

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**Original Application No. 92/2013**

**In the matter of :**

1. Kallpavalli Vrishka Pempakamdarula  
Paraspara Sahayaka Sahakara Sangam Ltd.  
(Kalpavalli Tree growers Mutually aided Cooperative Society Ltd).  
A legal entity registered under the  
Mutually Aided Cooperative Societies Act, 1995  
Through its President  
Having its registered office at  
Chenakotapalli, Anantapur District- 515101
2. Timbaktu Collective  
A Society registered under the Indian Society Registration Act,  
1860  
Through the President  
Having its registered office at  
46, Prim Rose Road  
Banglore-560025
3. Society for Promotion of Wastelands Development  
A Society registered under the Indian Society Registration Act,  
1860  
Through its registered office at 14 A Vishnu Digambar Marg  
New Delhi- 110002

.....Applicants

Versus

1. Union of India  
Through Secretary  
Ministry of Environment and Forests  
Paryavaran Bhavan, CGO Complex, Lodhi Road  
New Delhi- 110003
2. State of Andhra Pradesh  
Through its Chief Secretary  
Hyderabad- 500022
3. Principal Secretary Forest to the Government of Andhra Pradesh, Hyderabad, 795004
4. Andhra Pradesh Pollution Control Board,  
A-3, Prayauaraana Bhavan, Industrial Estate Sanath Nagar,  
Moosapet,  
Mossapet Hyderabad,  
Andhra Pradesh-500018,

- Through its Member Secretary
5. Enercon (India) Limited  
Through its Director  
Having its registered office at  
No. 10, 3<sup>rd</sup> Floor, Casa Birgitta Bruton Road, M.G. Road,  
Banglore-560025
6. Ministry of New and Renewable Energy,  
Through its Secretary,  
Block No. 14, CGO Complex,  
Lodhi Road, New Delhi- 110003

.....Respondents

**Counsel for Applicant/Appellant:**

Mr. Anand Sharma, Adv. , Mr. Colin Gonsalves, Adv.

**Counsel for Respondents:**

Ms. Neelam Rathore, Adv along with Mr. Vikramjeet and Ms. Syed Ahmed, Advs., Mr. M.P. Sahay, Adv., Mr. Vikas Malhotra, Adv. for Respondent No.1, Mr. P. Vikas Reddy, Adv., Mr. Pattabhiram Vardevu, Adv., Mr. Ram Vardevu, Adv., for Respondent No. 2 and 3, Mr. P. Rao, Mr. Vikant Reddy, Advs. for Respondent no. 2, Mr. Dhananjay Bajjal, Adv. for Respondent no. 3, Mr. Raghaqvendra with Mr. Nikhil Nayyar, Advs., Adv., Mr. Ambuj Agrawal, Adv., Mr. N. Sai Vinod, Adv. for Respondent No. 4, Mr. Himinder Lal with Ms. Rajni Ohri Lal, Advs. Mr. Shyam Divan, Sr. Adv. , Ms. Krishna, Adv. for Respondent No. 5., Mr. Amit Chadha, Mr. Atin Chadha, Mr. Shobhit, Advs. for Respondent No. 6,

**ORDER/JUDGMENT**

**PRESENT :**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**

**Hon'ble Prof. A.R. Yousuf (Expert Member)**

**Hon'ble Mr. Bikram Singh Sajwan (Expert Member)**

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**Dated : July, 2015**

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

**JUSTICE M.S. NAMBIAR (JUDICIAL MEMBER):**

1. The application is filed under Section 15 of the National Green Tribunal Act, 2010 seeking the following relief:

“(a) Pass an order for setting up of an Expert Commission of enquiry to look into the allegations contained in this complaint, to visit the Kallpavalli area and to make a report to this Tribunal on the possible adverse effects both long term and short term of the windmills project and what needs to be done to protect the people and ecology of the area.

(b) In the alternative to appoint Shri. Sagar Dhara, Director of Cerena Foundation to enquire into the facts contained in the Petition and to make a report to the Tribunal.

(c) For an order directing the respondents to take all remedial steps to check and restore all the water bodies, do large scale plantation, make retaining walls/pitching, start nurseries, control the soil erosion and do such restoration work as the Expert Commission may direct by a series of interim directions and further to take all the remedial steps to improve the quality of air free from pollution.

(d) For an order directing the respondents to call meetings of the Gram Sabha and Panchayats and after holding such meetings in a democratic and transparent manner and record the decisions taken.

(e) For an order directing the respondents to dismantle and remove all the windmills from the area and to take specific steps to

restore ecology and the environment to its original state in the region.

(f) For an order directing respondent no.1 to prosecute all the heads of the respondents no. 1 to 4 under section 17 of The Environment (Protection) Act, 1986.

(g) For a direction to respondent no. 1 to include windmill farms in Category A of the Schedule of the Environmental Impact Assessment Notification, 2006.

(h) For an order directing respondents to pay Applicant No. 1 an initial compensation of Rs. 1 lakh and for an order directing appointment of an expert committee to assess the damage caused to the environment and livelihood of the people and thereafter to direct the payment of compensation to the applicant no. 1 subject to the deduction of the payment prayed under.”

First Applicant is Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. (Kalpavalli Tree growers Mutually aided Cooperative Society Ltd, a body registered under the Mutually Aided Cooperative Societies Act, 1995, through its President.

Second Applicant is Timbaktu Collective, a Society registered under the Indian Society Registration Act, 1860, through the President, and

The third Applicant is a Society for Promotion of Wastelands Development, registered under the Indian Society Registration Act, 1860.

2. The applicants would contend that Ananthapur District of Andhra Pradesh whose hills which were barren during 1905, were once upon a time an area of massive dense forest cover. Due to the result of large scale use of wood for sleepers for the railways and extensive bangle making and brick kilns, the hills became barren, though originally the area was rich in wildlife like panthers which were spotted. The district currently has largest number of sheep and goats in the state. The arid climate makes the region suitable for grass and pastures in the hill slopes. Extensive grazing has resulted in stunted growth of trees and shrubs. While so the second applicant society was formed in 1990 by highly qualified young individuals who believe that agriculture was a key to progress and had a vision that by constructive collective work barren lands could be transformed into forest.

3. They purchased 32 acres of land to create an agro forest habitat and regenerated a forest, healed the land and over the years the villagers were motivated to regenerate the forest, to revive water harvesting structures and to convert into organic farming without use of pesticides by close collaboration with 8 villages. By 1993, the second applicant society together with the villagers started planting trees and restoration work. The ecological restoration work consisted

of restoration of water bodies, soil moisture conservation, nursery development, fire prevention etc. Eventually it turned out to be a dense forest. Respondent no. 5 the ENERCON Ltd., a company specializing in wind energy began negotiations with the Government of Andhra Pradesh in 2007 for setting up of wind mills and generation of wind energy. They chose Kallpavalli and the surrounding areas for setting up of 55 windmills, based on the study that the area had high potential for converting wind energy into electricity. Even though the area was covered by forest and extensive afforestation was in progress on the government lands adjoining the villages, both the government and the company ignored it and preferred to go by the obsolete revenue records which showed the area as “wastelands”. However, during the year 2011 the land area in question was converted from “wasteland” to “forest land” and has achieved all the requisite criteria for being declared a bio-diversity heritage site. The applicant has already made an application in the year 2011 before the Bio-Diversity Board for that purpose. During October, 2007 treating the area as wasteland, the company and the government entered into certain agreements for purchase of 48 acres of land on private negotiations, despite the introduction of part IX in the Constitution of India dealing with Panchayats and powers were given to Gram Sabha and the Panchayats to enable them to function as institutions of self government, neither the State Government

nor the company thought it fit to discuss the setting up of wind mills with the concerned Gram Sabha and the Panchayat. The villagers found a flurry of construction activities taking place on the government land within their villages. Though originally they said that they are constructing a 3 metre wide road, eventually they made a 15 metre wide road by cutting the village, up to the hills. On the top of the hills massive concrete construction work was done and using them as a base, 74 meter high wind mills with a potential to generate 800 KW power were set up. The villagers thought that a wind mill and industry would bring money to the area in the form of employment and income generation activities and so did not object to the work. The work on the wind mills began in early 2011 and 55 wind mills have already been erected. It took some time for the villagers to understand the environmental degradation taking place. Bewildered by enormous destruction done, the local villagers through the first applicant started demanding restitution/restoration of the damage done and the compensation for the loss suffered. In order to pacify the local villagers, respondent no. 5 company entered into a contract with the first applicant on 23.03.2011, where it agreed to make a temporary payment of Rs. 20 lakhs towards its Corporate Social Responsibility and also agreed to various terms and conditions like sharing of information, providing employment, restricting the width of the road etc. But the company

violated the terms and conditions of the contract and therefore, the applicants by letter dated 22.11.2011 conveyed the intention to rescind from the contract enclosing a cheque for Rs. 12 lakh. By letter dated 07.01.2013, the contract was terminated but retaining the money. Kallpavalli area was widely known for the abundance of grass that grew on the hill slopes which was more suitable for sheeps and goats. Tens and thousands of these animals used to come from far away villages even during drought periods, as grass grew in abundance. The livelihood of people of Kallpavalli depends on these pasture lands. But with the making of the roads, cutting of the mountains, destruction of grass, water sources and cutting of trees for construction activity and erection of 55 huge steel structures; the grass of Kallpavalli began to mysteriously diminish and in many parts disappeared altogether. As a result the cattles are unable to graze. Due to the construction of roads by deep cuts made in the mountains, the cattle could not climb up the mountains and the livelihood and income of people of Kallpavalli was adversely affected. Over 30,000 full grown trees were cut and thousands of smaller trees and shrubs including freshly planted trees under the afforestation programme were destroyed. The construction work caused huge amount of debris to spill into adjacent fields and into the tanks and water bodies, thus destroying the water bodies wholly or partially. As huge amount of water was required for



construction activities and the water from the traditional water bodies were used. As a result water levels have depleted. The adverse environmental impacts of setting up of cluster of wind mills is not exactly clear, although present research points out irreversible long term ecological damage. The wind mills increase the overall temperature of the area. The whirling of the massive blades reaching 74 meters from the top of a mountain, indicates that the blades are likely to disburse the rain clouds and thus causing fall in rainfall. The blades also dry the ground beneath sapping the moisture content and thus destroying the grass. It is also alleged that for making the roads by cutting the mountain tops and laying of transmission lines, over 30000 full grown trees were cut and thousands of smaller trees and shrubs were destroyed due to the setting up of the wind mills, plastic and metal debris were spread all over the area. Cattles ate them and died. Applicants have mainly relied upon the report "Land grabbing issue and its impacts in Kallpavalli forest of Ananthapur District. Land and resource grabbing through CMD community conserved forest on barren waste lands" prepared by Dr. Leena in this application.

4. According to the applicants the estimated damage of construction of 28.5 kms length and 10 m width of road in an area of 70 acres is Rs. 105 crores, damages of land is Rs. 8.25 crores, at the rate of Rs. 15 lakhs per acre for the area, directly or indirectly affected by road construction, Rs. 150

crores for damages caused to the grass, 0.27 crores for damage to non timber forest produce at 0.1 lakh per year, damage to the water bodies, fish etc is 1.6 crores, damages to the livelihood is Rs. 43.6 crores and contended that total damage would amount to Rs. 212.35 crores. They would contend that in view of the environmental impacts and damages caused, a committee of expert is to be appointed to assess the damage caused to the environment. The applicants also contended that as per the notification of MoEF dated 14.09.2006, wind mills farm projects are not included in any of the categorization listed in schedule I. Hence, setting up of the wind power project does not require environmental clearance from MoEF or State Department of Environment and Forest. They would contend that there should be a direction to include wind mills also in Category A of Schedule I of the notification. It is also alleged that respondent no. 5 has set up the wind mills in violation of the provisions of the Environment (Protection) Act, 1986, and therefore, they should be directed to remove the wind mills from the area and to restore the ecology.

5. Respondent No.1, MoEF in their reply contended that the applicants are actually the beneficiary of the project having received Rs. 20 lakhs from the project proponent and therefore, they are estopped from taking an inconsistent stand in the application Vide letter dated 22.08.2011, State of Andhra Pradesh sought prior approval of the Central

Government under the Forest (Conservation) Act, 1980 for diversion of 38.90 hectares of forest land in Penukonda Addl. I and Koringa Reserve Forest of Ananthapur Forest Division for setting up of 17.60 MW wind power project in favour of M/s ENERCON (India) Pvt. Ltd., the respondent no.5, to set up 22 windmills. Approval under Section 2 of the Forest Conservation Act, 1980 was granted by Ministry of Environment and Forest on 18<sup>th</sup> January, 2013. As per the proposal for setting of 22 windmills, only 509 trees were required to be felled from the said 38.9 hectares of forest area. It was also informed that there are no rare/endangered/unique species of flora and fauna found in the proposed area. Wind Power Project is not included in the Schedule of the EIA Notification, 2006 and therefore, the project does not require environmental clearance.

6. Respondent no. 2 and 3 have filed a joint reply contending that only 2 out of 6 villages fall in Kallpavalli area and the land given to the respondent no.5 was revenue assessed waste land.
7. Respondent no.5 in their reply contended that the process of building a wind farm is a long drawn process which generally takes 6 to 10 years to make it functional. Dry and barren waste land had been handed over to ENERCON (India) Pvt. Ltd in line with the laid down procedures, rules and regulations by the Government of Andhra Pradesh. Only patches of land in Mustikovila and Kogira villages on

footprint basis has been allotted to the company. The location of windmills is far away from human habitation. The company has widened the existing roads and wherever there was absolute necessity, gravel roads were laid. Windmills were erected in bare minimum land on footprint basis. The land consumed for the project is a fraction of thousands of acres of stretch of land in the area. The allegation that grass was mysteriously diminishing in many parts is ambiguous. Destruction of ground water is also farfetched and in any case it cannot be attributed to the wind farm activity. The windmills do not consume any water that may cause depletion of ground water. Their location is on high ridges denying access to ground water to enable exploitation. Photographs taken during the execution of work establish that no trees were existing on the land. The notes of inspection by Tehsildar, Roddam, Ananthapur District shows that the said land is situated on the top of the hill with a considerable height and is unfit for cultivation and is covered with hill rocks, boulders and waste land. It is situated to the North-East of Kogira Village. Company has paid the market value of the land and also executed a written undertaking to pay the difference of market value prevailing at the time of alienation order. The transfer of land was in accordance with the rules and regulations. The death of cattle was not caused by any act of the company. The elected representatives of Zila Parishad Territorial

Constituency clearly stated that there were no cattle fatalities owing to wind mill activity. The wind mill has not caused any harm of any nature to people, crops, cattle and environment or ecology of the area. It is specifically contended that windmill energy projects are not environmentally destructive, hazardous or cause displacement of people. The wind energy is a green and clean which saves fossil fuels and will not cause carbon emissions. The Hon'ble Supreme Court of India on the reports of the Expert Committee of Doctor Kanchan Chopra and the Central Empowerment Committee in IA 1135 in IA 566 in Writ Petition (Civil) 202 of 1995 came to the conclusion that wind energy deserves to be treated differently. Wind mills have arrived in India for more than 2 decades and there is no negative report affecting ecology or environment. The respondent has already commissioned 102 wind mills at Nallakonda site in Ananthapur District of Andhra Pradesh, which can generate around 1,36,000 Certified Emission Reductions (CERs), per annum, which implies that 1,36,000 tonnes of carbon dioxide is being prevented from getting emitted into the atmosphere and 97,750 tonnes of coal is being prevented from being burned annually. The Central Regulatory Commission has released regulations to encourage the wind energy by mediating with all States to purchase a percentage of renewable energy in their emphasis to control climate change. Centre for Wind

Technology was established to study the wind potential in the country. Andhra Pradesh Electricity Regulatory Commission (APERC) has announced the wind power policies in the State of Andhra Pradesh by providing incentives and attractive tariff to encourage non-conventional energy. NREDCAP, which is the nodal agency as per the orders of Government of Andhra Pradesh, accords approval for setting up of wind power projects. There are certain clearances to install and operate wind power project in the State of Andhra Pradesh like wind data showing the potentiality of the proposed site, capacity sanction from the nodal agency, land allotment to the developer from revenue/ forest department as recommended by the Nodal Agency, power evaluation from State Electricity Board, safety approval from Chief Electrical Inspectorate to the governments and commissioning instructions from Distribution Companies. Respondent Commissioned a total of 165.6 MW wind power project in Andhra Pradesh, out of which 81.6 MW project is in Nellakonda region of Ananthapur District which is being referred to as Kallpavalli region by the applicants in their petition. The total cost of the said project is approximately 594 crores. The land was taken on footprint basis for erection of wind turbines, i.e only a small patch measuring not more than 0.60 acres is required to make a concrete foundation on top of which the machine is erected. It was dry and barren wasteland which was handed over to the

company. The windmills are located 4 to 8 kms away from the nearest human habitation. The report of Dr. Leena, appears to be manufactured and targeted against the respondent and the report is not independent. The area is not known as Kallpavalli area but Nellakonda. The report prepared by Prof. Simon Chapman, Professor of Public Health, Sydney University reveals that the fears raked up by the anti wind farm lobby has psychogenic nocebo effect rather than any genuine adverse impact on health. The report of Dr. Leena does not show any methodology through which the study arrived at the conclusions. The report could only be termed observations in the absence of any specific and cogent explanation to the findings. The report of the Central Ground Water Board states that, there is an alarming downward trend in the depletion of ground water table in the said area since the last one decade. It is not mentioned therein that it is in any particular area, much less the Nellakonda region. Flora and fauna is not disturbed by the wind project. Only an extent of 311 acres out of thousands of acres land in the Nellakonda region has been delivered to the respondent company. It was in the interest of smooth implementation of the project, company has paid Rs. 20 lakhs to the applicants. The project is almost complete with only 28 windmills are likely to be installed and commissioned. The rest of 102 windmills have been commissioned except 5 which will be commissioned in a

matter of days. The company refuted the charge that no public hearing was conducted. It was only on the recommendation of the Gram Sabha, possession of the land was delivered to the company. It was due to scanty rainfall and the drought, the streams are dried up. Wind mills were erected far away from the main streams and they have no impact on the drying up of the stream. Locals have been given employment and all were benefited. Though applicants returned a cheque for Rs. 12 lakh along with the letter, the cheque was dishonored for insufficient funds and they suppressed this fact in the application. It is denied that wide roads have been made, the slopes of the hills are distracted to the disadvantage of cattle and animals or in any way disturbed the flora and fauna. The damages quantified in monetary terms are the result of their figments of imagination. As wind farm projects are not included in Schedule I of EIA Notification, 2006, no Environmental Clearance is needed. The non-inclusion of the project in the notification is a conscious policy of the Government and it requires no judicial interference. There has been no violation of any law much less the Forest (Conservation) Act. However, forest land for non-forest purpose was utilized in accordance with the provisions of Forest (Conservation) Act.

8. Respondent no. 6, the Ministry of New and Renewable Energy in their reply contended that there are no ill-effects of wind mills on the health and environment, Clean Development



Mechanics (CDM) is an internationally accepted process to reduce the carbon emission into the environment which is creating a lot of problems including ozone layer depletion and global warming. CDM, exclusively supports only those technologies which help in reducing the green house gas emissions and improves the energy efficiency. Inclusion of wind energy under the CDM is a Certificate that it is a green energy and does not create any environmental hazard. The Ministry promotes wind energy due to its intrinsic nature of carbon abatement. Noise from the windmills is well below the levels which can be termed as 'Pollution'. The area in question was waste land as per the revenue department's record. The rise in temperature and decline in water level cannot be attributed to the setting up of windmills. It could be the effect of global warming in and around the region. The wind turbines only help in reducing the global warming. Ministry is not aware of any detrimental effects such as dispersal of clouds and sapping of moisture due to the windmills. Reports referred by the Applicants only reflect individual studies and opinion of the author. The U. S. Department of Energy in its fact sheet on " Wind Energy Myths" states that the impact of wind energy development birds is extremely low compared to other human related causes like building, communications towers, traffic, and house cats. It is also stated that modern wind turbine produce very little noise. The turbine produces a whooshing

sound as they encounter turbulence in the air but this noise tends to be masked by the background noise of the blowing wind. It is also reported that operating the wind farm at a distance of 750 feet to 1000 feet is no more noisy than a kitchen refrigerator. Similarly, views on noise, health and avian populations are also expressed in the Fact Sheet of New South Wales Government, Dept of Environment, Climate Change and Water and at the website of Union of Concerned State, USA. The windmills do not have any detrimental effect on the surrounding, and they are generators of clean energy.

9. The Applicants have also filed rejoinder contraverting the defense taken in the replies and reiterating the earlier contention. Respondents have also filed replies to the rejoinder refuting the claim and asserting their objections.
10. On the side of the Applicants, three witnesses were examined and their documents were marked. Respondents did not adduce any oral evidence.
11. The Learned Senior Counsel appearing for the Applicant and the respective Respondents were heard.
12. Certain facts are either not disputed or are admitted. The wind power mills are not included in the Schedule of the Environment Clearance Regulations, 2006 (hereafter referred in short as Notification). Therefore, no prior Environmental Clearance, as mandated under Clause 2 of the Notification, is required either from the Ministry of Environment and Forest or the State Environment Impact Assessment Authority

(SEIAA). The non inclusion in the schedule to the Notification is a conscious decision of the Central Government as is clear from the reply of Respondent no.6, the Ministry of New & Renewable Energy.

13. By proceedings E3/4032/2004 dated 27.07.2006, the proposal of RDO Penukonda for alienation of 38.68 acres namely 13.03 acres in survey no. 762 of Kogira Village, 1.88 acres in survey no. 194 of Boxampalli Village, 5.62 acres in survey no. 377 of Thurakalapatnam Village, 2.75 acres in survey no. 139 of Sanipalli Village, 2.45, 5.78 and 7.17 acres respectively in survey no. 236, 237 and 238 of Paddipally Village to Respondent No. 5 for establishing wind farm project was accepted and permission to give advance possession of the said lands to the Respondent No. 5 on payment of the market value of Rs. 25,000/- per acre was granted. Respondent No. 5 pursuant to the order paid the market value of Rs. 9, 67, 000/- on 03.10.2007. By proceeding E3/4030/04 dated 24.10.2007 an additional extend of Rs. 48.91 acres I.e 10.90 acres in survey no. 627, 4.09 acres in survey no. 628, 7.93 acres in survey no. 629, 11.20 acres in survey no. 630 and 14.79 acres in survey no. 631, of Mustikovila Village which was earlier permitted to be given in advance possession to Respondent No. 5 by proceedings of the District Collector dated 31.07.2006, on recording receipt of the total market value of Rs. 12, 22, 750/- was given advance possession by proceeding

E3/1497/2011 dated 15.06.2011, 29.34 acres i.e (2.28 acres in survey no. 768, 4.50 acres in survey no.769, 5.78 acres in survey no. 770, 2.05 acres in survey no. 771, 4.55 acres in survey no. 772, 2.17 acres in survey no. 773 and 8.01 acres in survey no. 774, of Kogira Village of Roddam Mandal was permitted to be given in advance possession to Respondent No. 5 on payment of market value fixed by the District Collector at Rs. 60,000/- per acre. By proceeding E3/1498/2011 dated 15.06.2011, 9.34 acres i.e 0.69 acres in survey no. 767, 4.84 acres in survey no. 775, 0.62 acres in survey no.776, 0.69 acres in survey no. 777, 0.64 acres in survey no. 778, 0.62 acres in survey no. 779, 0.62 acres in survey no. 780, and 0.62 acres in survey no. 781, of Kogira Village was also permitted to be given advance possession on deposit of market value at the rate of Rs. 60,000/- per acre fixed by the District Collector. Respondent No. 5 had deposited the market value and had obtained advance possession of the said lands. By proceeding dated 18.01.2013, the Ministry of Environment and Forest, based on the proposal of the State Government by letter dated 22.08.2011 seeking prior approval in accordance with Section 2 of the Forest Conservation Act, 1980, for diversion of 38.90 of forest land in Penukonda Addl. 1 and Koriga Reserved Forest at Ananthapur Forest Division, approval was granted subject to the conditions enumerated therein including compensatory afforestation be raised in 43.38

hectares. Pursuant to the said approval, by proceeding dated 13.02.2013, the State of Andhra Pradesh granted permission to the Principal Chief Conservator of Forest for diversion of the said 38.90 hectares of land for setting up of the wind power project in favour of Respondent No. 5, making it clear that the total forest area utilized in the project shall not exceed 38.90 hectares.

14. The applicants have produced some materials including exhibit pw2/2, "Land grabbing issue and its impacts in Kallpavalli forest of Ananthapur District of Andhra Pradesh land and resource grabbing through CDM in community conserved forest on barren waste land" by Dr. Leena examined as PW 2 and copies of reports like "Summary of new evidence, adverse health effects and industrial wind turbines" by Carmen ME Krog and Brett S. Horner, to contend that the wind mills are not eco-friendly and they adversely affect human beings, wild animals, birds and also cause climate change. It is based on this contention the applicant would seek a direction to the Government to include wind mills in the Schedule to the Notification. Respondents on their part also produced materials including copy of the report "the wind energy fact sheet" by Department of Environment Climate Change, Govt. of New South Wales and "Fact sheet on wind energy myths" by U.S Department of Energy, to contend that there is no adverse affect on ecology, human beings, animals, birds or climate due to the wind

power plants. At the outset it is to be noted that it is not for the Tribunal to lay down the policy and it is for the applicants to canvas their submission before the Central Government, if any amendment is necessary to the Environment Clearance Notification of 2006.

15. The wind turbine consists of the tower, the control box, the main axle with braking system, the gear box, the electrical generator, the electronic control systems and the blades. Tower is cylindrical, built of steel and usually consists of two or three joined sections. The construction is similar to that of towers which supports the lights at the stadiums or on national highways. The control box contains the mechanical sub systems (main axle, braking system, gear box, electrical generator, blades and transformer). The main axle with the braking system is similar to the steel axle of a car with hydraulic disc breaks. The gear box is also similar to that of a car except that it has only one gear. The electric generator is similar to the those used in electricity generating stations with generator sets. The electronic control systems are composed of one or more sub systems of micro controllers to ensure safe and regular operation of the wind turbine in all conditions. The blades are made of synthetic material fibre glass and special resins similar to those used in sail boats and are designed to withstand extreme strains. There would also be a transformer which is not different from the transformers attached to the electricity poles. It is only a

machine which converts energy from the wind to electricity. Wind turbine is thus akin to a small electricity generating plant with the difference that it uses wind as fuel. Aerodynamic noise can be corrected by careful design of the blades by the manufacturers. The level of audible noise from a wind turbine, built to modern specifications, at a distance of 200 meter is said to be lower than the back ground noise level of a small country side town, which normally cannot be said to be a nuisance. No scientific study have specifically evaluated and established that exposure to low frequency sound from the wind turbines adversely affects human beings, animals, birds or environment.

16. There is no acceptable data or evidence that the audible or sub-audible noise created from wind turbine have any direct physiological effects. There is no acceptable data or evidence to hold that the sound associated with the wind turbines will result in noise levels, injurious to health of human beings. There is also no material to hold that the windmills cause any adverse effect on the animals, birds or climate. Based on the materials produced and the evidence tendered, we find no material to hold that wind power plants have any adverse environmental impact warranting any direction to the government to modify the Schedule to the Notification of 2006.

17. The only question to be decided is whether the windmills, installed by the respondent no. 5 ENERCON INDIA LTD. COMPANY has caused any adverse environmental impacts and if so, whether there should be any direction for restitution or restoration of the environment.

18. It is admitted by respondent no. 5 that they started constructing roads and civil works in August 2010 which was completed by November, 2011. The windmills were erected from July 2011 and completed by January, 2012. Wind turbines were commissioned by May 2013. Subsequently, 13 more were commissioned. According to Respondent No. 5, by 31<sup>st</sup> August, 2013, they have installed 20 more windmills making the total windmills commissioned at 135. Though the applicants would contend that the windmills were installed in the forest destroying the forest by cutting or uprooting thousands of trees and have relied on the photographs taken by PW3, Mr. Sachin Kumar. Respondent No.5, on the other hand, also produced photographs to show that at the places where the wind turbines are installed, there were no trees. It was contended by the respondent no. 5 that it was not a forest at all but a waste land. The State of Andhra Pradesh also supported that said contention. But on the materials we are not able to fully accept the submissions of the learned senior counsel appearing for the respondent no. 5 as well as learned senior counsel appearing for the State of Andhra Pradesh. Though reliance was placed by the



learned counsel on the classification of the land in the revenue records evidenced by the report of Tehsildar, Roddam dated 15.05.2013 submitted to the Divisional Forest Officer wherein land is described as 'adavi' which means "Government Un-assessed waste land". The said report shows that the total extent of land in survey no. 669 of Kogira Village is 3870.44 acres. Out of this land, 1056.57 acre is described as forest, 2000 acres as land given to TIMBUCTU, 51.71 acres as land given to M/S ENERCON, 339.95 acres as land assigned to landless poor and the balance of 339.91 as unfit for cultivation. Proceedings of the District Collector, Ananthapur E/3/4032/2004 dated 27.07.2006, whereby permission was granted for giving advance possession of 38.68 acres to respondent no. 5 for establishment of wind farm project on payment of market value, shows that out of the said 38.68 acres, 13.03 acres is in Kogira Village. Proceedings of the District Collector E/4030/2004 dated 24.10.2007 shows that 48.91 acres permitted to be given advance possession to respondent no. 5 for construction of windmill is in Mustikovila Village. So also proceedings of the District Collector E3/1497/2011 dated 15.06.2011 where under 29.34 acres was permitted to be given advance possession to respondent no.5 shows it is in Kogira Village. Proceedings of District Collector E3/1493/2011 dated 15.06.2011 where under permission was given for giving advance possession of 9.34 acres shows

that it is in Kogira Village. The total extent of land thus given to the respondent no. 5 which falls in Kogira Village is 51.71 acres. It is true that in the report submitted by Tehsildar Roddam to the Divisional Forest Officer, Ananthapur dated 15<sup>th</sup> Feb, 2013, it is specifically stated that 3870.44 acres in survey no. 669 of Kogira Village is classified as government unassessed waste (adavi) land and that the entire area is covered by hillocks and land masses. But the proceedings of the Ministry of Environment and Forest dated 18.01.2013, establish that by order dated 22.08.2011, the State Government of Andhra Pradesh had sought prior approval of the Central Government in accordance with Section 2 of Forest Conservation Act, for diversion of 38.90 hectares of forest land for setting up of 17.60 MW of wind power projects by respondent no. 5 and by letter dated 22.05.2012, Central Government had accorded in principal, stage 1 approval and as the State Government reported compliance of the conditions stipulated in the principal approval, the Central Government conveyed the approval of Stage II, for diversion of 38.90 hectares of forest land in Pannukonda Addl. I and Kogira Reserved Forest of Ananthapur Forest Division for the said project. Subsequently, by proceeding dated 13.02.2013, the State of Andhra Pradesh accorded permission to the Principal Chief Conservator of Forest for diversion of the said 38.90 hectares of land. It is thus clear that out of the land transferred by the State of Andhra Pradesh in favour of

respondent no. 5, 38.90 hectares (96.1 acres) which falls in Kogira Village and Penikonda Village are forest land. In the light of these materials, it can only be found that portion of the land wherein respondent no. 5, commissioned the windmill project is a forest land.

19. The photographs produced by the applicants would definitely indicate that, roads have been constructed by respondent no. 5 to take the materials for installing wind turbines up the hills and for that purpose, land have been disturbed by sharp cuttings. True in compliance of the direction for compensatory afforestation to be raised over 43.38 hectares, identified non-forest land as shown, in the approval granted by the Ministry of Environment and Forest by proceedings dated 18.01.2013, respondent no.5 has already carried out the afforestation.

20. Condition no. vii of the order dated 13.02.2013, where- under the State of Andhra Pradesh permitted diversion of 38.80 hectares of land in favour of respondent no. 5, deals with the formation of roads and it reads as follows:

*‘The alignment of roads in the proposed area shall be done by a recognized firm and got approved by the Divisional Forest Officer concerned before implementation of the project. The approach road will, however, be available for use of the Forest Department or any person authorized by the Forest Department.’*

21. It is in furtherance to the said condition incorporated by the Ministry of Environment and Forest in the approval the

same condition was stipulated as condition No. 7 in the order of transferring the land to respondent No.5.

22. There is no material to show that respondent no. 5 had obtained any such approval from the Divisional Forest Officer concerned as provided therein. Respondent No. 5 has also not raised any such plea. Moreover, the report submitted by Dr. P. S. Raghavaiah, I.F.S., Divisional Forest Officer, Ananthapuram, to the Conservator of Forest, Anantpuram Circle, Anantapuram also does not show that any such approval was granted. Therefore, on the basis of materials placed before us, it can only be found that no approval was in fact sought or granted.

23. The applicants would contend that as per agreement dated 23.03.2011, Respondent no.5 accepted the case of the applicants that the Vanasamrashana Committee carried out soil and water conservation works and, plantation works and thereby regenerated 7000 acres of forest on the revenue waste land since 1994 and that many poor families are getting their livelihood from the said forest and the company had caused destruction to the area by constructing 10 kms road and therefore, by the said agreement, they agreed to pay a compensation of Rs. 20 lakhs for the destruction that had happened in Kallpavalli area and they unambiguously admitted that “extra compensation will be paid by the company if any destruction happens in the future in Kallpavalli area” and hence, the company cannot wriggle out

of the liability to compensate the destruction caused to the environment and therefore, they are not entitled to dispute the entitlement of the applicants. The Leaned counsel also argued that though the company had agreed under the said agreement to provide information to the villagers, they failed to comply with all the conditions and therefore, by letter dated 22.11.2011, the failure was pointed out to the company, to which the company sent a reply disputing the entitlement and by the said repudiation, the contract was broken by the company and as a result by letter dated 10.1.2013, the applicants terminated the contract and the compensation of Rs. 20 lakh provided by the company originally is not sufficient to compensate the damages caused and, therefore, the applicants are entitled to the compensation to be assessed by an expert body. The learned counsel appearing for the respondent no.5 argued that when the applicants have no right over the land, they are not entitled to claim any compensation for themselves and in any case, based on an agreement which even according to the applicants they have terminated, no damage could be claimed. The learned counsel also pointed out that Rs. 20,00,000/- was paid to the applicants, in order to avoid the obstructions caused by them so as to purchase peace and to avoid obstacles in the smooth functioning of the project, and that too as a part of their social responsibility and hence, the applicants are not entitled to claim any amount and that too

when they sent the cheque for Rs. 12 lakh alleging that it is in repayment of the amount paid by the company and the cheque when presented for encashment, was dishonored by the bank for want of funds. It is argued that, in law, the respondent no. 5 is not liable to pay any damages to the applicants.

24. Though the applicants would content that they have rejuvenated the waste land into a forest and reliance was placed on the PW2/2 report submitted by PW2 and also relied on the oral evidence, tendered by the witnesses, we find no material to hold that any right was granted to the first applicant in respect of any extent of land in the Kallpavalli areas by any authority as claimed by them. Proceedings of Mandal Revenue Officer Chennekaothapli dated 21.02.1994 would only show that M/s TIMBAKTU Collective, the applicant no. 2, was permitted to take forestry activity in tune with the guidelines issued in GOMS no. 218 of Andhra Pradesh Government in respect of a total extent of 1000 acres in survey no. 314 in and around the Sappadi Venka both for Neem plantation and water shed development programme. It is also made clear that neither applicant no. 2 nor any beneficiary working under them will have any right over the land though they were permitted to take the usufructs and other produces that may accrue from the area allotted to them. Therefore, even if it is taken that, the applicants have been rejuvenating the land; they have no

right to claim compensation by virtue of the said order. Though it is alleged that damage has been caused to the cattle contending that many cattle died by consuming plastic and metal debris because of the activities of the respondent no. 5, we find no material to support much less establish the claim.

25. From the materials produced and the evidence on record, it can only be said that while setting up the wind mills, respondent no.5 had constructed roads and in that process caused damage to the trees and also to the ecology by cutting the hills to make the roads. But there is no material to hold that the entire damages were caused only within the area transferred in favor of respondent no.5. As stated earlier pursuant to the proposal forwarded by the State of Andhra Pradesh to the Ministry of Environment and Forest seeking approval for diversion of 38.90 hectares of forest land in favor of M/s ENERCON India Pvt. Ltd, approval was accorded by the Ministry of Environment and Forest by order dated 22.05.2012. The proposal submitted by the State of Andhra Pradesh shows that the DFO had prepared a compensatory afforestation scheme for the 39 hectares of forest land to be diverted and the non forest land identified was having an extent of 107.22 acres (43.38 hectares) with a financial outlay of Rs. 100.75 lakhs over a period of seven years from 2013 to 2020 and the user agency had already deposited 100.75 lakhs. By GOMS 19 dated 13.02.2013, Government

of Andhra Pradesh granted permission to the Principal Chief Conservator of Forest for diversion of the 38.90 hectares of forest land in favor of M/s ENERCON. It also establishes that the compensatory afforestation is to be raised over 43.38 hectares of non forest land in survey no. 229/1 of Mulakanur village, survey no. 1286, 1287, 1288/A, 1313/A, 1313/B, 1313/C, 1314/A. 1328/1, 1329, 1334, 1346/1, 1358 and 1359 of Cherlopalli Village. It further shows that Rs.100.75 lakhs has already been paid by respondent no.5 for compensatory afforestation in addition to the cost of 50% NPV of the forest area for diversion and of lease rent for establishment of the wind power project. If that be so, respondent no. 5 is not liable to pay damages for the loss caused to the trees or the land within the area diverted because of the payment of Rs. 100.75 lakhs for compensatory afforestation already made.

26. But it is clear from the evidence and the materials on record that inspite of the specific provision in the permission granted to the Principal Chief Conservator by the State and the order transferring the land to Respondent No. 5 that alignment of the roads in the above area should be done by a recognized firm and it should be got approved by the concerned DFO. This stipulation was not complied with. The evidence also establish that while constructing the road, extensive damage was caused to the topography, the surrounding areas, ecology and environment. Respondent



No. 5 is, therefore, bound to compensate the damage and degradation caused to the ecology and environment. We, therefore, direct Respondent No. 5 to pay an environmental compensation of Rupees Fifty Lakhs (50, 000, 00 /-).

27. It is also clear that extensive damage was caused to the trees while constructing the road. We, therefore, direct Respondent No. 5 to plant trees on either side of the road constructed by them in the area and not to cause dust to emanate from the road so as to protect the environment, as a precautionary measure.

28. The applicants are not entitled to claim compensation or a direction to Respondent No. 5 to dismantle the windmills or any of the other reliefs sought for.

29. In view of the above detailed discussion, we pass the following directions for restoration and restitution of the environment and ecology:

- (i) Respondent No. 5 shall deposit Rs. 50 Lakhs as environmental compensation with the Andhra Pradesh Pollution control Board within one month. The Pollution Control Board in consultation with the State Forest Department shall utilize the amount, only for the restoration of ecology and environment of that area. The compliance report shall be filed before the Tribunal within two months.
- (ii) Respondent No. 5 shall plant trees of local indigenous species under the guidance of State Forest Department on

either side of the road constructed in this area upto the top of the hill where the wind turbines are installed. It is the duty of Respondent No. 5 to maintain these trees.

(iii) Respondent No. 5 shall plant trees on the hill top around the wind turbines and shall maintain it as a green area.

(iv) Respondent No. 5 shall not cause any plastic material to be scattered either on the top of the hill or on the surrounding area to prevent any pollution caused by the plastic.

30. A compliance report shall be filed within three months and thereafter a progressive report once in every six months for five years.

31. The application is disposed of accordingly. Parties to bear their respective cost.

New Delhi,

Dated:.....

....., CP  
(Swantanter Kumar)

....., JM  
(M.S. Nambiar)

....., EM  
(A.R. Yousuf)

....., EM  
(B. S. Sajwan)