

ITEM NO.301 & 302

COURT NO.1

SECTION FIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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 WP(C)No.202/1995

T.N.GODAVARMAN THIRUMALPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS
(For directions)

Respondent(s)

WITH
W.P (C) No. 356/2007
(With appln. for stay)

AND

I.A.Nos.1362-1363 IN 966 & 1012 in W.P.(C)NO.202/1995
(for modification & direction & interim stay)

AND

I.A.NOs.1868, 2091, 2225-2227, 2380 & 2568 in W.P.(C)NO.202/1995
(For direction & intervention on B/O Lafonge Union Mining P.Ltd. and
vacation of interim order Dt. 23.11.07 and seeking permission to
bring addl. facts and documents on record)

AND

I.A.NOS.2616-2617 IN 1620 in W.P.(C)NO.202/1995
(For directions & stay)

AND *I.A.No.2618 in*

I.A.Nos.2245-2246 in W.P.(C)NO.202/1995
(For restoration of I.A. 2245-2246)

AND

I.A.No.2550 in W.P.(C)NO.202/1995
(For permission)

AND

I.A.No.2569 W.P.(C)NO.202/1995
(For permission)

AND

I.A.No.2579 in W.P.(C)NO.202/1995
(for recommendation of CEC in appln. no.858)

AND

I.A.No. 2580 in W.P.(C)NO.202/1995
(for recommendation of CEC in appln. no.1041)

AND

I.A.NO.36 IN W.P.(C) NO.171/1996
(For directions)

AND

I.A.No. 2644 in I.A.NO.2386 in W.P.(C)NO.202/1995
(For early hearing)

I.A.No. 2143 in W.P.(C)NO.202/1995
(Report of CEC regarding the non utilization of funds)

Date: 10/07/2009 These Applns./Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

Mr. Harish N. Salve, Sr.Adv. (A.C.)
Mr. Uday U. Lalit, Sr.Adv. (A.C.) (N.P.)
Mr. Siddhartha Chowdhury, Adv. (A.C.)
Mr. A.D.N. Rao, Adv. (A.C.)

For Petitioner(s)/
Applicant(s)/
Respondent(s) :

Mr. P.K. Manohar, Adv.

Mr. G.E. Vahanwati, AG
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Mr. Raj Kumar Mehta, Adv.

Mr. J.R. Das, Adv.

Mr. Vijay Panjwani, Adv.

WP 356/07, IA No.
1579080

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Jitendra Mahapatra, Adv.
Ms. Sweta Verma, Adv.
For Mr. Ajay Sharma, Adv.

Mr. Naresh Kr. Sharma, Adv.

IA 941

Mr. V.S. Raju, Adv.
Mr. T.N. Rao, Adv.

IA 754-55

Mr. Janaranjan Das, Adv.
Mr. Shwetaketu Mishra, Adv.
Mr. P.P. Nayak, Adv.

Respondent-in-person

Mr. Jana Kalyan Das, Adv.

IA 1362-63

Mr. Altaf Ahmed, Sr. Adv.
Mr. Manish Goswami, Adv.
Mr. Anil Srivastav, Adv.
For M/s. Map & Co., Advs.

IA 1362 in IA 966

Mr. Altaf Ahmad, Sr. Adv.
Mr. Anil Shrivastav, Adv.

Mr. V.K. Verma, Adv.

IA 1362	Mr. G.E. Vahanavati, AG Mr. Ajit Pudussery, Adv. Mr. K. Vijayan, Adv. Mr. Somiran Sharma, Adv.
I.A.1868	Dr. A.M. Singhvi, Sr. Adv. Mr. Mukul Rohatgi, Sr. Adv. Mr. Sanjeev K. Kapoor, Adv. Mr. Vishal Gupta, Adv. Mr. Avinash Menon, Adv. For M/s. Khaitan & Co., Adv.
I.A.1868	Mr. Ranjan Mukherjee, Adv. Mr. S.C. Ghosh, Adv. Mr. Santanu Bhowmick, Adv. Mr. Jitendra Kumar, Adv.
IA 2550	Mr. Ramji Srinivasan, Sr. Adv. Mr. Mukesh Kumar, Adv. For M/s. M.V. Kiwi & Associates, Adv.
IA 36	Mr. Anis Suhrawardy, Adv. Mr. Syed Mehdi Imam, Adv. Ms. Sushma Suri, Adv. Ms. Purnima Bhat Kak, Adv.
IA 2579	Mr. S. Wasim A. Qadri, Adv. For Mr. S.N. Terdal, Adv. Mr. B.K. Prasad, Adv. Mrs. Hemantika Wahi, Adv. Ms. Jesal Wahi, Adv. Mr. Anil Kr. Jha, Adv.
IA 2617 in 1620 Ranchi Assn. & IA 2580 GSPCB & Dir. of Environment	Mr. Bhavanishankar V. Gadnis, Adv. For Mrs. B. Sunia Rao, Adv.
State of Bihar	Mr. Manish Kumar, Adv. For Mr. Gopal Singh, Adv.
State of Tripura	Mr. Rituraj Biswas, Adv. For Mr. Gopal Singh, Adv. Mr. Kuldip Singh, Adv. Mr. D.S. Mahra, Adv.
State of Goa	Ms. A. Subhashini, Adv.

State of Nagaland Mr. Edward Belho, Adv.
 Mr. Rituraj Biswas, Adv.
 Mr. P. Athuimei R. Naga, Adv.

UPON hearing counsel the Court made the following
O R D E R

I.A.No. 2143 in W.P.(C)NO.202/1995

Pursuant to a series of Orders passed by this Court for Afforestation purpose, various agencies had deposited amounts by way of Net Present Value (NPV) when the forest area were utilized for non-forest purposes. This amount is lying with the ad-hoc CAMPA. The MoEF, the amicus curiae and the CEC have discussed the matter and they have come up with a scheme as to how to utilize the deposited amount for the purpose of Afforestation. The CEC has filed a Report framing a scheme and the same has been placed before this Court for consideration. We have examined the scheme and accepted the following recommendations:

A) The guidelines and the structure of the State CAMPA as prepared by the MoEF may be notified/implemented. All previous orders passed by this Court regarding this would stand modified to the extent necessary for implementation of the present proposal.

B) Substantial amount of funds have been received by the Ad-hoc CAMPA and sudden release and utilization of this large sum all at one time may not be appropriate and may lead to its improper use without any effective control on expenditure. This Court considers it appropriate to permit the Ad-hoc CAMPA to release, for the time being, the sum of about Rs.1000 crore per year, for the next 5 years, in proportion of 10% of the principal amount pertaining to the respective State/UT as per the conditions given below:

(i) the details of the bank account opened by the State Executive Committee (in Nationalized Bank) are intimated to the Ad-hoc CAMPA;

(ii) the amount towards the NPV and the protected

area may be released after the schemes have been reviewed by the State Level Executive committee and the Annual Plan of Operation is approved by the Steering Committee;

(iii) the amount towards the CA, Additional CA, PCA and the Catchment Area Treatment Plan may be released in the respective bank accounts of the States/UTs immediately for taking up site specific works already approved by the MoEF while granting prior approval under the Forest (Conservation) Act, 1980.

(C) An amount upto 5% of the amount released to the State CAMPA may also be released and utilized by the National CAMPA Advisory Council, for monitoring and evaluation and for the implementation of the various schemes as given in para 19 of the Guidelines on the State CAMPA. It is left to the discretion of the National CAMPA Advisory Council whether it wants to spend money directly or through the Ad hoc CAMPA.

(D) The recommendations for the release of the additional funds, if any, will be made in due course from time to time after seeing the progress made by the State Level CAMPA and the effectiveness of the accounting, monitoring and evaluation systems.

(E) The State Accountant General shall carry out the audit of the expenditure done out of State CAMPA funds every year on annual basis.

(F) The State Level Executive Committee shall evolve an appropriate and effective accounting process for maintenance of accounts, returns and for audit.

(G) The interest received by the State CAMPA on the amounts placed at their disposal by the Ad hoc CAMPA may be used by it for administrative expenditure.

(H) Till an alternative system is put in place (after obtaining permission from this Court) the money towards CA, NPV and Protected Areas (National Parks, Wildlife Sanctuaries) shall continue to be deposited in the Ad hoc CAMPA and its release

will continue to be made as per the existing orders of this Court.

While carrying out the work of utilizing these funds the broad guidelines adopted by the NREGA may be followed and as far as possible work may be allotted mostly to rural unemployed people, maintaining the minimum wages level.

The CEC may file status reports as regards implementation of the scheme every six months.

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 WP(C)No.202/1995
WITH
W.P.(C) No. 356/2007

These matters relate to saw mills in the State of Orissa. This Court had earlier directed that there should be no saw mills within 10 kilometers from the boundary of the forest area. Many of the saw mills in the State of Orissa were closed down. The applicants in I.A.Nos.1579 and 1580 also closed down their saw mills. We are told that some of the saw mills had obtained interim orders from the High Court but as those are contrary to the direction given by this Court, all those saw mills must also be closed down immediately.

We are told that the Orissa Forest Corporation has its own saw mills and these mills are given on lease to private parties. Such practices shall be stopped forthwith.

The State of Orissa to file a fresh affidavit to this effect within a period of four weeks. The State shall arrange to have an industrial estate and take urgent steps to this effect and shall also take steps to see that there shall be appropriate amendment to the Saw Mills Rules of 1991. It shall file an affidavit to this effect.

List on 21.8.2009.

I.A.No.1362-63 in 966 & 1012 in W.P.(C) No.202/1995

By these interim applications, the applicant seeks modification of this Court's Order dated 19.4.2004 passed in I.A.No.966 and 1012. The matter relates to the construction of the Lower Subansiri Hydro Electric Project by NHPC. The CEC has made some recommendations and subject to these recommendations the work has to be completed in the entire area of Lower Subansiri Project which will be declared as National Park/Sanctuary. This is accepted and an affidavit to this effect is filed by the Deputy Inspector General (Wildlife), Government of India wherein it is stated that any proposal in the upper stream of Subhansri river would be considered independently on its own merit by the Standing committee as and when submitted by the proponents and the State Government would declare 168 sq. kms of Reserve Forest as Sanctuary and make serious efforts to bring an additional area of 332 sq km reserved forests under the category of Conservation Reserve in consultation with MoEF. This suggestion is acceptable to the State Government and NHPC and Subject to the following conditions the I.As. are disposed of:

i) approval under the F.C. Act for the project has been granted inter alia on the condition that the entire area upstream of the Lower Subansiri Project will be declared as National Park/Sanctuary;

ii) the Standing Committee of the IBWL has cleared the project on the condition that the reserve forest area in the catchment of the project will be declared as National Park/Sanctuary;

iii) the conditions imposed by this Court are identical to the conditions on which the project has been cleared under the FC Act and by the IBWL. These conditions were known to the State of Arunachal Pradesh and a compliance report was also sent by them;

iv) This Court's order is a consent order which reiterates the conditions already imposed by the MoEF and to which applicant State had already agreed to comply with.

This is in continuation of the earlier order passed by this Court.

I.A.NOs.1868, 2091, 2225-2227, 2380 & 2568 in W.P.(C)NO.202/1995

List on 4.9.2009.

I.A.NOS.2616-2617 IN 1620 & I.A.2618 in 2245-2246
in W.P.(C)NO.202/1995

Adjourned.

I.A.No.36 in W.P.(C)NO.171/1996

No orders. I.A.No.36 is disposed of.

I.A.Nos.2550 & 2569 in W.P.(C)NO.202/1995

List on 21.8.2009.

The CEC to file its report in the meantime.

I.A.No.2579 in W.P.(C)NO.202/1995

Permission is sought for construction of fencing and a patrol road along the Indo-Bangladesh Border in Dampa Tiger Reserve, Mizoram. The CEC has examined the feasibility and has suggested certain recommendations and also directed that the NPV be collected from the concerned agency. As the project is for governmental purpose, the NPV will be charged at the concessional rates. Subject to payment of NPV and subject to the following conditions imposed by CEC, the project is cleared:

i) for the use of 69.26 ha. of forest land approval under the FC Act will be obtained;

ii) NPV will be deposited as per the rates applicable for the use of forest/non-forest land falling within the National Park/Wildlife Sanctuary;

iii) the mitigative measures and the other conditions

iii) the mitigative measures and the other conditions including the construction of animal corridors on which the project has been cleared by the Mizoram Forest Department will be strictly followed;

iv) the conditions imposed by the Chief Wildlife Warden will be strictly complied with;

v) the clearance from the Standing Committee of the National Board for Wildlife will be obtained; and

vi) no stone quarrying and dumping of malba will be carried out inside the Dampa Tiger Reserve or any forest area falling outside it.

Subject to fulfilling of the above conditions, the I.A. is disposed of accordingly.

I.A.No.2580 in W.P.(C)NO.202/1995

- GEC has filed its Report. The State of Goa seeks time to file a response to the Report. Three weeks time is granted for the same. List on 21.8.2009.

I.A.No.2644 in I.A.No.2386 in W.P.(C)NO.202/1995

List I.A.No.2386 on 28.8.2009. I.A.no.2644 is disposed of accordingly.

R.Dhawan
(R.K. Dhawan) 14/7/09
Court Master

Madhu Saxena
14/7/09
(Madhu Saxena)
Court Master

14/7

Re: Seeking further information related to agenda notes

sk (sk@cpf.in)

23 September 2009 11:59AM

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Vasantha (vasantha@cpf.in)

Dear Sri BK Singh,

Thank you for sharing the agenda notes, well in advance. My observations are as under:

1. The first function of the National CAMPA Advisory Council is to lay down broad guidelines for State CAMPA. As such, it may be technically correct to seek approval of the revised guidelines Dated 2nd July 2009, in this meeting. An item to that effect may be included.
2. The agenda and minutes of the Ad-hoc CAMPA meeting of 15-09-2009, may be circulated to members of this council, as there has been mention about the same in the agenda notes.
3. Since the Council is vested with the responsibility of regular monitoring and evaluation of projects being undertaken by the State CAMPAs, it will be good to have a look at the abstracts of the proposals considered by the first meeting of AdHoc CAMPA authority on 3rd July 2009. They may please be circulated.

With Best Regards

Suryakumari

In the context of the Hon'ble Supreme Court's order dated 10th July 2009, the following decisions / observations were made during the meeting:-

1. The Hon'ble Supreme Court has authorized the National CAMPA Advisory Council to utilize upto 5% of the amount released to the State CAMPA every year for monitoring and evaluation and for implementation of the various schemes by it. The said amount can be spent by the National CAMPA Advisory Council either directly (through the MOEF) or through the Ad-hoc CAMPA. Accordingly, the adhoc CAMPA is to release upto Rs.50 crores per annum for this purpose of the next five years. In case, the National CAMPA Advisory Council decides to spent the amount through MoEF, the amount is to be released to the MoEF for this purpose otherwise to be retained and disbursed as per the decisions taken by the National CAMPA Advisory Council.



For this purpose, it was decided that a separate sub-account for the expenditure as per the decisions by the National CAMPA Advisory Council will be immediately opened by the adhoc CAMPA and an amount of Rs.50 crores every year will be transferred therein. The credit balance in the said account will be released as per the decisions taken by the National CAMPA Advisory Council.

For 19th Meeting

- National CAMPA Advisory Council had to decide the mode of expenditure / either through adhoc CAMPA or through the MoEF.
- For establishment of National Forestry Informatics Centre, there are two modes – one to register a company u/s 25 of the Companies Act, 1956 or to register a Society (national level) for operational reasons it may be appropriate that instead of Section 25 of the Companies Act, a Society is registered at Delhi. The Van Vigyan Bhavan, ICFRE can be used for the time being, as the registered office of the proposed Society. The Society may consist of ex-officio members as well as technical experts. Ultimately, the working place of the Society may be established in Gurgaon at a suitable location for which the State of Haryana will be willing to allot adequate land.
- The National CAMPA Advisory Council may commit release of Rs.5 crores per annum for the next five years for the time being as grant-in-aid to the said Society.
- The MoEF may agree for sparing adequate number of IFS officers for working in the Society.
- There is no need of creating any posts for this purpose. The Society will make its own rules and create posts as and when required by it.
- The FSI have adequate technical expertise available with it to start the work. It may be desirable, a MoU is entered into by the Society with FSI (after obtaining approval of the MoEF) for establishing of the National Forestry Informatics Centre.

- One of the jobs that can be taken by the proposed Society is procurement of high resolution maps, ground truth verification, and overlapping of the satellite imagery on the revenue / forest maps. This will provide a permanent record for various applications such as effectiveness of plantations, change in forest cover, encroachment, forest fire, etc., and will in due course of time become the most powerful tool available for forest management in the country. The same system can also be used for verifying the effectiveness of various site specific works undertaken by utilizing CAMPA funds.
- The National CAMPA Advisory Council may also consider asking CEC to contribute few crores of rupees (after obtaining the approval of the Supreme Court) for the project.
- The National CAMPA Advisory Council may also consider setting up of a separate Society to work as a think tank for various policy analysis and strategy formulation of the forestry and wildlife sector. It may be mentioned that in many countries such as in USA most of the policy analysis and strategic analysis is done outside the government system but as per the broad contour provided by the government and has been very successful in tackling the complex situations.
- It is expected that in due course of time both the centres will act as a funnel for receipt of funds from various sources and play a pivotal role in forest administration and management of dissemination of information in the country. It is also expected that they will provide valuable inputs in policy analysis, establishment of legal frameworks for conservation and protection of forests and act as an institutionalized advisory group to the MoEF.

- The beauty of the thing is that within the existing system and without bothering to create any post or any policy changes, the entire scheme of things can be made in a very cost effective manner.
