

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

Appeal No. 11/2017 (CZB)

&

Appeal No. 18/2017 (CZB)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Dr. Satyawan Singh Garbyal
(Expert Member)**

BETWEEN:

1. Pallamari Pahadivali Banjari Devi
Jan Seva Samiti
Through Its Authorized Representative
Shri Prashant Kumar
S/O DG Maidamwar
Reg. Address:: Village Hahaldaddi,
Post Durgukondal, Tehsil Durgukondal,
District Kanker (CG)

.....Appellant

Versus

1. Union of India,
Ministry of Environment, Forest
& Climate Change
Through Secretary
Indira Paryavaran Bhavan
Jorbagh Road
New-Delhi – 110003
2. M/S Monnet Ispat and Energy Ltd.
Through Its Director,
Registered Office: Monnet House, 11,
Masjid Moth, Greater Kailash Part II,
New Delhi

3. Chhattisgarh Environment Conservation Board
Through Member Secretary
Paryavas Bhavan,
North Block Sector – 19
Naya Raipur (C.G)
4. State of Chhattisgarh,
Through District Collector,
Kanker,
Kanker, Chhattisgarh
5. State of Chhattisgarh,
Principal Chief Conservator of Forest
Through Department of Forest
Jai Road, Aranya Bhawan, Raipur (CG)

.....Respondents

BETWEEN:

Rajesh Rangari
S/o Shri Kanahayia Lal Rangari,
Resident of :- House No. 272,
Ward No. 7, Saliya Para Bhanupratapur,
District Kanker, Chhattisgarh-494669

.....Appellant

Versus

1. Union of India
Through the Secretary,
Ministry of Environment and Forest & CC
Jor Bagh Road, Ali Ganj, Lodi Colony,
New Delhi - 110003
2. State of Chhattisgarh,
Through its Chief Secretary,
Mahanadi Bhawan,
New Raipur, Chhattisgarh
3. Monnet Ispat & Energy Ltd.
Through Its Executive Director / Incharge,
Regd, Office at:
Monnet Marg, Mandir Hasaud,
Raipur – 492101
Chhattisgarh
Also having corporate office at :-
Monnet House, 11,
Masjid Moth, Greater Kailash Part –II
New Delhi - 110048

4. Chhattisgarh Environment Conservation Board
Through the Member Secretary
1- Tilak Nagar, Shiv Mandir Chowk,
Main Road, Avanti Vihar, Raipur
Chhattisgarh – 492001.
5. Indian Bureau of Mines
Through the Controller General
2nd Floor, Indira Bhawan,
Civil Lines, Nagpur – 440001
6. Principal Chief Conservator of Forests,
Government of Chhattisgarh
Aranya Bhawan, Medical College Road,
Raipur – 492001, Chhattisgarh

.....Respondents

Counsel for Appellant : Shri Rohit Sharma, Adv.
Counsel for Respondent 4 & 5: Shri Siddharth Choudhan, Adv.
Shri B.S. Thakur, DFO
Counsel for Respondent No. 2: Shri Sanjay Upadhyay, Adv. for
Shri Noor Alam, Adv.
Counsel for MPPCB : Ms. Parul Bhadoria, Adv. for
Shri Purushaindra Kaurav, Adv.

J U D G E M E N T

Reserved on May 19th, 2017
Pronounced on May 23rd, 2017

- 1) Whether the judgement is allowed to be published on the internet
----- yes
- 2) Whether the Judgement is to be published in the All India NGT
Report ----- yes

DELIVERED BY HON'BLE MR. JUSTICE DALIP SINGH, JM

1. These two Appeals have been filed challenging the
order dated 04.01.2017 & 05.01.2017 passed by the
Union of India and State of Chhattisgarh respectively.

Under the order dated 04.01.2017 of the Government of India MoEF & CC the Central Government granted their consent under Section 2 of the Forest Conservation Act 1982 for diversions of 79.56 hectares of forest land for iron ore mining in East Bhanupratappur forest division in favour of M/s Monnet Ispat and Energy Ltd. in Kanker District Chhattisgarh. The order in Appeal No. 18/2017 dated 05.01.2017 has been issued by the Government of Chhattisgarh for diversion of 79.56 hectares of forest land based upon the letter dated 04.01.2017 issued by the Government of India under Section 2 of the FC Act 1980.

2. On consideration of the submissions made by the Learned Counsel for the Appellant while hearing the Appeal No. 11/2017 on 23.02.2017 this Tribunal passed the following order:

It is contended by the Learned Counsel for the Appellant based upon the document Annexure A-4 that the SDO (Forest), Bhanupratappur, District Kanker, Chhattisgarh in his communication had clearly spelt out in form no. 3 at Sl. No. 6 that the density of the forest was between 0.7 & 0.8. He has also drawn our attention to the guidelines issued by the State vide Annexure A-5 dtd. 16.07.2017 in which at Sl. No. 13 it has been provided that where the density of the forest is 0.6 or more no permission for diversion should be granted.

Based upon the above, it is contended inter alia that the State has recommended the case for grant of Forest

Clearance (FC) for diversion of 79.56 hectares of forest land contrary to its own guidelines.

It has further been pointed out that this fact was not brought to the notice of the MoEF, FC Division, Govt. of India while considering the matter for the grant of diversion of 79.56 hectares of forest land for Stage – I & II forest clearance which had been granted to the Respondent No. 2. It has also been brought to our notice by the Learned Counsel that this matter was also earlier considered by the Hon'ble High Court of Chhattisgarh. However, he prays for time to submit copy of the judgment before us as also the copy of the recommendations made by the State Government to the MoEF, Government of India in this behalf.

He has brought to our notice that the possession of the land in dispute admeasuring 79.56 hectares was already given to the Respondent No. 2. However, the EC has so far not been granted by the Govt. of India. In that view of the matter, we would direct MoEF, Govt. of India, not to issue the EC till further orders and the Respondent No. 2 shall not in any way cause destruction to the forest in any manner or / and also not start any mining or other operation on the land in dispute. It has also been brought to our notice that the Stage – I & II clearances further require that the Project Proponent Respondent No. 2 has to obtain the clearances under the Forest Right Act, 2006 which as per the Learned Counsel so far has not been accorded.

Issue notice. Notices be issued Dasti. Also issue notice on M.A. No. 100/2017.

Notices were ordered to be issued in response to which the Respondent No. 2 project proponent filed their reply. In the reply several objections have been raised including those of maintainability of the Appeal.

3. However, upon the hearing of the matter on the issue which has been indicated in our order dated 23.02.2017 the Respondent No. 2 in their reply sought

to rely upon the document annexure no. R-6 which is the extract of part 3 of the pro-forma where under column no. 15 against the query “whether the concerned conservator of Forest agrees with the information in part B and the recommendations of the Deputy Conservator of Forest” it has been answered as “agree, mixed forest density 0.5 to 0.7”. On the basis of the above Learned Counsel for the Respondent No. 2 submitted that assuming the guidelines framed by the state vide Annexure A-5 dated 16.07.2010 which provides that forest consents for forest clearances shall not be granted where the density of the forest is more than 0.6 under para 13 of the same at page 34 . Based upon the above it was submitted that the density which has been found and by the State Government and mentioned in their recommendations under para 3 vide annexure R-6 on page 45 of the reply filed by the Respondent No. 2 the density has been mentioned as being less than 0.6 and as such there is no impediment or illegality in so far as the consent granted by the State Government is concerned.

4. In so far the above contention is concerned we may state that under the reply to query the point no. 15 of

para 3 the density has been stated to be “0.5 to 0.7”. Based upon the above it cannot be held conclusively that the entire area of 79.56 hectares for which the FC and the EC is being sought by the Respondent No. 2 which is admittedly covered by forest has a density of less than 0.6. Assuming that some part of it may have a density of 0.5. However, there are portions within the area of 79.56 hectares where the density exceeds 0.6 and reaches 0.7 as well. Such of these areas which have a density of more than 0.6 have not been identified and outlined or their extent mentioned as to where it is 0.5 / 0.6 / 0.7.

5. As such the recommendation by the Chief Conservator of Forest to that extent where the density of the forest exceeds 0.6 need to have been firstly identified within the area of 79.56 hectares for which the FC and EC is sought its dimensions and locations marked and more specifically the reasons ought to have been assigned as to why a departure was being made from the general guidelines which prohibit the grant of consent where the density of the forest exceeds 0.6.

6. We are therefore, of the view that while granting stage 2 clearance material considered by the concerned

authority while passing the order dated 04.01.2017 which in our opinion did not in fact spell out the correct position and presumably the ministry took a view that there is no objection on the part of the State to grant the clearance notwithstanding the fact that some portion for which the clearance for diversion has been sought had forest density of 0.6 and above which according to the guidelines ought not to be recommended for grant of FC.

7. In our opinion while making the recommendation the State Government if it was granting its consent for forest clearance to be given by the Central Government contrary to item no. 13 of the guidelines ought to have spelt out the reasons why it was doing so the MoEF Govt. of India to take a decision of after considering the actual facts. From the order dated 04.01.2017 that is impugned order we do not find any mention of the fact as to a consideration of the above issue of departure from the guidelines and special reasons for the same both by the State Government and the Central Government. In fact so far as order Annexure A-2 impugned in Appeal No. 11/2017 order is concerned Government of India has made no mention with regard to the issue of the forest density.

8. We are therefore, of the view that if any departure is sought to be made from the general guidelines by the State for recommending the case for the grant of EC specific reasons for the same must be assigned. This assumes the importance in view of the fact that right from the very beginning the Sub-Divisional Officer (SDO) Forest in form 3 appended to Annexure A-4 which is available at page 26 of the paper book of the memo of appeal in Appeal No. 11/2017 against the column no. 6 has mentioned as follows:

<p>आवेदित वन क्षेत्र में वनों की वर्तमान स्थिति प्रकार खंड इतिहास के अनुसार</p>	<p>आवेदित वन क्षेत्र का घनत्व .7 एवं .8 है वनों की Quality III है क्षेत्र घने वन से परिपूर्ण है वन का प्रकार - 5 B Notren Tropical Dry Deciduous Mixed Forest</p>
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9. Thus, so far as the initial response of the forest department is concerned it showed that the SDO to whom the matter was assigned under the letter of the Divisional Forest Officer dated 05.10.2015 clearly stated that the density of the forest was 0.7 and 0.8. (well above 0.6) specifically. Though even as per the documents filed by the Respondent No. 2 the density has been altered to 0.5 to 0.7 by the State Govt. while recommending the case to the Govt. of India. For making observations against the column no. 6 of form

no. 3 the reasons have been spelt out by the SDO in the annexed document to annexure A-4 filed along with the memo of appeal. It is available at page 29 of the paper book wherein it has been stated as follows:

वन संवर्धन (Silviculture) वर्ष 2005-06 में जल वर्तमान कार्य आयोजना बनाई जा रही थी तब के स्टॉक मेप के अनुसार स्थल की गुणवत्ता तथा गणत्व .5 व .6 था, तथा सनिधि मानचित्र के अनुसार क्षेत्र में माध्यम आयु वर्ग के मिश्रित वन थे

वर्तमान के site quality है किन्तु घनत्व में वृद्धि होकर .7 से .8 है क्षेत्र मध्यम आयु वर्ग के मिश्रित वन से आच्छादित है जिसमे प्रमुख प्रजाति सजा, धावड़ा रोन्हा, हरी करी, सागौन आदि है. आवेदित क्षेत्र में इन 10 वर्षों में कोई कार्य नहीं किया गया तथा पहाड़ी एवं पहुँच विहीन क्षेत्र होने के कारण जैविक दबाव लगभग नगण्य है अतः आवेदित क्षेत्र काफी सघन होकर अच्छे गुणवत्ता के वनक्षेत्र में परिवर्तित हुआ है सेम्पले प्लांट के अनुसार प्रति है औसत वृक्ष संख्या 368 है अर्थात प्रति 27 वर्ग मीटर पर 01 वृक्ष, अर्थात क्षेत्र में 5.25 वृक्ष 5.25 मीटर के अंतराल में वृक्ष स्थित है वृक्षों के crown लगभग आपस में मिले हुए है. Forest Survey of India के प्रतिवेदन 2013 के अनुसार क्षेत्र ादो 70% से अधिक Canoy से आच्छादित हो तो वह वन अतिसघन (Very Dense) वन के अंतर्गत श्रेणीकरण किया जाना है. अतः आवेदित क्षेत्र को अतिसघन वन क्षेत्र के अंतर्गत वर्गीकृत किया जा सकता है.

चैंपियन एवं सेठ के वर्गीकरण के अनुसार वन प्रकार – 5 B Notrern Tropical Dry Deciduous Mixed Forest

10. We may state that before us no document or material has been filed to indicate the reasons which prevailed upon the DFO / Conservator of forest and the State Government to disagree with the reasons given by the SDO and the observations made by him giving the Forest density as 0.7 + 0.8. A perusal of form A appended to the Forest Conservation Rules 2003 framed in excise of the powers conferred by sub-

Section 1 of Section 4 of the Forest Conservation Act 1980 for the purposes of Part (iv) and Part (v) provides in Para 17 which is required to be filled by the Nodal Officer or the PCCF or the head of Forest Department while giving his opinion and recommendation that “while giving opinion, the adverse comments made by the concerned Conservator of Forest or Deputy Conservator of Forest should be categorically reviewed and critically commented upon” Likewise under Para 18 part 5 which is required to be filled by the Secretary In-charge of the Forest Department of the State Government it has been specifically provided that “adverse comments made by any officer or authority in part B, part C and part D should be specifically commented upon”. As we have stated above the SDO Forest in Part 3 specifically gave an opinion with regard to the density of forest and also specifically has given the reason in Para no. 18 as to how from the year 2005 to 2015 in the last 10 years the quality of forest with density had improved from 0.5 to 0.7 / 0.8. No record has been placed before us to show that any officer while dealing with this matter under part (iv) or Part (v) in the State Government under para 18

gave any reasons for comments upon the reasons given by the SDO Forest that the density was 0.7 / 0.8, and why the State Government while forwarding the case had downgraded to 0.5 to 0.7. This being the statutory requirement under the Rules of 2003 should have been complied with, non observance and non compliance of the aforesaid would require in our opinion the reconsideration by the concerned authorities and in case it tend to disagree with the observations and the note put by the SDO Forest such reasons for disagreement must be recorded before forwarding the case to the Government of India. A perusal of the above contents of para 01 appended by the SDO, we find that he has categorically stated the past condition in the year of 2005-06 and the reasons why the density has increased in the past 10 years to 0.7 to 0.8. Any superior authority which wishes to disagree with the note put up by the subordinate officer must necessarily in our opinion record reasons for doing so. Since, no material has been placed before us we cannot definitely hold as to what prevailed upon the superior officers and the State Government to make the recommendation as it has in favour of the Respondent No. 2 contrary to the

guidelines framed in this behalf which prohibits grant of FC / EC in forest areas having density above 0.6.

11. An attempt was made by the Learned Counsel for the Respondent No. 2 to submit that the guidelines which have been appended as Annexure A-5 and issued by the State Government on 16.07.2010 do not have any statutory force and are not mandatory for being followed. In our view the aforesaid contention has no force as a perusal of the same goes to show that the introduction itself reads as follows :

“Guidelines for diversion of forest land for non-forestry under Forest (Conservation) Act, 1980 – for stipulating the norms for survey and investigation (Prospecting of ores) on forest land.”

भारत सरकार पर्यावरण एवम वन मंत्रालय, नई दिल्ली का पत्र क्रमांक F.No. 5-3/2007 -FC दिनांक 16.12.2008 एवम कार्यालय पत्र क्रमांक / भू - प्रबंद / खनिज / परिपत्र - 2009/115-13/611, दिनांक 12.03.2009

12. It clearly therefore, stipulates that these guidelines have been framed for the purposes of diversion of forest land for non forest purposes land and under instructions from the Government of India, Ministry of Environment of Forest & CC contained in the letter dated 16.12.2008. It is also spelt out that this has been so looking to the requirement under the Forest

Conservation Act 1980. Assuming that these guidelines are not statutory as contended by the Learned Counsel for the Respondent No. 2 it cannot be denied that guidelines have been framed for dealing with the issue on a uniform basis. In the absence of the guidelines it can always be argued that there is arbitrariness and different yardsticks are being adopted for either accepting or rejecting an application which would be contrary to the provisions contained in Article 14 of the Constitution of India. We are of the considered view that the guidelines which have been framed even as an administrative action though not accepting the contention of the Respondent No. 2 that they are non-statutory need to be observed and followed. We hold that application for the aforesaid guidelines is in the spirit of Article 14 of the Constitution of India. And as such the contention of the Learned Counsel for the Respondent No. 2 project proponent that the guidelines are not mandatory cannot be accepted. Even in the administrative matters the applicability of equal application of laws needs to be followed. An attempt was also made to argue that the guidelines are only applicable in the case of prospecting licenses and not

for mining operation. We are of the view that in case no permission for prospecting licenses can be granted in Forest areas having density of 0.6 or more than the question of granting permission or recommending such case favourably for grant of FC to carry out mining operation in any case cannot be granted. What applies as, a restriction or a prohibition against prospecting necessarily applies even more to actual mining operation.

13. In the light of the above, we gave two options to the Learned Counsel for the Respondent No. 2 as well as the Learned Counsel for the State. The first option was to permit the State Government to place before us the relevant record to show as to why the recommendation and the findings given by the Sub-divisional forest vide his report Annexure A-4 dated 20.10.2015 and the contents of form no. 3 stating the forest density as 0.7 to 0.8 with its reasons were not accepted by the superior authorities and the State Government deciding to recommend the case of the Respondent No. 2 contrary to the guidelines that a forest area having the density of more than 0.6 should not be recommended for grant of forest clearances.

14. The second option given was that we remand the matter of the MoEF to re-consider the issue. This be done in the light of the fact and material that has come to light and which has been considered by us here in above which includes the contents of Form 3 and its accompanying documents / guidelines sent by the SDO Forest stating the Forest density as 0.7 to 0.8 and his reasons for holding to which we have reproduced here in above.

15. In the light of the above the Learned Counsel for the Respondent No. 2 submitted that the matter be remanded for consideration of the matter *De-Novo* from the stage 2 and the FAC may be directed to take into consideration the record of the State Government and the forest officials as to ascertain the reasons for disagreement with the findings given by the SDO Forest in his report in form 3 Annexure A-4 and part 1 of the same. To the above the Learned Counsel for the Appellant in Appeal No. 11/2017 had no objection.

16. We are therefore, of the view that the order dated 04.01.2017 deserves to be set aside for consideration of the issue afresh in the light of the discussion contained hereinabove. We also direct that the issue

to be decided at the earliest and preferably within 30 days of the submission of the certified copy of this order. It would be open for both the parties to place the entire material which has been filed before us or any other material which they seek to be considered by the MoEF for this purpose. So far as the MoEF is concerned it may also call for the relevant record from the State government. In case the meeting of the committee is not scheduled to be held within 30 days the matter shall be placed in the agenda for consideration in the next meeting to be held and decided without delay. While doing so we would expect that reasons be recorded for arriving at a decision either way.

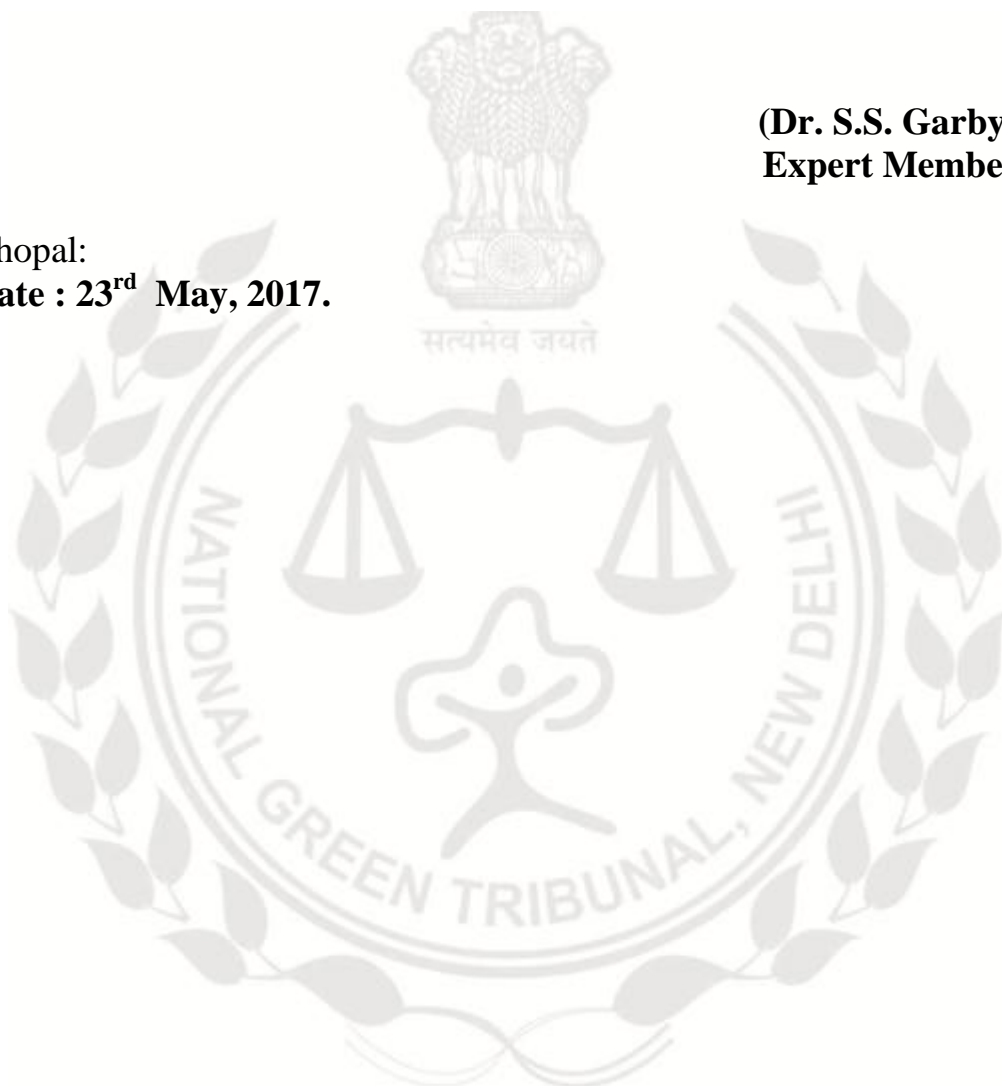
17. In so far as the Appeal No. 18/2017 is concerned none has appeared today before us. The Appeal No. 18/2017 seeks to challenge the order dated 05.01.2017 passed by the State Government in consequence of the order dated 04.01.2017 which has been set aside by us while deciding the Appeal No. 11/2017 as such the Appeal 18/2017 also stands allowed, however, we have not stated anything with regard to the merits of the matter in that Appeal.

18. Both these Appeals No. 11/2017 & 18/2017 stand disposed of with all pending M.As as above.

(Mr. Justice Dalip Singh)
Judicial Member

(Dr. S.S. Garbyal)
Expert Member

Bhopal:
Date : 23rd May, 2017.



NGT