

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 169/2016/EZ

**MANOJ KUMAR BANARA & ORS.  
VS  
STATE OF ODISHA & ORS**

**CORAM:** Hon'ble Mr. Justice (Dr.) P. Jyotimani, Judicial Member  
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

**PRESENT:**

<b>Applicant</b>	<b>: Mr. Sankar Prasad Pani, Advocate</b>
<b>Respondent No.1</b>	<b>: None.</b>
<b>Respondent No. 2</b>	<b>: Mr. Gora Chand Roy Choudhury, Advocate Ms. S. Roy, Advocate</b>
<b>Respondents No.3</b>	<b>: None.</b>
<b>Respondent No. 4</b>	<b>: Mr. Deepak Kumar Pani, Advocate</b>
<b>Respondent No. 5</b>	<b>: Mr. Debashis Kundu, Sr. Advocate Mr. Joydeb Ghorai, Advocate Mr. Ayteshi Kundu, Advocate</b>
<b>Respondent No. 6</b>	<b>: Mr. Soumya Mishra</b>


<b>Date &amp; Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 7 5<sup>th</sup> January, 2017.</b>	<p>Ld. counsel appearing for 4<sup>th</sup> Respondent undertakes to file affidavit in course of the day after serving copies on the other side.</p> <p>In our order dated 03.01.2017, based on submission made by Mr. Debashis Kundu, Id. Senior Counsel appearing for the 5<sup>th</sup> Respondent, viz., the project proponent that the project has got the forest clearance, we had directed to produce the same and also directed "till then no further construction and tree felling will be made by the 5<sup>th</sup> Respondent."</p> <p>Today the Senior Counsel has produced the document dated 6.2.93 which is the forest clearance</p>

originally granted by the Assistant Inspector General of Forest. Admittedly, the Forest Conservation Rule was not in existence at that time. Forest clearance granted by the Assistant Inspector General of Forest is as follows:-

*“Sub:- Diversion of 1419.95 ha of ofrest land for the purpose of Iron Ore based industries at Jakhapura (Near Daitari) in Cuttack District of Orissa.*

*I am directed to refer to your letter No. 30506/F&E dated 23<sup>rd</sup> December, 1992 on the above mentioned subject seeking prior approval of the Central Government in accordance with Section-2 of the Forest (Conservation) Act, 1980 and to say that the proposal has been examined by the Advisory Committee constituted by the Central Government under Section 3 of the said Act.*

*2. After careful consideration of the proposal of the State Government and on the basis of the recommendation of the above mentioned Advisory Committee, the Central Government hereby conveys its approval under Section 2 of Forest (Conservation) Act, 1980 for diversion of 1419.95 ha of forest land for the purpose of Iron Ore based Industries at Jakhapura (Near Daitari) in Cuttack district subject to the following conditions:-*

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- i. Legal status of the forest land will remain unchanged.*
- ii. No Forest land will be utilized for construction of factory, township etc.*
- iii. Compensatory plantation to be raised over equivalent non-forest land which will be notified as protected forest under Indian Forest Act.*
- iv. 176 ha of forest area proposed for construction of township should be located in the non-forest area and the proposed area should be used for green belt plantation using mainly indigenous species at the cost of the project.*
- v. No forest land should be utilized for rehabilitation of oustees.*
- vi. In 76 ha forest area which contains 1.13 lakhs trees, no tree cutting shall be done & this area shall be part of green belt.*
- vii. Free supply of firewood shall be given to the labourers working on the project.*
- viii. In the green belt indigenous species shall be planted.*
- ix. Conditions stipulated while granting site clearance/ environmental clearance shall be strictly adhered to.*

*Asst. Inspector General of Forest.”*

Subsequently after the rules were framed being

Forest Rules, 2003 original forest clearance came to be modified by an order of MoEF dated 13/17.1.2005 deleting condition No.2 of the final approval dated 3/4.2.93 referred to above. Therefore, by virtue of the order 13/17.1.2005, the original forest clearance granted on 3.2.1993 has been reiterated, however, by cancelling condition No. 2 which states that no forest land will be utilised for construction of factory, township, etc. Therefore, it is clear that as on date the 5<sup>th</sup> Respondent has a valid Forest Clearance being user agency.

However, we are concerned about clause 6 of the Forest Clearance dated 3.2.1993 which prohibits user agency in cutting of 1.13 lakhs trees situated at 76 ha and the Id. counsel for the 5<sup>th</sup> Respondent on instruction from Senior Manager (Legal) of 5<sup>th</sup> Respondent would submit that the said 76 ha are not under their possession and they have not cut any trees in the said area.

Recording the said statement we direct that either the 5<sup>th</sup> Respondent or any other person shall not be permitted to cut any tree in that area.

In view of the above, the order passed on 3.1.2017 stands modified to the effect that 5<sup>th</sup> Respondent shall be entitled to act as per FC granted on 3.2.1993 as modified on 13/17.1.2005.

In the meanwhile, we direct the DFO to inspect



the portion concerned and file a detailed status report on physical features.

Ld. counsel for the applicant is entitled to file rejoinder.

Ld. counsel for the 5<sup>th</sup> Respondent is entitled to file document with proper affirmation with advance copies on the other side. He is also at liberty to file counter affidavit to the O.A.

**Post on 07.02.2017.**

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Justice (Dr.) P. Jyothimani, JM

05-1-2017

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Prof. (Dr.) P. C. Mishra, EM

05-1-2017

