision after considering the observations made by CEC.

31. The application as regards the applicant is disposed of accordingly.

I.A. Nos. 2344-45 & 2351

32. The applicant M/s. Adani Chermicals Ltd. in Kutch district of Gujarat has made this application for reconsideration of diversion of 1850 ha. (approved area of 1840 ha.) of forest land for high purity salt works in its favour for development of Mundra Special Economic Zone and also for reconsideration of diversion of one consolidated patch in Survey No. 169/ 36 admeasuring 168.41 ha. of forest land for the Salt Washery Desalination plant and container depot near Dhruh village in Kutch district of Gujarat. CEC has examined the project and has submitted its report.

33. Meanwhile, as regards the proposed land use, the State Government may furnish a fresh proposal to the FAC within a reasonable time.

34. FAC may take an appropriate decision at the earliest.

35. The applications as regards the applicant are disposed of accordingly.

I.A. Nos. 208-209, 1692, 1989-1990 & 2219-2220 in W.P. (C) No.202/1995

36. The benefit of the order passed by this Court on 2nd May, 2008 shall be applicable to these applicants also, subject to payment of penalty as in other cases.

37. The applications are disposed of accordingly.

I. A. Nos.1950-51 & 2105-07

38. These applicants are also entitled to avail the benefit of the order passed by this Court on 2nd May, 2008 and it is to be noticed that they have broken the seal put by the forest department The CEC has suggested an additional penalty of a sum of Rupees one lac on these applicants for this act. The applicants are allowed to operate subject to payment penalty and additional amount of rupees one lac to be deposited with the State Level Committee.

39. The applications are disposed of accordingly.

I.A. No. 2211, W.P.(C) No. 469/2005

40. In this application, certain allegations have been made and indicated that M/s. BALCO is in possession of about 1897 ha. of government land out of which about 1751 acres is recorded as jungle in the revenue records. Learned counsel appearing for the State of Chhattisgarh states that lease was granted in favour of M/s. BALCO to an extent of 388 acres but this was disputed by learned counsel appearing for M/s. BALCO. We are told that M/s. BALCO has filed a writ petition bearing No.5328/ 1996 before the High Court, Chhattisgarh for regularisation of the alleged lease/ allotment in their favour by the government. We are told that the writ petition is being adjourned from time to time. As this matter is pending before the High Court, we request the High Court to dispose of the writ petition pending before it and pass final orders at the earliest within a period of three months from today.

41. Post this matter after the decision of the High Court.

I.A. Nos. 1424-25

42. The applicant to file its response to the report filed by CEC within four weeks.

43. List on 17.10.2008 for directions.

I.A. Nos. 2289-90

44. The C.E.C. has filed its report after examining the project and has laid down certain conditions. The conditions are acceptable to the applicant. Subject to fulfillment of the conditions laid down by the C.E.C, the project is approved.

45. The applications are disposed of accordingly.

I.A. Nos.170-175 in W.P.(C) No.460/2004

46. List on 17.10.2008.

Rest of the matters on board today:

47. List on 07.11.2008.

I.A. No.:	Order Date: 17.10.2008	
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The matters listed before the Forest Bench on 07.11.2008 are directed to be listed on 10.11.2008 (Monday).

I.A. No. 1287,1570-1571,1624-1625 & 1978

List on 10.11.2008 along with I.A. No. D2884/08-application for impleadment.

I.A. No.1698

The Public Health & Engineering Department of State of Rajasthan seeks to implement a project for supply of drinking water to Karauli and Sawai Madhopur districts by drawing water from river Chambal. It proposes to lay down a pipeline of about 160 kms. The project is estimated at about Rs.478.91 crores and is likely to benefit the citizens of 926 villages in the districts of Karauli and Sawai Madhopur. The project was examined by CEC. It was found that minimum flow of water observed during the last 20 years was 4.78 cusecs. It was pointed out that flow of water will be available at the down stream of the tapping point after meeting the water requirement of the proposed project.

Subject to fulfilling of the following conditions the project is cleared:

- (i) For use of forest land approval under the F.C. Act will be obtained.
- (ii) 5% of the estimated project cost of Rs.478.91 crores i.e. Rs.23.95 crore will be deposited by the project authorities for conservation and protection of National Parks and Sanctuaries in the State. For utilization of the funds, a Society under the Chairmanship of the Chief Secretary, Rajasthan with the Principal Secretary (Forests), the Principal Chief Conservator of Forests, the Chief Wildlife Warden as its Members and one officer now below the rank of Chief Conservator of Forests as its Member Secretary may be got registered. This amount along with the amount payable towards the NPV should be deposited in a separate interest

bearing bank account of a nationalized bank maintained by the Society and income received by way of interest should be used in perpetuity for the conservation and protection of National Parks and Sanctuaries in the State. The procedure and guidelines for the utilization of the funds may be decided by the State Government of Rajasthan; and

- (iii) a Monitoring Committee consisting of the representative of Chief Wildlife Warden, Rajasthan and Secretary, Public Health Engineering Department will be set up to monitor and ensure that the prescribed minimum flow of water down stream of the tapping point of Chambal River will be maintained.

The above conditions are accepted by the learned counsel appearing for the State of Rajasthan.

Subject to fulfillment of these conditions, the Standing Committee of the Wildlife shall pass necessary order.

I.A. is allowed accordingly.

I.A. No. 2194-2196

List on 21.11.2008.

I.A. No. 2278-2279

List on 10.11.2008 along with I.A. No.2275.

I.A. No. 2343

The Andaman and Nicobar Administration has sought permission for use of 2700 ha. of alternative land for allotment to the agricultural farmers as a consequence of Tsunami which was hit in the Island. CEC has examined it and suggested that there should be a Committee to implement the directions which were already issued by this Court. Learned counsel appearing for the Administration submitted that the Committee would be constituted soon and further action will be taken and the report will be submitted to this Court within a period of two months. The matter be posted on 9.1.2009. Report may be filed to the CEC about the matter before 09.01.2009.

I.A. No. 2365

Issue notice to the respondent and MoEF returnable on 28.11.2008. Reply, if any, be filed in the meantime.

I.A. No. 2371-72

I.A. is allowed. CEC will give required information.

I.A. No. 2373-74

Issue notice to the respondent and to CEC returnable on 28.11.2008. Reply, if any, be filed in the meantime.

I.A. No. 2375

It is submitted by the learned counsel that the I.A. has become infructuous. The I.A. is dismissed as having become infructuous.

I.A. No. 1424-25

The CEC has filed its report on 25.09.2008 regarding illegal mining in the forest area in the State of Chhatisgarh. One Mr. Anil Lunia alleged to have obtained licence for mining iron ore. The area is admeasuring about 18.27 hectares of land in village Bhaisakanhar. The State has also recently issued an order directing him to pay penalty of Re. 6,66,75,633.75 for conducting mining activities in the forest without environmental clearance.

Learned counsel appearing for Anil Lunia seeks four weeks time to reply to the report filed by CEC and the applicant in I.A.1424-25, who is a Member of Legislature Assembly also seeks to file rejoinder. Two weeks time is granted for the same.

List on 28.11.2008 for directions.

I.A. No. 2382 in Application No. 1111

The Central Public Works Department (CPWD) is seeking permission for recommendation for renovation, upgradation and new construction of Dr. Karni Singh Shooting Range, Tughlakabad, Delhi. This area is within the Delhi Ridge area and for renovation and upgradation about 400 trees are to be cut. CEC has examined the project and has laid down the following conditions:

- (i) for use of the forest land approval under the F.C.Act will be obtained.
- (ii) 5% of the estimated project cost of Rs.65 crores i.e. Rs.3.25 crores will be deposited by the applicant for conservation and protection of the Delhi Ridge. The amount should be kept in an interest bearing bank account maintained by the Delhi Forest Department and should be used under the supervision, monitoring and permission of the Ridge Management Board;
- (iii) 500 indigenous trees will be planted within the shooting range complex; and
- (iv) the conditions imposed by the Ridge Management Board will be strictly complied with.

The above conditions are acceptable to the CPWD. Subject to fulfilling of the above conditions the project is cleared.

I.A. is allowed accordingly.

As per the previous order passed by this Court as part of the work relating to the Common Wealth Games, a sum of Rs.42.22 crores were directed to be deposited and this amount has already been deposited and lying in the 'Civil Deposit' in the name of Chief Secretary, Delhi Government and it is not an interest bearing deposit. We hereby direct that the Chief Secretary may deposit the entire amount i.e. Rs.45.47 crores (including Rs.3.25 crores noted above) in a fixed deposit for a period of three years in a nationalized bank.

CEC to file its report within a period of four weeks.

I.A. No.170-175 in W.P.(C) No. 460/04

The applicants seek mining permission in the State of Goa. Some of the mining areas are near to the wildlife sanctuary in the State of Goa. The State of Goa may file its response to the applications. Learned counsel for the applicants will give a copy of the applications to the learned counsel for the State of Goa.

The State Government may send details to the Standing Committee, National Board for Wildlife as called for.

List on 28.11.2008.

The State and the National Board may file their responses in the meantime.

I.A. No.:	Order Date: 20.10.2008	
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I.A. Nos. 2281-2282

List on Friday the 24.10.2008. CEC may file its reply/response if any, in the meantime.

I.A. Nos. 991, 1004, 1185, 1273, 1280, 1294, 1443, 1611, 2018 & 2073, 2175, 2357 and I.A. No.979 in I.A. Nos.443, 1204, 1245, 1357 & 2110, 2141

List on 19.12.2008.

I.A. Nos.2213-15 in I.A. Nos. 948-948A:

Issue notice to C.E.C. and State of Chhattisgarh.

Response/report, if any, may be filed within four weeks.

I.A. No. 2070, 2071, 2142 & 2387 in 2071

I.A. No. 2070:

In the State of Bihar there is a wildlife sanctuary by name Valmiki Wildlife sanctuary, which is originally having extent of 880 sq.km. and now it seems that the State seeks to reduce the extent to 840.26 sq.km. as part of the rationalisation of the boundary of the sanctuary. The C.E.C. has examined the matter and filed a report wherein it is stated that this is a part of the north-western flank of the sanctuary and it contains low hill sal and miscellaneous forests of high density with small grassy moist patches; tiger, Leopard, Wild Boar, Sloth Bear Sambhar and Cheetal are found in the area and the entire area is eco-fragile and sensitive and has bearing on critical wildlife habitat. The State, if it is serious to reduce the area, may approach the MoEF Committee for rationalisation of the boundary and while considering this fact, report of the C.E.C. also may be considered.

I.A. is disposed of accordingly

I.A. No.2071:

The State seeks permission to divert 600.72 ha. of land for the Durgawati Reservoir Project. C.E.C. has examined and has laid down the following conditions :

1. approval under the F.C.Act will be obtained for use of the forest land;
2. the conditions on which the project has been recommended for approval by the Standing Committee of the NBWL will be strictly complied with; and
3. five per cent of the revised estimate cost of the project will be deposited by the project authorities for conservation, protection and improvement of National Parks and sanctuaries in the State of Bihar. For utilisation of the funds, a Society under the Chairmanship of the Chief Secretary, Bihar with the Principal Secretary (Forests), the Principal Chief Conservator of Forests, the Chief Wildlife Warden as its members

and one officer not below the rank of Chief Conservator of Forests as its Member Secretary may be got registered. This amount alongwith the amount payable towards the NPV, Catchment Area Treatment and Compensatory Afforestation should be deposited in an interest bearing account(s) in a nationalised bank(s) maintained by the Society and income received by way of interest should be used in perpetuity for conservation, protection and development of forest and wildlife in the State.

The said conditions are acceptable to the applicant. Subject to the fulfillment of the above conditions, the project is cleared.

I.A. is disposed of accordingly.

NBWL had earlier recommended that action be taken against some officers. But having regard to larger interest, no further action is required and we make it clear that no proceeding may be taken against the said officers.

Consequently, I.A. Nos.2142 & 2387 are also disposed of

I.A. Nos.1381, 1429, 1519-1520, 1652-1654, 1782-1783, 1812, 1995-1996, 1998-1999, 2014 and 2120:

I.A. No.1381:

This application is regarding functioning of unlicensed wood-based industries in the State of Haryana. The C.E.C. has examined the matter and the State has complied with all the recommendations of C.E.C. and the State, as per the recommendations of the C.E.C., has framed rules for giving/granting licenses and it was stated that all steps are being taken for issuing licenses. No further directions are required.

I.A. is disposed of accordingly.

I.A. No.1429:

In the State of Uttaranchal, there are certain plants of Medium Density Fibre Board (MDFB) which are not using the timber for this purpose. The C.E.C. has examined the matter and has made certain recommendations. The State has not raised any objections to the recommendations of C.E.C.

The application as regards Uttaranchal is disposed of.

List the application on 28.11.2008 as regards the State of Madhya Pradesh.

I.A. Nos.1519-1520:

There are large number of applicants to start the wood based industries in the State of West Bengal. There are 2927 units seeking permission to start wood based industries. The total timber available from the forest area was assessed to be 14.25 lakh cu.m. as against 25.52 lakh cu.m. assessed by the State Government. The available timber is adequate only to accommodate 750 saw mills. C.E.C. has suggested that as regards 750 saw mills, they may be given licenses according to the guidelines and suggestions issued by it.

It is also noticed that there are several other wood based industries which are operating only on the imported timber. C.E.C. has suggested that these wood based industries shall be located at such places which are away from the forest land and also to ensure that these wood based industries are not using non-imported timber. If these conditions are acceptable to the State Government, the State Government may process the applications in

accordance with the guidelines and suggestions issued by C.E.C. and issue licenses based on the said guidelines/suggestions.

The interim order(s) passed by this Court on 18.05.2007/27.07.2007 staying granting licenses is vacated. I.A.s are disposed of accordingly.

I.A. Nos.1652-1654, 1782-1783, 1812, 1995-1996, 1998-1999, 2014 and 2120 are also disposed of accordingly.

I.A. No.1421 in 703 :

C.E.C. to file its response within four weeks.

I.A. No. 941 in I.A. Nos.754-755 with I.A. No.777, 1131-1133, 1138-1146,1148, 1184, 1272, 1361, 1579-1580 & W.P.(C) No.356/07:

List on 05.12.2008.

I.A. No.2000-2000A:

Applicant to serve the unserved respondent-State of Chhattisgarh. In addition, permitted to serve the standing counsel for the State.

Adjourned by four weeks.

I.A. No.2149-2150 & 2153-2154:

It is submitted that the recommendations of C.E.C. are acceptable to the applicant-NHAI and the project is cleared subject to the fulfillment of suggestions/recommendations of C.E.C.

The applications are disposed of accordingly.

I.A. No.2147-2148:

List on 10.11.2008.

I.A. No. 2245-2246 in I.A. No.1620 in I.A. No.566/2002:

Adjourned.

I.A. No. 2287-2288:

Issue notice to C.E.C. C.E.C. to file its response within four weeks.

I.A. No. 2342 in 2119 in 1483 in 548:

In the State of Maharashtra, the Great India Bustard Wildlife Sanctuary, as on paper, having an extent of 8496.44 sq.kms. But it is submitted by the learned Solicitor General of India, appearing for the State, that out of this area 347.63 sq.kms.is effectively the wildlife sanctuary and out of this 347.63 sq.kms., 250.64 sq.kms. is forest and

85.72 sq.kms is vacant land and 11.27 sq.kms. is private land. Learned Solicitor submits that they are carrying non-forest activities in the rest of the area including 347.63 sq.kms. The rationalisation of the boundary of the sanctuary is to be finally decided based on the recommendation of the Committee constituted for the said purpose working under the MoEF. The Committee may take an early decision and based on the decision, the rest of the area which is excluded in such non-forest activities could be permitted. We request the rationalisation committee to take a decision at the earliest at least within a period of four weeks.

List after six weeks.

I.A. No.2306-2307 in I.A.1785 in W.P.(C) 4677/1985:

Issue notice. Notice shall also be issued to C.E.C.

I.A. No.2198 @ Contempt Petition No. 125/2006 in I.A.1785 in W.P.(C) No. 4677/1985:

The State to file its affidavit within four weeks.

I.A. No. D 58737 in W.P.(C) No. 4677/1985:

Adjourned.

I.A. Nos.1-3 in SLP(C)....CC 11166/2008: *(This is a SLP which has not been registered and there is delay in filing this SLP hence there is CC number.)*

Permission to file SLP granted.

Issue notice to State of Himachal Pradesh and C.E.C.

I.A .No.:	Order Date: 24.10.2008	
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I.A. No. 1865

The State of Andhra Pradesh seeks permission for execution of work relating to tunnels with all their ancillary works of Pula Subbaiah Veligonda Project. The CEC has examined and recommended for approval of the project, subject to the following conditions:

- i) for use of forest land, approval under the F.C. Act will be obtained.
- ii) the 15 conditions on which the project has been recommended by the Standing Committee of the National Board of Wildlife will be strictly complied with;
- iii) the additional conditions, if any, imposed by the Chief Wildlife Warden, Andhra Pradesh Forest Department will be complied with;
- iv) 5% of the project cost of Rs.999.60 crores associated with the implementation of the project works within the sanctuary i.e. Rs.50 crores will be deposited by the project authorities for conservation and protection works in the National Parks and Wildlife Sanctuaries in the State of Andhra Pradesh. It is recommended that for this purpose a Committee under the Chairmanship of the Chief Committee under the Chairmanship of the Chief Secretary, Andhra Pradesh with the Special Chief Secretary/Principal Secretary Forests, Principal Chief Conservator of Forests, Chief Wildlife Warden, a representative of the DGF & SS, MoEF and one eminent expert (non official) in the field of wildlife may be constituted and registered under

the Societies Act. The money payable by the user agency may be deposited with the said Society. The interest received on the principal amount may be used in perpetuity for conservation and protection of the National Parks and Sanctuaries in the State.

The above conditions are acceptable to the State of Andhra Pradesh.

The project is cleared, subject to fulfilling of the above conditions.

I.A. is allowed accordingly.

I.A. No. 2059

The State of Andhra Pradesh seeks permission for construction of Srisailam Left Bank Canal Underground Tunnel Project. The CEC has examined and recommended for approval of the project, subject to the following conditions:

- i) the conditions imposed by the Chief Wildlife Warden will be strictly complied with;
- ii) 5% of the project cost (Rs.55.36 crores) after deducting Rs.30 crores already deposited in the Compensatory Afforestation Fund i.e. Rs.25.36 crores will be deposited by the project authorities for undertaking conservation and protection measures in National Parks and Sanctuaries in the State. It is recommended that for this purpose a Committee under the Chairmanship of the Chief Secretary, Andhra Pradesh with the Special Chief Secretary/Principal Secretary Forests, Principal Chief Conservator of Forests, Chief Wildlife Warden, a representative of the DGF & SS, MoEF and one eminent expert (non official) in the field of wildlife may be constituted and registered under the Societies Act. The money payable by the user agency may be deposited with the said Society. The interest received on the principal amount may be used in perpetuity for conservation and protection of the National Parks and Sanctuaries in the State.

The above conditions are acceptable to the State of Andhra Pradesh.

The project is cleared, subject to fulfilling of the above conditions.

I.A. is allowed accordingly.

I.A. No. 2186-87

List on 14.11.2008.

I.A. No. 2346

The State of Rajasthan seeks permission for construction of Harsani Girab, Myajlar road 26 km. to Sandho ki Basti in Barmer District, Rajasthan. The CEC has examined and recommended for approval of the project, subject to the following conditions:

- i) only gravel road would be constructed;
- ii) no night camping shall be allowed during the construction of road by labour and construction activity will be permitted only during day time only;
- iii) speed breakers will be constructed at an interval of 500 mtrs. In sanctuary area by user agency;
- iv) barrier should be constructed at entry and exit of each village, where movement of vehicles during sunset will be recorded;

- v) no cutting of trees will be allowed;
- vi) the construction material for road will be brought from the area outside the DNPI;
- vii) the user agency will not create borrow pit in DNP area, for the construction of road;
- viii) user agency will clear all the debris left after construction activity;
- ix) the user agency will put any maintain sign board at every two kilometers distance on both sides of the road mentioning that the road is passing through Desert National park and drivers should be watchful about wildlife and drive cautiously;
- x) in order to avoid crushing of reptiles, suitably designed under passes shall be constructed.

The NPV shall be paid as suggested by CEC.

The project is cleared, subject to fulfilling of the above conditions.

I.A. is allowed accordingly.

I.A. No. 2347

The State of Rajasthan seeks permission for the construction Mamer Minor Irrigation Project falling within Phulwari Ki Naal, Wild Life Sanctuary in Tehsil Kotra, Distt. Udaipur, Rajasthan. The CEC has examined and recommended for approval of the project, subject to the following conditions:

- i) for use of forest land, approval under the F.C. Act will be obtained.
- ii) the user agency will deposit NPV as per the rate applicable for use of land falling within the Wildlife Sanctuary;
- iii) the conditions imposed by the National Board of Wildlife will be strictly complied with.

The NPV shall be paid as suggested by CEC.

The project is cleared, subject to fulfilling of the above conditions.

I.A. is allowed accordingly.

I.A. No. 2386

Adjourned by four weeks.

I.A. No. 2388

Issue notice.

CEC to file response within a period of four weeks.

I.A. No. 2389-91

Referred to CEC.

I.A. No. 1458

Adjourned by four weeks.

I.A. No. 1479

MoEF seeks time to file Report.

Five weeks time is granted for the same.

W.P.(C) No. 498/2003

Adjourned by five weeks.

W.P.(C) No. 10/2001

Subject to general order passed regarding saw mills, the writ petition is disposed of accordingly.

I.A. No. 2281-82

The State of Uttarakhand seeks permission for repair work on damaged part of 200 mtrs. road on Hill By-pass road falling within the Rajaji National Park, Haridwar. The CEC has examined and made certain conditions for approval of the project, subject to the following conditions:

- i) The Hill By-pass road will be used only on special occasions such as Kumbh Mela/Ardh Kumbh Mela and on the occasion of 'Somvati Amavasya' and that too strictly between Sunrise and Sunset. For this purpose, gates will be erected at appropriate places at both ends of the road falling within the Rajaji National park so as not to hinder the movement of wildlife. These gates will be erected by the Forest Department at the cost of the PWD. These two gates should be opened only on special occasions and that too under strict supervision and written directions of the Director, Rajaji National Park;
- ii) the conditions imposed by the Chief Wildlife Warden for repair of the road will be strictly complied with;
- iii) no labour camp will be established within the Rajaji National Park;
- iv) the earth and other material required for the repair of the road will be brought from outside the Rajaji National Park and no material will be extracted or used from the Rajaji National Park; and
- v) adequate number of speed breakers will be installed on the road at regular intervals to regulate the speed of the vehicles.

The above conditions are acceptable to the State of Andhra Pradesh.

The project is cleared, subject to fulfilling of the above conditions.

I.As. are allowed accordingly.

I.A. No.:	Order Date: 10.11.2008	
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I.A. No. 1442:

List on 28.11.2008.

I.A. No.1426 & 1768:

Allegation is that certain irregularities have taken place in the grant of permission for mining activities. In view of the nature of the allegations, we request the Lok Ayukta, Karnataka to look into these matters as has been done in the earlier case and a report may be filed within a period of four weeks. We make it clear that we have not examined any of the alleged irregularities on merits and we express no opinion. It is made clear the uninfluenced that it is being referred, a report may be filed. All the records may be made available by the CEC to the Lok Ayukta for appropriate action. Before finalising the report, the Lok Ayukta may give reasonable opportunity to the

applicants of being heard.

Liberty to mention after the report is made available to this Court.

I.A. Nos.2164, 2167, 2298, 2378, 2379 in 1413:

When these matters came up last time, we have requested the Ministry of Coal to file an affidavit. So far no such affidavit has been filed. Learned Solicitor General of India is requested to contact the Ministry of Coal for taking appropriate action.

I.A. No.2293-94, 2298:

We are told that the CEC has cleared the project.

List on 14.11.2008.

I.A. Nos. 2231-32 in 2167:

We had requested the Lok Ayukta of Karnataka to submit a report in a sealed cover regarding the mining in forest by Narayan Mines Pvt. Ltd. in the State of Karnataka.

The Lok Ayukta has submitted the report but we are told that the applicants herein were not heard before finalising the report and the applicants have got various objections to the report. We request the Lok Ayukta to afford an opportunity to the applicants and after that a report be submitted to this Court within a period of six weeks. The records may be sent back to the Lok Ayukta and the parties be given notice by the Lok Ayukta.

I.A. Nos.1287, 1570-1571, 1624-1625, 1978, 2395 in W.P.(C) No.202/1995:

CEC has filed a report regarding the working of the Sandalwood oil factories in various parts of India. Learned counsel appearing for some of the private owners of the sandalwood factories stated that they were not being heard before giving such a report. It is also contended that these factories are being operated in different States and there is no allegation that there is illegal cutting of sandalwood trees in the States of Kerala, Karnataka, Maharashtra and Tamil Nadu. Applicants in I.A. Nos.1570-71, 1624-25, 1978, 2395 be given an opportunity of being heard by CEC and a report be filed within a period of six weeks. All the applicants may get in touch with the CEC in this connection.

I.A. Nos.2278-2279 with 2275

The Karnataka State Highway Improvement Project proposes to repair the road which is passing through the Rajiv Gandhi National Park (Nagarhole) having a length of 28.9 kms. CEC has examined the matter and subject to certain conditions has recommended the same. These conditions are acceptable to the Karnataka State Highway Improvement Project and subject to fulfillment of the conditions as recommended by the CEC, the applicant may go ahead with the project.

The applications are disposed of accordingly.

I.A. Nos.2160-2161 in 1399, 2185 in I.A.728, 2248-2249 in 1694, 2254, 2280, 2284-2286, 2314-2315, 2316-2317, 2323-2324, 2325-2327, 2376-2377, 2383-2385, 2393-2394 in W.P.(C)No.202/1995:
W.P.(C)No.23/2008:

W.P.(C)No.24/2008:

W.P.(C)No.33/2008:

W.P.(C)No.131/2008:

W.P.(C)No.522/2007:

W.P.(C)No.D 33560/2006:

W.P.(C)No.D30339/2006:

W.P.(C)No.116/2007:

List on 14.11.2008.

I.A. No.2370 in W.P.(C) No.202/1995:

Issue notice to CEC. CEC to file its report within a period of six weeks.

I.A. Nos. 2333-2334 in W.P.(C)No.202/1995:

Issue notice to CEC. CEC to file its report within a period of six weeks.

I.A. No. 2335

This is an application by the State of Rajasthan seeking permission for construction of a Dam in Tehsil Kumbalgarh District Rajsamand to facilitate drinking water in certain villages in Rajasthan. CEC has recommended the project subject to fulfillment of certain conditions. The said conditions are acceptable to the State Government. Subject to the fulfillment of the same, the project is approved.

I.A. is disposed of accordingly.

I.A. Nos. 2339-41:

Ministry of Defence seeks permission for upgradation and maintenance of certain existing roads which is passing through the desert National Park in Rajasthan. CEC has examined the project and has held that no widening or upgradation of the existing roads should be done on new black topping. Subject to this, the road work in the Desert National Park may be continued. In case the Ministry of Defence finds any difficulty, it would be at liberty to file an application. The existing black topping can be repaired or the surplus could be renewed. Adjourned by 10 days.

I.A. Nos. 2337-2338

Issue notice. CEC to file its report within a period of six weeks.

I.A. No. 2364 in I.A. No.1364

I.A. No.1364 was dismissed on 18.07.2008 by this court as counsel was not ready at that time. Learned senior counsel prays that it may be restored to the file. We heard learned senior counsel for the applicant. After hearing learned counsel, we find no merit in the application. I.A. is accordingly dismissed.

As regards I.A. No. 2364 learned senior counsel appearing for the NHAI is agreeable to the recommendations of CEC and is also prepared to pay the NPV as suggested within four weeks. Subject to the fulfillment of the above,

the I.A. is allowed.

I.A. Nos. 2367-2369

This is an application by GAIL.

There shall be interim stay on NPV sought for by the State of U.P. (Forest Department) until further orders.

List after six weeks.

I.A. Nos.1335, 1356, 1376-1377, 1388 in 989, 2197-2198

As requested, four weeks time is granted for filing rejoinder. List thereafter.

I.A. Nos. 2212, 2237-2238, 2277 & 2272

Shri A.D.N.Rao, learned counsel submits that there would be inspection within a short time and a report may be furnished.

List on 28.11.2008.

I.A. No. 2147-2148

List on 14.11.2008.

C.A. No.8133/2003:

C.A. No.8134/2003:

C.A. No.8135/2003:

SLP (C) No. 15796/2006:

I.A. No. 2320

Adjourned.

I.A. No.:	Order Date: 21.11.2008	
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I.A. No.1785 in W.P.(C)No.4677/1985:

I.A. No.1967 in I.A.1785 in W.P.(C)NO.4677/1985:

I.A. No.2152 in I.A.1785 in W.P.(C)NO.4677/1985:

I.A. No.2143 in I.A.1785 in W.P.(C)NO.4677/1985:

I.A. No.2186 in I.A.1785 in W.P.(C)NO.4677/1985:

With W.P.(C)No.624/2002

With W.P.(C)No.661/2002

With W.P.(C)No.428/2002

With Contempt Petition (C)No.568/2002 in W.P.(C) No. 428/2002

Contempt Petition (C) No.542/2002 in W.P.(C) No. 428/2002

I.A. No. 2198@ Contempt Petition No. 125/2006 vide Court's order dated .25.10.2007

In W.P.(C) No.4677/1985:

I.A. No.2269 in I.A. No.1785 in W.P.(C) No.4677/1985:

I.A. No.2270 in I.A.1785 in W.P.(C) No. 4677/1985

C.P.(C) No. 186/2003 in W.P.(C) No. 4677/1985:
I.A. No. 1866 in W.P.(C) No. 4677/1985:
I.A. No. 1858-1859 in W.P.(C) No. 4677/1985:
I.A. No.1886 in W.P.(C) No. 4677/1985:
I.A. No.1888 in W.P.(C) No.4677/1985:
I.A. Nos.1891 to 1893 W.P.(C) No.4677/1985:
I.A. No.1895 in W.P.(C) No.4677/1985:
I.A. No.1896 in W.P.(C) No.4677/1985:
I.A. No.1906 in W.P.(C) No.4677/1985:
I.A. Nos.1907-1908 in W.P.(C) No.4677/1985:
I.A. Nos.1911-1912 in W.P.(C) No.4677/1985:
I.A. No.1937 in W.P.(C) No.4677/1985:
I.A. No.2168 in I.A. No.1785 in W.P.(C) No.4677/1985:
I.A. Nos. 2306-2307 in W.P.(C) No.4677/1985:
I.A. Nos. 2308-2309 in W.P.(C) No.4677/1985:
I.A. No.2310 in I.A.2269 in 1785 in W.P.(C) No.4677/1985:
I.A. No.1968 in W.P.(C) No. 4677/1985:
I.A. Nos. 2334-2335 in W.P.(C)No.4677/1985
I.A. No.2336 in W.P.(C) No. 4677/1985:
I.A. No. D 58737 in W.P.(C) No.4677/1985:
I.A. Nos. 2355-2357 in W.P.(C) No. 4677/1985 and
HARYANA MINING:

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, 1590, 1612-1613, 1700-1703, 2007-2008, 1488, 2138-2139 in 891-892, 2205 & 2417, 2426-2427 in W.P.(C) No.202/1995:

CEC has filed a report regarding the mining activities in the Aravalli Hill area in Haryana. CEC, with the help of the State of Haryana and other agencies, prepared a large-scale map of villages in Gurgaon and Faridabad districts falling within Aravalli hills by fixing of about 20 ground control points (GCP) in each village through intensive field work using village map, GPS and satellite imagery of the corresponding village and it was drawn by super imposition of each village map on satellite imagery and overlaying of areas. The map is now made available to the Court. But many of the applicants who have either no permission for mining activities or have filed applications which are pending, have not been able to peruse the map so that they may respond in respect of findings of C.E.C. Learned counsel/amicus curiae appearing for CEC has stated that those applicants would be permitted to peruse the map in the office of the CEC. Those who want to have perusal of the map may give advance intimation to Mr.A.D.N.Rao, learned counsel/amicus curiae. Those applicants would be at liberty to file objections, if any, before the next date of hearing.

List on 28.11.2008.

I.A. Nos.1868, 2091, 2225-2227 & 2380

List in January, 2009.

T.C.(C) No.7/1997:

Adjourned.

SLP(C) No. 19012/2008:

Leave granted.

The appeal is disposed of, in terms of the signed order.

I.A. No.2176 in 548

The State of Tamil Nadu proposes to construct a high level bridge across Pulicat Lake in Pulikat lake Bird sanctuary in Ponneri Taluk of Turuvallore district. CEC has examined the matter and suggested that the project could be approved subject to fulfillment of the following conditions:

- i) work will be carried out only during day time only;
- ii) construction material will be brought from outside the sanctuary area;
- iii) disposal sites will be located outside the park area;
- iv) machineries will be removed from work site immediately after the work is over; and
- v) no labour camps will be erected in the sanctuary and
- vi) approval under the F.C.Act will be obtained for use of forest land;
- vii) 5% of the project cost of Rs.10.00 crores i.e. Rs.50 lacs will be deposited in the Compensatory Afforestation Fund for conservation and protection of the sanctuary; and
- viii) the conditions on which the proposed use of forest land within the sanctuary has been recommended by the Standing Committee of the National Board of Wildlife will be strictly complied with.

Learned counsel appearing for the State has submitted that the conditions are acceptable to the State. Subject to fulfillment of these conditions, the project is cleared.

I.A. is disposed of accordingly.

I.A. Nos.2186-2187

The applicant -M/s.Airtech Pvt. Ltd. has filed these applications seeking permission for establishment of the furniture making unit at plot nos.50A & 50B, Sahibabad industrial area, Ghaziabad. CEC has examined the matter in consultation with the Principal Secretary, (Forests) and the Principal Chief Conservator of Forests, U.P. Forest Department.

The applicant had submitted that unit will not be having any facility for conversion of round timber into saw timber and also other conditions prescribed in the U.P.Forest Act. It is stated that no sawing activity as done in a saw mill shall be undertaken. The applicant has submitted before us that they have filed an application for issuance of a license in view of the definition of "saw mill" under the U.P.Establishment and Regulation of Saw Mill Rules, 1978. It is made clear by the learned counsel appearing for the applicant that they will not be running a saw mill and are only wanted to run a furniture making unit to cater to the needs of general public. The applicant is allowed to establish the unit subject to filing an undertaking before this Court that the unit will not be having any facility for conversion of round timber to sawn timber within two days and that activities done in a saw mill shall not be undertaken. Subject to this condition, necessary license may be granted by the Government of U.P. and also subject to other regulations if any concerning the grant of license for starting such unit.

I.A. is disposed of accordingly.

I.A. No.1658

CEC has filed a report regarding the permission for change in the legal status of the forest land approved under the F.C. Act by the MoEF for the rehabilitation of villagers of the three villages namely Kosla, Botezari and Palasgaon (Single) in Andhari Wildlife Sanctuary in District Chandrapur, Maharashtra. It was also stated therein that the relocation of these villages is required because the boundary of the national park is to be extended and therefore, modification in the order passed by this Court on 13.11.2000 in Writ Petition (C) No.337/1995 is sought for. We make it clear that despite the order passed by this Court on 13.11.2000, the MoEF is permitted to change in the legal status of the forest land approved under the F.C. Act for relocation of these villages for the purpose of extending the boundary and for rehabilitation of the tribal people residing there.

Application is disposed of accordingly.

I.A. No.2318

The Department of Public Health Engineering, Government of West Bengal seeks to implement a drinking water supply project namely "Darjeeling Water Supply Pumping Scheme" at an estimated cost of Rs.49.17 crores and as part of the project seeks permission for diversion of 0.99 ha. of forest land falling in Senchal Wildlife Sanctuary. The CEC has suggested that a sum of Rs.2.46 crore i.e. 5% of the project cost be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection of National Parks and Sanctuaries in the State of West Bengal by the State Government. Learned counsel appearing for the State of West Bengal submits that as only a portion of the project is falling within the sanctuary area, they may not be burdened with the cost of paying in relation to the total project. As this amount is paid for afforestation purpose, we do not think that the State should be excluded from such payment. Permission is granted to the project subject to the payment of Rs.2.46 crores in the CAMPA Fund and such amount will be utilised for the purpose for which it was established; and fulfillment of other conditions stipulated by C.E.C.

I.A. is disposed of accordingly.

W.P.(C) No. 651/2005:

Adjourned to January, 2009.

I.A. Nos.2414-2416

Issue notice to CEC. Reply, if any, be filed within four weeks.

SLP(C) No. 24540/2003:

Adjourned.

I.A. Nos.2293-2294, 2298 in 2167

This is with regard to the construction of a Human River Project in Chandrapur district of State of Maharashtra. The Assistant Inspector General of Forests (Forest Conservation Division), Ministry of Environment and Forest (MoEF), Government of India has filed an affidavit stating that the entire amount of NPV and Compensatory Afforestation would be deposited by the user agency in the CAMPA fund and the user agency has also agreed to

all the conditions prescribed by Wildlife Institute of India. In view of the affidavit filed by the Assistant Inspector General of Forests (Forest Conservation Division), Ministry of Environment and Forest (MoEF), Government of India, the application is allowed and necessary action be taken in this regard.

Application is disposed of accordingly.

I.A. Nos.2160-2161 in 1399, 2185 in I.A.728, 2248-2249 in 1694, 2254, 2280, 2284-2286, 2314-2315, 2316-2317, 2323-2324, 2325-2327, 2376-2377, 2383-2385, 2393-2394 in W.P.(C) No.202/1995

With W.P.(C) No.23/2008

W.P.(C) No. 24/2008

W.P.(C) No. 33/2008

W.P.(C) No. 131/2008

W.P.(C) No. 522/207

W.P.(C) No. 116/2007

The applicants are transferees of saw mills which were either not given licenses or these saw mills were not being operated. CEC has filed a report and has suggested that along with other applications received for renewal, subject to availability of timber in the State of U.P. and after meeting the requirement of license of wood based industries in the units covered by CEC report dated 06.05.2008 in I.A. No.2185 in 728 of the wood based industries and in terms of the orders passed by this Court on 18.05.2007 and 27.07.2007, these applications will also be considered. The applications for licenses may be considered by the CEC within a period of three weeks. The applications/petitions are disposed of accordingly.

W.P.(C) D.No.33560/2006 & W.P.(C) No.D 30339/2006:

Learned counsel for the petitioner submits that the petitions have become infructuous. The writ petitions are dismissed as having become infructuous.

I.A. Nos.2147-2148 in W.P.(C) No.202/1995:

List on 09.01.2009.

I.A. No.2320 in W.P.(C) No.202/1995:

Issue notice to CEC. Reply, if any, be filed within four weeks.

Post along with connected matter.

I.A. Nos.1572, 1578, 2190, 2209-2210, 2328, 2366 in W.P.(C) No. 202/1995

Contempt Petition (C) No.114/2007

W.P.(C) No.144/2006

SLP(C) No.958/2008

Original Suit No. 4/2007:

List on 16.01.2009.

Replication, if any, may be filed in the meanwhile.

RAJASTHAN MINING:

I.A. No.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 in W.P.(C)NO.202/1995

With SLP (C) No. 3353/2003

With C.A. No.7363/2000

C.A. No. 7364/2000

C.A. No. 7365/2000

SLP (C) No. 6419/2008

List on 28.11.2008.

I.A. No.2194-2196 in W.P.(C) No.202/1995:

Applicant is permitted to reply to the State's affidavit within two weeks.

I.A. No. 2208 in W.P.(C) No.202/1995:

The Andaman & Nicobar Islands Small Scale Wood Based Industries Association in Andaman & Nicobar Islands has filed this application seeking permission to have saw mills in the Andaman & Nicobar Islands. The CEC has made series of recommendations as to how the regulation of supply of timber and making available the timber to these units will have a serious impact leading to deforestation. The suggestions/recommendations made by the CEC are acceptable to the applicant and it may take further steps in the matter to see that these suggestions/recommendations are complied with.

I.A. is disposed of accordingly.

I.A. Nos. 2168, 2216, 2291-2292, 2336, 2392 in W.P.(C) No. 202/1995:

I.A. Nos. 2428-2429 in I.A. No. 2167 in W.P.(C) No.202/1995 &

I.A. Nos. 2430-2431 in I.A. No. 2168 in W.P.(C) No.202/1995:

List on 05.12.2008.

I.A. Nos. 2339-2341 in W.P.(C) No. 202/1995:

List on 28.11.2008.

I.A. Nos.2419-20 in W.P.(C) No.202/1995

Date: 21.11.2008 These Applications./Petitions were mentioned today.

UPON hearing counsel the Court made the following

ORDER

List on 09.01.2009 before the Forest Bench.

ORDER

Leave granted.

2. Application for deletion of proforma respondent nos.12 to 18 is allowed.
3. The appellant herein has filed a writ petition before the Guahati High Court alleging that the Government had sanctioned transfer of 100 ha. of land to respondent no.7 and 8. The appellant contended that this transfer is violative of the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971, which prohibits transfer of land to private parties. The High Court, by the impugned interim order, deferred hearing of the writ petition on the ground that the issues are pending before this Court. We make it clear that there is no such proceedings pending before this Court regarding alleged violation of the provisions of the Meghalaya Transfer of Land (Regulation) Act, 1971 and the High Court is at liberty to proceed with the writ petition filed by the appellant and pass appropriate orders.

The appeal is disposed of accordingly. No costs.

I.A. No.:	Order Date: 28.11.2008	
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I.A. No. 2079-80

Taken on Board.

CEC has filed its recommendations in Court.

Issue notice to the State of Maharashtra only for the time being.

I.A. No. 2396-98, 2399-2401, 2402-04, 2405-07, 2408-10 and 2411-13 in 979

Referred to CEC. CEC to file Report within a period of six weeks.

I.A. No. 170-175 in W.P.(C) 460/2004

Adjourned to January, 2009.

I.A. No. 1424-25

Heard learned senior counsel appearing for the applicant.

Our attention has been drawn to the CEC Report and having gone through it, we understood that M/s.ESSAR while carrying out the project of laying down the pipelines, has violated some conditions of licence and caused damage to the forest, though these facts are denied by Mr. Mukul Rohtagi, learned senior counsel appearing for ESSAR. Having regard to the report filed before us we are of the view that an additional sum of Rs.50 lakhs should be paid by ESSAR within a period of four weeks and the same be deposited in a separate account which shall be maintained by CEC.

Matter relating to Mr. Anil Lunia

CEC has filed its report in IA 1424-25. We are told that in this connection three writ petitions are also pending before the High Court of Chattisgarh. In one petition the the Conservator of Forests, Chattisgarh is the petitioner and in the other two petitions one Mr. Anil Lunia is the petitioner. Learned counsel appearing for Mr. Anil Lunia and also the petitioner State have no objection for transferring these cases to the file of this Court. Accordingly, we order transfer of W.P.(C) Nos.6355, 5874 and 6458 of 2005 pending before the High Court to the file of this Court. The Registrar of the High Court of Chhattisgarh shall see that the entire records of these cases be transferred to the Secretary General of this Court for taking further orders. Parties to complete pleadings within a period of four weeks.

Post for directions on 23.01.2009.

I.A. No. 1429

No orders required. Disposed of accordingly.

I.A.....in I.A. No.1442 (*This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.*)

Taken on board.

Issue notice to CEC.

CEC to file its Report within a period of three weeks.

I.A. Nos. 2212, 2237-38, 2277 & 2272

List on 12.12.2008.

I.A. Nos. 2365 & 2373-74

List after four weeks.

I.A. Nos. 2419-20

Issue notice to CEC and to the State.

CEC to file its report within a period of four weeks.

List on 09.01.2009.

I.A. No. 1484

Adjourned.

I.A. No.1785 in W.P.(C) No. 4677/1985

I.A. No.1967 in I.A. No.1785 in W.P.(C) No. 4677/1985

I.A. No.2152 in I.A. No.1785 in W.P.(C)No. 4677/1985
I.A. No.2143 in I.A. No.1785 in W.P.(C)No. 4677/1985
I.A. No.2186 IN I.A. No.1785 in W.P.(C)No. 4677/1985
W.P.(C) No.624/2002, W.P.(C) No. 661/2002
W.P. (C) No. 428/2002
Conmt.Pet. (C) No. 568/2002 in W.P.(C) No.428/2002
Conmt.Pet.(C) No.542/2002 in W.P.(C) No.428/2002
I.A. No. 2198 @ Conmt.Pet.No.125/2006 vide Court's order dated 25.10.2007 in W.P.(C) No.4677/1985
I.A. No. 2269 in I.A. No.1785 in W.P.(C) No. 4677/1985
I.A. No. 2270 in I.A. No.1785 in W.P.(C) No. 4677/1985
C.P.(C)No.186/2003 in W.P.(C) No.4677/1985
I.A. No.1866 in W.P.(C) No.4677/1985
I.A. No. 1858-1859 in W.P.(C) No. 4677/1985
I.A. No.1886 & 1888 in W.P.(C) No. 4677/1985
I.A. No.1891 to 1893 in W.P.(C) No. 4677/1985
I.A. No.1895, 1896 & 1906 in W.P.(C) No. 4677/1985
I.A. Nos.1907-1908 & 1911-1912 in W.P.(C) No. 4677/1985
I.A. No.1937 in W.P.(C) No. 4677/1985
I.A. No.2168 in I.A. No.1785 in W.P.(C) No. 4677/1985
I.A. No.2306-2307 & 2308-2309 in W.P.(C) No. 4677/1985
I.A. No.2310 in I.A. No.2269 in 1785 in W.P.(C) No.4677/1985
I.A. No.1968 in W.P.(C) No. 4677/1985
I.A. No.2334-2335 and 2336 in W.P.(C) No. 4677/1985
I.A. No. D58737 in W.P.(C) No. 4677/1985
I.A. No.2355-2357 in W.P.(C) No. 4677/1985
With

HARYANA MINING

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, 1590, 1612-1613, 1700-1703, 2007-2008,1488, 2138-2139 in 891-892, 2205
And I.A. No. 2306-07,2198, 1968,2336 in W.P.(C) No. 202/1995.

List on 16.01.2009.

I.A.....IN I.A. NO.828 *(This is an unregistered I.A. and has been taken on record at the time of hearing of the application. This is as per the order of the Supreme Court.)*
Taken on board.

Issue notice to CEC and State of Rajasthan.

RAJASTHAN (MINING)

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 in W.P.(C)No.202/1995 with SLP(C) No.3353/2003
C.A. No. 7363/2000, C.A. No. 7364/2000, C.A. No. 7365/2000 & SLP (C) 6419/08

List on 16.01.2009.

I.A. No. 2339-41

I.As. are disposed of with liberty to the Union of India to file fresh application, if necessity so arisen. Rest of the matters be listed on 16.01.2009.

I.A. No.:	Order Date: 05.12.2008	
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List only the Hoardings and CNG matters on 12.12.2008 (already listed on that date). No forest matter be listed on that date.

I.A. No. 941 in I.A. No.754-755 with I.A. No.777, 1131-1133, 1138-1146, 1148, 1184, 1272, 1361, 1579-1580 in W.P.(C) No. 202/1995:
W.P.(C) No. 356/2007:

It is submitted by learned senior counsel for the applicants that in Orissa, the 1991 Act/Rules stipulate that there shall not be any saw mill within a distance of 10 mtrs. Of the upper boundary of the forest area and it is pointed out by the learned counsel for the State that in the State of Orissa not a single space is available to have a saw mill if the rules are strictly applied. Learned counsel appearing for the State submits that as to whether permission for any saw mill could be given in the identified industrial estate. Learned counsel for the State, in consultation with CEC, shall file an affidavit indicating the steps taken by the State in this regard.

Adjourned by four weeks.

I.A. Nos. 2168, 2216, 2291-2292, 2336, 2392 in W.P.(C) No. 202/1995 2428-2429 in 2167, 2430-2431 in 2168:

List on 23.01.2009.

I.A. No. 2421-2422

Adjourned.

I.A. No. 2423-2425 in W.P.(C) No. 202/1995:

List on 30.01.2009 along with I.A. Nos. 1274-76/2005.

I.A. No. 2432

By way of this application the State is seeking permission for use of forest land falling in the Jambughoda Wildlife Sanctuary for the construction of the Bobdakuva Mota Raska -Lambhiya-Zand Zand hanuman road in Vadodara. The CEC has examined the feasibility of the construction of the road to the wildlife sanctuary and has recommended subject to fulfillment of certain conditions. The conditions are acceptable to the State. The State has also agreed to reduce the width of the road from 10 mtrs. to 6 mts. Subject to fulfillment of the conditions stipulated by the CEC, the project is approved. I.A. is disposed of accordingly.

I.A. No. 2433 in W.P.(C) No. 202/1995:

By this application the Indian Oil Corporation seeks ex-post facto permission for use of land falling in the marine sanctuary and the marine national park for laying the pipeline from the Single Buoy Mooring (SBM) to its depot. The execution has already been carried out by the IOC and the CEC has examined the matter and has given certain recommendations.

We are told that the NPV has not been paid. The applicant shall pay the NPV within a period of eight weeks, and carry out the recommendations.

Ex-post facto permission is granted accordingly. I.A. is allowed in the above terms.

I.A. Nos. 2434-2436 in W.P.(C) No.202/1995:

Referred to C.E.C. C.E.C. to file its response within a period of six weeks.

I.A. No. 1493 @ CP (C) No. 280/03 in W.P.(C) No. 202/1995:

Applicant to serve a copy of the I.A. on the MoEF.

Adjourned by four weeks.

Reply, if any, may be filed by the MoEF within that time.

I.A. No.1500, 2235 in W.P.(C)No. 202/1995:

Adjourned to 09.01.2009.

W.P.(C) No.21/2008:

Issue notice.

A copy of the petition may be served on the CEC.

Response, if any, may be filed within six weeks.



Enviro Legal Defence Firm

The Enviro Legal Defence Firm (ELDF), India's first environmental law firm established in 1999 aims at mainstreaming environment and development law, resolving conflicts over resources and strengthening environmental jurisprudence. Specifically, ELDF represents individuals and organizations in courts and before administrative agencies in cases that would have significant impact in protecting environment, resources and ecosystems and establish important precedents in case law; provides consultancy based research and training on environment and development law that can be used by others to protect both urban and rural environment;

WWF-India

World Wide Fund for Nature (WWF) is one of the world's largest and most respected independent conservation organizations. Its mission is to stop the degradation of the planet's natural environment, which it addresses through its work in biodiversity conservation and reduction of humanity's ecological footprint. It has been working on these issues in India for over four decades now.

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