

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
APPEAL NO. 04 OF 2020**

IN THE MATTER OF:

BIMAL GOGOI AND ANR.

...APPELLANTS

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

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Proof of service

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THROUGH**RITWICK DUTTA****RAHUL CHOUDHURY****KAUSTAV DHAR
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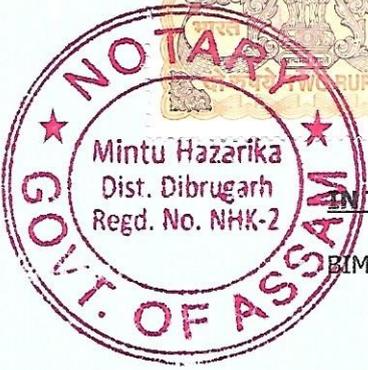
Email: litigation@dclawchambers.com**PLACE: KOLKATA/DELHI****DATE: 29.05.2025**

Serial No... 2565
Date... 29/05/2025

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
APPEAL NO. 04 OF 2020



IN THE MATTER OF:

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ADDITIONAL AFFIDAVIT FILED ON BEHALF OF THE APPELLANTS

I, Bimal Gogoi, S/o Mr. Muhi Gogoi, aged about 54 years, R/o Chandramari, Majar Ali, PO- Golaghat, Assam - 785621, do-hereby solemnly affirm and declare on oath as under:

1. That I am the Appellant No. 1 in the above titled Appeal and am conversant with the facts and circumstances of the case and competent to swear this Additional Affidavit.
2. That the Deponent craves liberty to raise additional submissions or file Additional Affidavit in case need arises during the course of arguments.
3. That the above titled Appeal is pending adjudication before this Hon'ble Tribunal which was filed under Section 16(h) of the National Green Tribunal Act, 2010 challenging the Environmental Clearance dated 11.05.2020 granted to M/s Oil India Ltd for extension drilling and testing of hydrocarbons at 7 (seven) locations under Dibru Saikhowa National Park Area, North West of Baghjan PML, District Tinsukia, Assam.
4. That the following additional fact was not a part of the Appeal No. 04 of 2020, hence, the Appellants want to file additional facts and documents and hence the same shall be placed on record for perusal of this Hon'ble Tribunal which are necessary for proper adjudication of the above-mentioned Appeal.
5. It is to be noted that the project proponent, M/s OIL India Ltd. has proposed a diversion of 0.069 ha for the purpose of non-forestry use i.e., for Extended Reach

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Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division. The proposal for seeking prior approval of the Central Government was considered by the Forest Advisory Committee (FAC) in its meeting held on 04.07.2024. That the FAC thereby decided to recommend the rejection of the proposal for diversion of 0.069 ha for the purpose of non-forestry use i.e., for extended reach drilling (ERD) under Dibru Saikhowa National Park and stated the following:

"4. Decision of the Advisory Committee: After detailed discussion and deliberation with the DDGF (Central), Regional Office, Shillong and State Government officials, the Committee decided to recommend for rejection of the proposal for non-forestry use of 0.069 ha. of Dibru Saikhowa National Park area for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division, Tinsukia in the State of Assam in accordance with the orders of the Hon'ble Supreme Court dated 04.08.2006, reiterated vide its order on 26.04.2023 in T.N. Godavarman Thirumulpad v. Union of India & Ors (WP(C) No. 202 of 2015) read with the Ministry letter No. 11/46/2020-FC dated 12.09.2023".



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Copy of the Copy of the Minutes of the Meeting of the Forest Advisory Committee (FAC) held on 04.07.2024 is annexed herewith as **ANNEXURE A/1**.

6. In this regard, it is pertinent to note that the FAC discussed the order dated 04.08.2006 passed by the Hon'ble Supreme Court in the matter titled **T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2010) 13 SCC 740** which states that no Temporary Working Permissions or Temporary Permit or any other permission, by whatever name called, shall be granted for mining activities in the National Parks, Sanctuaries and Forest areas. That the FAC further discussed the order dated 26.04.2023 passed by the Hon'ble Supreme Court in the matter titled **T.N. Godavarman Thirumulpad vs. Union of India & Ors. 2023 SCC OnLine SC 504** whereby it was directed that mining within the National Parks and Wildlife Sanctuaries and within an area of one (1) kilometre from the boundary of such National Park and Wildlife Sanctuaries shall not be permissible.

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Copy of the Order dated 04.08.2006 passed by the Hon'ble Supreme Court in the matter titled T.N. Godavarman Thirumulpad vs. Union of India & Ors. (2010) 13 SCC 740 is annexed herewith as **ANNEXURE A/2.**

Copy of the Order dated 26.04.2023 passed by the Hon'ble Supreme Court in the matter titled T.N. Godavarman Thirumulpad vs. Union of India & Ors. 2023 SCC OnLine SC 504 is annexed herewith as **ANNEXURE A/3.**

7. It is to be noted that the MoEFCC vide order dated 02.08.2024 in view of the recommendations of the FAC in its meeting dated 04.07.2024 has also rejected the proposal for the diversion of 0.069 ha for the purpose of non-forestry use i.e., for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division. That the relevant extracts of the Order of the MoEFCC is hereby reproduced:

*"The Committee after detailed discussion and deliberation with the DDGF (Central), RO Shilong officials of Government of Assam and after going through the facts and proposal, **decided to recommend for rejection** of the proposal for the non-forestry use of 0.069 ha of Dibru Saikhowa National Park area for Extended Reach Drilling (ERD)..."*



Copy of the letter dated 02.08.2024 by the MoEFCC is annexed herewith as **ANNEXURE A/4.**

8. The Appellants further submit that thereafter, a meeting was scheduled on 11.11.2024, whereby pursuant to the detailed discussion it was decided in the meeting that fresh proposal to be made for the purpose of R&D Study in the same oil well for which extraction proposal was rejected. The relevant extracts are hereby reproduced:

*"That accordingly, a meeting was scheduled on 11.11.2024 under the chairmanship of DGF&SS along with stakeholders (MoEFCC, WII, OIL, DGH). Further, after detailed discussion with Director General, Directorate General of Hydrocarbons, Director, Wildlife Institute of India and Chairman and Managing Director, OIL India Ltd, **it was deliberated in the meeting that in order to carry out R&D study in the same oil well for which the extraction proposal was rejected, the stakeholders were***

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advised that fresh proposal for R&D purpose may be submitted in PARIVESH 2.0 portal seeking permission for ERD Technology".

Copy of the minutes of the meeting dated 11.11.2024 is annexed herewith as

ANNEXURE A/5.

9. Thereafter, in its recent meeting on 27.01.2025, the Advisory Committee further reviewed the proposal to conduct a Research and Development (R&D) Study in the same oil well to evaluate the effects of Extended Research Drilling (ERD) activity. It is important to highlight that, after thorough discussions, the Advisory Committee has explicitly recommended conducting the R&D Study only in specific 4 locations by the Wildlife Institute of India within the Dibru Saikhowa National Park to assess the impact of ERD Technology on the local flora and fauna, with no commercial objectives involved. The meeting also emphasized that the R&D study would be allowed under two key conditions: first, the study will not lead to any diversion of forest land, and second, the results will solely be used to monitor the impact of anthropogenic disturbances on the forest and wildlife, with no commercial use of the findings.

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"5. **Decision of the Advisory Committee:** After detailed deliberations with the Regional Offices, Nodal Officers and officers of the Forest Conservation Division, the Advisory Committee observed that extant proposal has been proposed within a National Park for undertaking a study by the WII, Dehradun to assess the impact of ERD technology on surrounding the flora and fauna without any commercial implications and in the recent past also the Ministry has allowed a pilot research and development study for backfilling of mining voids. The Committee, therefore, recommended that proposed research and development study as proposed by the DGH may be allowed in the proposed locations in the Dibru Saikhova National Park subject to following conditions:

- i. The Research and Development study proposed by the DGH will not cause any diversion of forest land on the surface.***
- ii. The outcome of the proposed activity will not be used for any commercial purpose and will be used purely for research purpose to monitor the impact of anthropogenic disturbance on forests and wildlife for prescribing for not result into any commercial implications.***

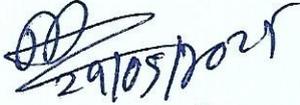
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Copy of the Minutes of the Meeting of the Advisory Committee dated 27.01.2025 is annexed as **ANNEXURE A/6.**

10. It is pertinent to note that the entire scope and nature of the project have changed following the decision made by the Advisory Committee in its meeting on 27.01.2025. **Previously, the Environmental Clearance granted on 11.05.2020 was for "Extended Reach Drilling (ERD)" of hydrocarbons at seven locations within the Dibru Saikhowa National Park. However, based on the Advisory Committee's recommendations, the project's scope is now limited to "Research and Development Study (R&D)" at four specific locations within the Dibru Saikhowa National Park to assess the impact of ERD Technology on the local flora and fauna, with no commercial objectives.** Therefore, given the significant changes to the project's nature and scope, the EC dated 11.05.2020 is no longer valid and is considered infructuous.

11. The Appellants further submit that the Environmental Clearance (EC) dated 11.05.2020 was granted under Category 1(b) of the EIA Notification, 2006, which pertains to Offshore and Onshore Oil and Gas exploration. However, this Category 1(b) is no longer applicable and has lost its relevance in light of the Advisory Committee's recommendations, as the current nature of the project is now limited to an R&D Study only. In this regard, the Advisory Committee in the minutes of the meeting dated 27.01.2025 has stated that no specific category exists for R&D Studies, and therefore, there is a need to establish a new category to accommodate such studies:

While perusing the process of online application, it was noticed that no appropriate category is available in PARIVESH 2.0 for this drilling activity under R&D purpose. There is a requirement of developing one new category as 'R&D' in PARIVESH, which would involve a multi-level scrutiny process, starting from State Government departments to the MoEFCC. Consequently, it is anticipated that the clearance process may require a minimum of 6 to 7 months to complete.


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12. The Appellants submit that the Environmental Clearance (EC) dated 11.05.2020 was granted for drilling and oil exploration purposes related to the extraction of hydrocarbons. However, the R&D Study does not involve any drilling or oil exploration activities. Instead, its sole objective is to assess the impact of drilling and the associated anthropogenic disturbances on the flora and fauna within the Dibru Saikhowa National Park. It is also important to note that the outcome of the R&D Study is strictly prohibited from being used for any commercial purpose. The results will be used solely for research purposes to monitor the impact of anthropogenic disturbances on the forest and wildlife, with no commercial implications. Thus the Appellants herein submit that since the very nature and scope of the project has changed, the EC dated 11.05.2020 is infructuous and hence there is an absolute need for a fresh EC. In this regards, the Appellants submit that the very condition of the EC dated 11.05.2022 states that:

"(v) No further expansion or modification in the plant, other than mentioned in the EIA Notification, 2006 and its amendments, shall be carried out without prior approval of the MoEFCC. In case, of derivations or alterations in the project proposal from those submitted to this Ministry for clearance, a fresh reference shall be made to the Ministry to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any."

(Copy of the EC dated 11.05.2020 is annexed as ANNEXURE A/1 of the Appeal filed by the Appellants at Pg. No. 39).

13. It is crucial to note that, in the present case, there has been a modification in the scope and nature of the project based on the recommendations of the Advisory Committee. As a result, such modifications cannot proceed without obtaining prior approval from the MoEFCC. Therefore, a fresh proposal is be submitted to the MoEFCC for approval.

14. Furthermore, the Appellants herein also submit that that in respect of cases where forest land is involved in the project, the EC will only be granted after the project proponent obtains Stage-I FC. That in the present case, the EC dated 11.05.2020 was granted without obtaining any valid Stage-I FC. That the Project Proponent in



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Form I at Entry No. 21 has stated that the project does not involve forest land and hence does not require Forest Clearance under Section 2 of the Forest (Conservation) Act, 1980. That the project proponent made a deliberate concealment and has obtained the EC dated 11.05.2020 without obtaining any prior Stage-I FC in absolute violation of the observations made by the Hon'ble Supreme Court. That the Hon'ble Supreme Court in the matter titled **Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338** vide judgment dated 06.07.2011 has specifically directed that in respect of cases where forest land is involved in the project, the EC will only be granted after the project proponent obtains Stage-I FC:

"(ix) The Office Memorandum dated 26-4-2011 is in continuation of an earlier Office Memorandum-dated 31-3-2011. This earlier OM clearly delineates the order of priority required to be followed while seeking environmental clearance under the Environment Impact Assessment Notification, 2006. It provides that in cases where environmental clearance is required for a project on forest land, the forest clearance shall be obtained before the grant of the environment clearance.

[...]

123. Part II of our order gives guidelines to be followed by the Central Government, State Governments and the various authorities under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. These guidelines are to be implemented in all future cases. These guidelines are required to be given so that fait accompli situations do not recur. We have issued these guidelines in the light of our experience in the last couple of years. These guidelines will operate in all future cases of environmental and forest clearances till a regulatory mechanism is put in place. On the implementation of these guidelines, MoEF will file its compliance report within six months."

15. The Appellants herein further submit that the OM dated 11.04.2022 bearing No. F.No. IA3-22/10/2022-IA.III [E 177258] issued by the MoEFCC also states that in respect of cases where forest land is involved in the project, the EC will only be



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granted after the project proponent obtains Stage-I FC. The relevant extracts are reproduced herewith:

"2. The Hon'ble Supreme Court judgment in W.P (C) No. 202 of 1995 in the Lafarge Case pronounced inter-alia that the EC in respect of projects involving forest land will only be granted after the project proponent obtains Stage-I Forest Clearance (FC) in respect of the forest land involved in the project, so that fait accompli situation does not arise. In line with the directions of the Hon'ble Supreme Court, the Ministry grants EC only after grant of Stage-I FC, even while the projects/activities get appraised in anticipation of grant of FC."

Copy of the OM dated 11.04.2022 bearing No. F. No. IA3-22/10/2022-IA.III [E 177258] issued by the MoEFCC is annexed herewith as **ANNEXURE A/7.**

16. The Appellants submit that the Environmental Clearance dated 11.05.2020 was obtained without a valid Stage-I Forest Clearance. Furthermore, the current proposal for Forest Clearance to divert 0.069 hectares of land for non-forestry use, specifically for Extended Reach Drilling (ERD) under the Dibru Saikhowa National Park, has been rejected by both the Forest Advisory Committee and the Ministry of Environment, Forest, and Climate Change. Given that the present scope and nature of the project is now limited to a "Research and Development Study (R&D)" aimed at assessing the impact of ERD Technology on the local flora and fauna, with no commercial objectives, the EC dated 11.05.2020 is now rendered infructuous. Therefore, a fresh EC must be obtained from the MoEFCC.

17. The above-mentioned facts and documents are necessary for proper adjudication of the matter. It is submitted that no prejudice will be caused to the Respondents if these facts and circumstances are placed on record. It is therefore most respectfully submitted that the Appeal may be allowed in the interest of justice.



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VERIFICATION

Verified on this 29th day of May, 2025 at Naharkatia that the contents of the above-mentioned Additional Affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Identified by:
Prayanku Buragohain
Advocate
Enrol No: 333 of 2018

Bimal Gogoi

DEPONENT



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Minutes of the Meeting of the Advisory Committee (AC) meeting held on 04.07.2024**Agenda No. 1****File No. 3ASC132/2022/GHY**

Sub: Proposal for seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 in favour of Oil & Natural Gas Corporation Ltd., Jorhat, for non-forestry use of 6.09 ha Reserved Forest land for exploratory drilling location TNAA in Sonai Reserve Forest under Cachar Division in the State of Assam (Online Proposal No. FP/AS/MIN/47775/2020)-regarding.

1. The agenda item was considered by the AC in its meeting held on 04.07.2024. The corresponding agenda note may be seen at www.parivesh.nic.in.
2. During the meeting, all the facts and background of the proposal, along with examination of the proposal in the DSS were presented and explained by the Member Secretary before the AC for their examination and analysis. Committee was also apprised of the relevant provisions under other Acts, Rules and Guidelines relevant to the proposal and their significance by him.
3. The DDGF (Central), Regional Office, Chandigarh and Representative from State of Assam attended the meeting. The Advisory Committee (AC) after thorough deliberation and discussion observed the following:
 - i. Government of Assam vide FRS.102/2022/63 dated 12.08.2022 submitted the above mentioned proposal seeking prior approval of the Central Government under Section 2 of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.
 - ii. The area proposed for diversion is 6.09 ha of Reserved Forest and the density of vegetation is 0.3 having Eco-class I. About 876 trees are proposed to be felled in the proposal.
 - iii. It has been mentioned in the proposal that proposed project does not fall within 10 km radius of the boundary of any PAs. No endangered, Schedule-I species, etc. have been reported in the area proposed for diversion. No protected archaeological / heritage site / defence establishment or any other important monuments is located in the area has been reported. Certificates to this effect has been submitted by DFO concerned.
 - iv. No violation of provisions under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 is observed. Certificate to this effect has been submitted by DFO concerned.
 - v. Compensatory Afforestation was earlier identified in double degraded forest land of 13 ha in Lailapur Barman Basti area in Innerline RF under Hawaithang Range, Dholai of Cachar Forest Division, Silchar under Cachar Forest Division in Cachar district. Later on CA has been identified over 6.09 ha non-forest land adjacent to Burahchapory Wildlife Sanctuary under Nagaon Wildlife Division. CA scheme for 10 years along with site suitability certificate, KML file and DGPS map have been submitted.
 - vi. Sub-office, Guwahati had carryout site inspection of the area proposed for diversion on 08.03.2024 and following has been mentioned:

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- a. DDGF (C), Shillong has recommended the proposal stating that the proposal is site specific. It is also a project of importance considering the energy need of the country the area being proposed is bare minimum and hence is recommended for approval.
 - b. This proposal is the first exploratory/production drilling in the PML, and nearby area involving forest land in the region.
 - c. The area proposed has a waterbody/steam on its northern side. The user agency may be asked to take appropriate measures to ensure that there is no contamination to the waterbody and appropriate structures like cement wall along the bank of the waterbody, the soak pit may be placed away from the waterbody and made impermeable etc., may be taken.
 - d. The estimate for the compensatory afforestation of ₹2,29,24,364.00/- includes 1.5 crore cost for strengthening of infrastructure (vehicle etc.) which may not be appropriate under the CA estimate and no details of the 1.5 crore has been provided. Ministry may take necessary decision.
 - e. The user agency is yet to deposit the entire amount of 2% NPV for the forest area involved in the PML. This matter may be looked into.
- vii. The Committee observed that as per DSS analysis, Kaccha Road and some settlements are visible within the proposed CA land boundary i.e. 6.09 ha non-forest land. Site Inspection of CA land proposed over 6.09 ha non-forest land has not been carried out by RO, Shillong. However, Site-suitability certificate for CA land has been submitted by the State Government. DDGF (C), Regional Office present in the meeting informed Committee that non-forest land proposed for CA is part of the landscape where the State Government eviction drive has taken place and that the landscape is suitable for CA plantations. The Committee considered the submission of DDGF (C), Regional Office, Shillong in this regard and accepted CA over non-forest land over 6.09 ha.
- viii. The Committee was informed that the proposal was placed before REC in its meeting held on 19.12.2023 and REC has recommended the proposal for an area of 2.09 ha. of forestland instead of 6.09 ha. of forest land for exploration. DDGF (C), Regional Office present in the meeting informed Committee that this discrepancy was due to some typographical error and the area recommended by REC is 6.09 ha only. The Committee accepted the submission made by DDGF (C), Regional Office, Shillong.
4. **Decision of the Advisory Committee:** The Committee after detailed discussion and deliberation with the DDGF (Central), Regional Office, Shillong and Assam Government officials, recommended the proposal for grant of '*in-principle*' approval under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 for diversion of 6.09 ha. of Reserved Forest land for exploratory drilling location TNAA in Sonai Reserve Forest under Cachar Division in the State of Assam subject to the general, standard and following specific condition:-
- i. The State Government shall submit revised CA scheme as per extant CAF Rules and Guidelines excluding the costs for vehicle purchase and infrastructure strengthening along with Stage- I compliance report.

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Agenda No. 2

File No. 3-ASB/037/2021/GHY

Subject: Proposal for seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 in favour of M/s. Oil India Ltd., Tinsukia for non-forestry use of 0.069 ha. of forest land for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division, Tinsukia in the State of Assam (Online Proposal No. FP/AS/MIN/28749/2017)– regarding.

1. The agenda item was considered by the AC in its meeting held on 04.07.2024. The corresponding agenda note may be seen at www.parivesh.nic.in.
2. During the meeting, all the facts and background of the proposal, along with examination of the proposal in the DSS were presented and explained by the Member Secretary before the AC for their examination and analysis. Member Secretary also apprised the committee of the provisions under other Acts, Rules and Guidelines relevant to the proposal and their significance.
3. The DDGF (Central), Shillong, Chandigarh and officials from State Government attended the meeting. The Advisory Committee (AC) after thorough deliberation and discussion observed the following:
 - i. Government of Assam vide their letter No. FRS.21/2021/30 dated 17.07.2021 submitted the above mentioned proposal seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.
 - ii. The proposed diversion area is 0.069 ha of Reserved Forest and the density of vegetation is 0 having Eco-class 1 with no tree felling.
 - iii. The component wise breakup of the proposal is submitted as under:

Sl. No.	Component	Forest land (ha)	Non forest land (ha)
1	PAD-1	0.033	2.93
2	PAD-2	0.026	3.358
3	PAD-3	0.01	3.097
Total		0.069	9.385

- iv. It has been mentioned in the proposal that proposed project falls within Dibru Saikhowa National Park. Species like Leopard, elephant, fox, wild Buffalo, Dolphin, Wild pig, Hollock Gibbon, Slow Loris, Capped Langour, pangolin are present in the area proposed for diversion. No protected archaeological / heritage site / defense establishment or any other important monuments is located in the area has been reported. Certificates to this effect has been submitted by DFO concerned.
- v. No violation of provisions under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 is observed. Certificate to this effect has been submitted by DFO concerned.
- vi. Compensatory Afforestation has been proposed over 0.138 ha degraded forest land in Borajan, Podumoni Wild life sanctuary. Suitability certificate has been submitted by DFO concerned. Certificate to defray the cost of CA has been submitted by the User Agency. CA scheme for 10 years have been submitted along with the proposal.

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- vii. As per DSS report, the instant proposal falls under Inviolable zone on In-High conservation zone value as per DSS Rule- I because the proposed forest land is located within Dibru-Saikhowa National Park.
- viii. As per the User Agency in the proposal, the Proposed land for 7 ERD locations of forest land beneath Target Dept of 3900-4000 meter of DSNP. Therefore, the impact upon the land may not be visible. If high density blasting is done on the location then the impact may be visible over the surface.
- ix. The proposed ERD wells will be taken up at the depth of 3900-4000 m from the surface of Dibru Saikhowa National Park. The drilling of 7 extension/appraisal locations is situated towards North Eastern part of Upper Assam Basin and North of discovered Baghjan oil field to find out limit of oil/gas bearing horizon. It involves drilling of a 07 exploratory bore hole of 26 inch diameter in forest land.
- x. Government of Assam on 11.12.2006 granted the Petroleum Mining Lease (PML) for Baghjan area measuring an area of 75.00 sq. km subject to certain terms and conditions mentioned therein. The lease is valid upto 14.05.2023 which has been extended upto 31.12.2040. No forest area is involved in Baghjan PML.
- xi. Regional Office, Shillong had carry out site inspection of the area proposed for diversion on 16.03.2024 and following has been mentioned:
 - a. DDGF (C), Shillong has recommended the proposal subject to the strict implementation of the recommendation mentioned in biodiversity study carried out by the Assam State Biodiversity Board, study conducted by WII, Wildlife Management and Research Plan by OIL approved by CWLW and as per the prescribed guideline of Ministry.
 - b. The bio diversity study conducted by Assam State Biodiversity Board, Standard Operating Procedure provided by the WII, Dehradun, Wildlife Management and Research Plan by OIL approved by CWLW along with Ministry's prescribed guideline and other quantitative study are required to be considered in the proposed area.
 - c. This underground extraction technology is novel and its use will minimize damage to forests on surface area. However, it is essential that all precautions be taken including region-specific guidelines being developed or developed by WII (as per Letter no FC- 11 /46/2020-FC dated 12.09.2023) and other wildlife Management Plan, if any, approved by CWLW may be followed /implemented strictly.
- xii. The Member Secretary upraised Committee that the proposal was considered in 44th Standing Committee of NBWL meeting held on 29.07.2017, the Standing Committee decided to recommend the proposal along with the following conditions imposed by the State Chief Wildlife Warden:
 - a. The State Chief Wildlife Warden recommended the proposal with following safety and mitigation measures:
 - Environment Impact Assessment and Environment Management Programme (EIA/EMP).

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- Preventive measures to ensure there is no contamination of surface water.
 - Flaring of gas.
 - Measure to prevent noise pollution.
 - Measures to prevent oil spills.
 - Measures to prevent fire hazard.
 - To erect 10 feet high barricade around the drilling plinths of each well. Also a safety zone of 7.5 meters around the barricade may be fenced with chain link fencing and planted with indigenous plant species to prevent any injuries / mortality of wildlife and also environmental damage and pollution in the mining locality.
- b. The State Forest Department, Govt. of Assam shall ensure to undertake certain protection and mitigation measures for the welfare of the existing wildlife population as well as to prevent environmental damage and pollution in and around the vicinity of the National park.
- c. The user Agency shall have to provide a reasonable amount to PCCF, WL & CWLW, Assam as Corpus Fund, which will be utilized for wildlife conservation and other allied activities in the interest of the wildlife prior to allowing the use of the area.
- xiii. The Committee was also informed that based on the recommendation of NBWL, approval of Hon'ble Supreme Court was also obtained in 07.09.2017 in favour of OIL India Ltd.
- xiv. The Committee was further informed that CWLW and Nodal Officer have recommended the proposal stating that the proposed project of ERD at Baghjan is very near to the Dibru Saikhowa and also to the Maguri Matapung Beel IBA site (already ravaged by a blow out and fire). This proposal is recommended by with a very precise and comprehensive as well as well research Environmental Management Plan, Blow out prevention and Fire Risk Mitigation Plan (with CFD studies of risks from the source to the pad site) and comprehensive Wildlife Management and Research Plan must be prepared by M/s OIL with adequate funding provisions all to be placed separately in CORPUS FUND of the State Wildlife, notwithstanding other charges M/s OIL may have to pay for the clearances. These plan must be approved by the CWLW.
- xv. It was noted that the Hon'ble Supreme Court vide order dated 04.08.2006 passed an order in *T.N. Godavarman Thirumulpad v. Union of India & Ors (WP(C) No. 202 of 2015)* stating that no Temporary Working Permissions or Temporary Permit or any other permission, by whatever name called, shall be granted for mining activities in the National Parks, Sanctuaries and Forest areas.
- xvi. Furthermore, the Hon'ble Supreme Court in its order dated 26.04.2023 in *T.N. Godavarman Thirumulpad v. Union of India & Ors* directed that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.

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- xvii. On the matter of Extended Reach Drilling, in the course of discussions with the Ministry, the ERD report of Directorate General of Hydrocarbons (DGH), inter-alia recommending exemption of Extended Reach Drilling Technology from the purview of Forest (Conservation) Act, 1980, was considered by the Advisory Committee in its meeting held on 31.03.2022. After detailed deliberations and discussion, the Committee was of the opinion that recommendation made in the ERD report may be accepted and agreed 'in-principle' by Ministry. The Committee, with a view to ensuring holistic assessment of impacts as envisaged in the report, recommended that a copy of report may also be provided to the Wildlife Institute of India for examination of the report with reference to impact on the wildlife.
- xviii. The Wildlife Institute of India had provided an Interim Standard Operating Procedure to be adopted while undertaking ERD near the forest areas. Said SOP was placed before the Advisory Committee in its meeting held on 17.07.2023. The Advisory Committee recommended to accept the ERD report of the Directorate General of Hydrocarbons subject to compliance of recommendation made in the General Standard Operating Procedure suggested by the Wildlife Institute of India.
- xix. Further, it was informed that necessary guidelines conveying the acceptance of the ERD report to the States/UTs will be issued by the Ministry after receipt of the approval of the competent authority on the recommendation made by the Advisory Committee. It was also informed that the recommendations made by the Advisory Committee will be applicable in the forest areas other than the Protected Areas.
- xx. Subsequently, the Ministry vide letter No. 11/46/2020-FC dated 12.09.2023 issued guidelines regarding applicability of Forest (Conservation) Act, 1980 on Extended Reach Drilling (ERD) technology stating that:
“The exemption considered for the ERD technology will not be applicable if the drilling area falls inside the Protected Areas notified under the Wildlife (Protection) Act, 1972 and Eco-Sensitive Zone of Protected Areas”.
- xxi. The Member Secretary informed the Committee that as the Extended Reach Drilling is being carried out inside Dibru Saikhowa National Park, as per directions of Hon'ble Supreme order dated 04.08.2006, reiterated vide its order on 26.04.2023 wherein it was directed that mining within the National Park and Wildlife Sanctuary shall not be permissible, and as per Ministry's letter 11/46/2020-FC dated 12.09.2023, the extant proposal may not be considered and may not be acceded to.
- 4. Decision of the Advisory Committee:** After detailed discussion and deliberation with the DDGF (Central), Regional Office, Shillong and State Government officials, the Committee decided to recommend for *rejection* of the proposal for non-forestry use of 0.069 ha. of Dibru Saikhowa National Park area for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division, Tinsukia in the State of Assam in accordance with the orders of the Hon'ble Supreme Court dated 04.08.2006, reiterated vide its order on 26.04.2023 in T.N. Godavarman Thirumulpad v. Union of India & Ors (WP(C) No. 202 of 2015) read with the Ministry letter No. 11/46/2020-FC dated 12.09.2023.

740 SUPREME COURT CASES (2010) 13 SCC

(2010) 13 Supreme Court Cases 740

(Record of Proceedings)

(BEFORE Y.K. SABHARWAL, C.J. AND ARIJIT PASAYAT AND
S.H. KAPADIA, JJ.)

T.N. GODAVARMAN THIRUMULPAD . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

IA Nos. 1598-1600 in WP (C) No. 202 of 1995, etc.,
decided on August 4, 2006

**A. Environment Protection and Pollution Control — Forests —
Diversion of/Encroachment/Intrusion into forest land — Grazing permits in
Kumbalgarh Sanctuary (Rajasthan) to right holders and concessionists
“Raika” — Chief Wildlife Warden directed to submit report as to carrying
capacity in Sanctuary (i.e. number and types of domestic animals which can
safely be allowed to graze in sanctuary area without adversely affecting
requirement of herbivores in area) including details of immunisation
measures and mechanism which is in place in the Sanctuary — Wild Life
(Protection) Act, 1972, S. 33** (Para 15)

**B. Environment Protection and Pollution Control — Mining — Mining
activities in forest area — Conditions precedent for grant of temporary
working permission or permit as well as procedure for grant stated**

(Paras 18 to 21)

T.N. Godavarman Thirumulpad v. Union of India (86), (2006) 5 SCC 25, referred to

**C. Environment Protection and Pollution Control — Dams —
Restoration of Gangao Dam — Principal Secretary, Irrigation directed to
file detailed affidavit as regards execution of first and second phases of work**

(Para 5)

T.N. Godavarman Thirumulpad v. Union of India, (2010) 13 SCC 748, referred to

**D. Environment Protection and Pollution Control — Mining — State of
Gujarat accepted all conditions recommended in report of CEC —
Permission granted subject to certain specified conditions** (Para 26)

R-D/44143/S

Chronological list of cases cited

on page(s)

- | | |
|---|--------|
| 1. (2010) 13 SCC 748, <i>T.N. Godavarman Thirumulpad v. Union of India</i> | 741b-c |
| 2. (2006) 5 SCC 25, <i>T.N. Godavarman Thirumulpad v. Union of India (86)</i> | 743a |

ORDER

IA Nos. 1598-1600 in WP (C) No. 202 of 1995

1. Ms Rachana Srivastava, learned counsel accepts notice on behalf of the respondents. Reply to the applications be filed within four weeks. Two weeks' time thereafter is granted for filing rejoinder affidavit.

IA Nos. 1601-03 in WP (C) No. 202 of 1995

- a 2. The Central Empowered Committee may examine the matter and file its report within two weeks. The interlocutory applications are adjourned for two weeks.

IA Nos. 1485 and 1507 in WP (C) No. 202 of 1995

- b 3. The Government of India and National Mineral Development Corporation may file their response within two weeks. The interlocutory applications are adjourned for three weeks.

IA No. 1574 in WP (C) No. 202 of 1995

- c 4. The affidavit dated 15-6-2006 filed by Mr A.K. Srivastava in compliance with the orders of this Court dated 28-4-2006¹, is utterly vague and does not disclose the relevant information as per the report of the Central Empowered Committee dated 27-4-2006, which, in turn, refers to the restoration of Gangao Dam.

- d 5. It was stated that the first phase of the work would be executed within a period of three months i.e. from 1-4-2006 to 30-6-2006 and the second phase would be executed during the period 1-7-2006 and 30-6-2007. The affidavit does not show whether the first phase, as proposed by the same officer, is complete or not. It does not even show whether the work has even commenced or not. Undisputedly, the damage came to the notice of the respondent in July 2005.

6. Under these circumstances, we direct the Principal Secretary, Irrigation to file a detailed affidavit after verification of all the relevant facts within three weeks.

e ***IA Nos. 827, 1122, 1216, 1337 and 1473 in WP (C) No. 202 of 1995***

7. The report of the Central Empowered Committee dated 31-7-2006 regarding non-recovery of the net present value by the Ministry shall be registered as a separate interlocutory application.

- f 8. As prayed by Mr A.D.N. Rao, learned counsel, Ministry of Environment and Forests is granted four weeks' time to file its response. Audit report is taken on record.

IA Nos. 1122, 1337 and 1473

9. The interlocutory applications are adjourned.

IA No. 1216

- g 10. This application has been worked out. It is, accordingly, disposed of.

IA No. 1591 in WP (C) No. 202 of 1995

11. As requested in Letter dated 31-7-2006, the Central Empowered Committee is granted eight weeks' time to file its report. List the interlocutory application after receipt of the report.

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¹ *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 748

IA No. 1535 in IA No. 548 in WP (C) No. 202 of 1995

12. The prayer in the interlocutory application is to direct the State of Rajasthan to continue grant of grazing permits in the Kumbalgarh Sanctuary to the right holders and concessionists “Raika”. According to the applicants, the cause for approaching this Court is Letter dated 2-7-2004 sent by the Central Empowered Committee to all the Chief Secretaries, Principal Chief Conservators of Forests and Chief Wildlife Wardens, which has led to the State Government stopping the issuance of the grazing permits. a

13. We have perused the report of the Central Empowered Committee dated 13-7-2006. One of the suggestions made is that, in terms of the provisions of the Wild Life (Protection) Act, 1972, the Chief Wildlife Warden concerned may be asked to assess the carrying capacity of each of the wildlife sanctuaries i.e. the number and the type of domestic animals which can safely be allowed to graze in the sanctuary area without adversely affecting the requirement of the herbivores in area. Further, the Chief Wildlife Warden should also provide the details of the livestock which have been immunised along with the mechanism put in place to ensure that overgrazing does not take place. b

14. Section 33 of the Wild Life (Protection) Act, 1972 vests in the Chief Wildlife Warden the authority to control, manage and maintain all sanctuaries and for that purpose within the limit of any sanctuary, he may regulate or control or prohibit, in keeping with the interest of wildlife, the grazing or movement of livestock. Immunisation measures are required to be taken, as stipulated. c

15. The Chief Wildlife Warden shall submit a report as to the carrying capacity of the sanctuary in question, namely, Kumbalgarh Sanctuary, in terms of the suggestion made in Para 17 of the Report of the Central Empowered Committee dated 13-7-2006, including the details of immunisation measures and the mechanism which is in place in the said sanctuary. Para 17 of the Report reads as under: d

“It is submitted that in terms of the provisions of the Wild Life (Protection) Act, the Chief Wildlife Warden concerned may be asked to assess the carrying capacity of each of the wildlife sanctuary i.e. the number and the type of domestic animals which can safely be allowed to graze in the sanctuary area without adversely effecting (affecting?) the requirement of the herbivores in the area. The Chief Wildlife Warden should also provide the details of the livestock which have been immunised along with the mechanism put in place to ensure that overgrazing does not take place. After receipt of the above information, if required, appropriate directions may be issued by this Hon’ble Court for allowing grazing in the sanctuary area.” e

16. The report shall be submitted within three weeks. List the interlocutory application after four weeks. f

IAs Nos. 1413-14, 1454 in IAs Nos. 1413, 1426, 1428, 1439-41, 1444-45, 1459 and 1460 in WP (C) No. 202 of 1995

- a** 17. By order dated 16-9-2005², it was, inter alia, directed that no temporary working permission or temporary working permit or any other permission, by whatever name called, shall be granted for mining activities in the national parks, sanctuaries and forest areas. It was further directed that no mining activity would continue under any temporary working permit or permission (TWP), which may have been granted. This order was later relaxed on the applications filed by some of the applicants. Suggestions have been filed by the learned amicus curiae and the Ministry of Environment and Forests, besides the Federation of Indian Minerals Industries (FIMI) regarding the conditions, which would govern the grant of TWP.

- c** 18. On consideration thereof, the conditions precedent for the grant of TWPs as well as the procedure for their grant shall be as provided hereinafter. At the outset, it is clarified that TWPs shall be granted only where the following conditions are satisfied.

Preconditions

- d** 19. (i) TWPs can only be granted for the renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency;
- (ii) The mine is not located inside any national park/sanctuary notified under Sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972;
- e** (iii) The grant of TWP would not result in any mining activity within the safety zone around such areas referred to in Precondition (ii) above (as an interim measure, one kilometre safety zone shall be maintained subject to the orders that may be made in IA No. 1000 regarding Jamua Ramgarh Sanctuary);
- f** (iv) The user agency who has broken up the area of the mine (in respect of which TWP is being sought) has or had the requisite environmental clearances and at no time prior to the grant of the TWP was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of the Forest (Conservation) Act (for short “the FC Act”). In cases involving violation of the FC Act, a formal decision on merit should be taken under the FC Act after considering the gravity of the violation. However, the grant of a TWP may be considered where past violations have been regularised by the Ministry of Environment and Forests (for short “MoEF”) by the grant of an approval under the FC Act with retrospective effect;
- g** (v) The conditions attached to the approval under the FC Act for the grant of the mining lease (or the renewal of the mining lease) have been fulfilled, particularly those in respect of (but not limited to)
- h**

² *T.N. Godavarman Thirumulpad v. Union of India* (86), (2006) 5 SCC 25

compensatory afforestation, reclamation plan and overburden dumping on the specified site;

(vi) The user agency has, within the stipulated time, already filed a proposal in conformity with the Forest (Conservation) Rules, 1980 for seeking an approval under the FC Act along with the complete details as are required to be furnished. An application for the grant of TWP in favour of the user agencies, who have either not filed a proper proposal and/or have not provided complete information, particularly in respect of (but not limited to) compensatory afforestation, phased reclamation plan, felling of trees, details of minerals extracted in the past, etc. should not be entertained;

(vii) A TWP shall be granted only limited to working in the area broken up legally and during the validity of the lease. No TWP can be granted in respect of, or extending to either unbroken area or the areas which have been broken after the expiry of the mining lease or have been broken in violation of the FC Act or any other law for the time being in force;

(viii) In no circumstances can the duration of a TWP extend beyond the period of one year. Where an application for the grant of permission under the FC Act is not disposed of during the currency of TWP, the applicant, on the strength of the same TWP, may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court; and

(ix) A valid lease under the MMRD Act exists [including by way of a deemed extension in terms of Rule 24-A(6) of the Mineral Concession Rules] in respect of the area of the TWP.

Procedure for grant of clearances under the FC Act and the issuance of TWPs (in relation to renewal of mining leases)

20. (i) The user agency shall submit, in the first instance, to the State Government, proposals seeking renewal of the mining lease under the FC Act not less than two years prior to the expiry of the mining lease, except the leases which are due to expire before August 2008, provided applications are made on or before 31-10-2006;

(ii) On receipt of the proposal within the stipulated time as aforesaid, and upon its examination, where the State Government is of the view that further details (besides the information submitted by the user agency in the prescribed formats) are necessary, the State Government shall give intimation thereof not later than ninety days of the receipt of the proposal;

(iii) The State Government shall forward the proposal together with their recommendations to the Central Government not later than nine months after receipt of the proposal;

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a (iv) The Central Government shall ordinarily dispose of the application for grant of permission not later than four months of its receipt;

Provided where the Central Government is unable to dispose of the application within four months as aforesaid, it shall record special reasons explaining the delay;

b (v) Where the application for grant of permission under the FC Act is delayed beyond the periods stipulated hereinabove, the user agency may then apply for the grant of a TWP. In such cases, the user agency will have the option of applying for a TWP through the State Government in the pro forma prescribed by MoEF with an advance copy both to MoEF and the regional office of MoEF. Such applications shall be made at any time after the expiry of thirteen months from the date of filing of the proposal with the State Government but not later than nine months prior to the expiry of the existing approval under the FC Act. In cases where lease/renewal was granted prior to the enactment of the FC Act and the lease period has not expired, the application shall be made at least nine months prior to the expiry of the lease period;

c (vi) The proposal seeking TWP shall be processed by the State Government and forwarded to MoEF within a period of three months, who shall place the proposal before FAC constituted under Section 3 of the FC Act in its next meeting. The information/details which have not been filed by the user agency, either in respect of the proposal under the FC Act or in the proposal for the TWP shall also be sought by the State Government and made available by the user agency during this period;

d (vii) In the event of failure on the part of the State Government to send its recommendations on the proposal submitted by the user agency for grant of TWP within the stipulated period, the advance copy of the application, already sent by the user agency to the Central Government, shall be placed before FAC for its consideration. FAC shall provide an opportunity to the State Government and the user agency to be heard before giving its recommendations on the merits of the case.

e (viii) If the State Government, for reasons to be recorded in writing, recommends a refusal of the request to grant a TWP, FAC shall, after giving the user agency and the State an opportunity to present their views pass such orders as it thinks fit. FAC shall be at liberty to evolve a suitable procedure for this purpose;

f (ix) In respect of cases where no recommendation has been received from the State Government within the stipulated time, FAC shall, after giving the State an opportunity to be heard, examine the proposal on merit and pass appropriate orders. FAC should evolve a suitable procedure that shall be fair and reasonable and would ensure adherence with the time schedule;

g (x) All proposals for grant of the FC Act clearances and TWPs in respect of mining leases shall be placed before FAC. Where FAC by

order recommends the grant of a clearance or a TWP, MoEF shall, within a period of four weeks from the date of such order, issue orders for the grant of clearance on the usual terms, including those relating to the payment of NPV; a

Provided where a TWP is being granted, it shall only be for a period not exceeding one year and upon payment of NPV for the already broken up area;

(xi) Decision on grant of a TWP shall be taken before the expiry of the mining lease. Decision of MoEF on the proposal for diversion of forest land for mining lease under the FC Act shall be conveyed to the user agency before the expiry of TWP. b

(xii) In case MoEF disagrees with the recommendation of FAC, it shall record its reasons in writing and communicate the same to FAC, and FAC may, after considering such reasons, pass such further orders as it thinks fit; c

Provided where the Government still disagrees with the order passed by FAC, it may seek appropriate directions from this Court;

(xiii) All the orders of FAC shall be made available to the user agency and the State Government;

(xiv) In cases where the recommendations have been made by FAC without ascertaining the views of the State Government, the TWP shall become effective only after the details made available by the user agency are confirmed by the State Government within a maximum period of one month. In case the information furnished by the user agency is found to be at variance with the factual position, the State Government shall refer the matter back to MoEF, who may, if so advised, suspend the grant of TWP; d
e

(xv) TWP shall become effective only after the payment towards the NPV for the already broken up area is deposited by the user agency;

(xvi) In cases where site inspection by the Regional Chief Conservator of Forests is mandatory, the proposal for TWP shall be examined by FAC after considering the site inspection report of the Regional Chief Conservator of Forests; the Regional Chief Conservator of Forests shall ensure that the inspection is completed in such time as may be directed by FAC; and f

(xvii) At the time of payment of NPV at the present rate, the user agency shall also give an undertaking to pay the additional NPV, if so determined as per the final decision of this Court. g

21. Those who are continuing to operate on the strength of the temporary permit under the interim protection granted by this Court would continue as before, for a period not exceeding four months. We direct that their cases shall be decided by FAC within the said period of four months. The State Governments are directed to consider and send their recommendations to h

MoEF forthwith, and not later than six weeks from today, with a view to ensure decision within the stipulated period of four months.

- a **22.** To consider the question of constitution of appropriate FAC, adjourned to 25-8-2006.

IA Nos. 1466-67 in WP (C) No. 202 of 1995

23. The learned counsel seeks leave to withdraw the interlocutory applications. They are, accordingly, dismissed as withdrawn.

- b *IA No. 4 in Contempt Petition (C) No. 193 of 2001 in WP (C) No. 202 of 1995*

24. Not taken up.

WP (C) No. 603 of 2000

25. Not taken up.

- c *IA No. 1614 in Applications Nos. 863 and 905 in WP (C) No. 202 of 1995*

26. The learned counsel appearing for the State of Gujarat states that all the conditions recommended in the report of the Central Empowered Committee dated 28-7-2006 are acceptable to the State Government. In this view, permission sought for in IAs Nos. 863 and 905 is granted to the State Government on complying with the conditions as under:

- d “(i) the requisite approval under the Forest (Conservation) Act for use of the forest land will be obtained;
- (ii) the NPV for the forest land will be deposited in the Compensatory Afforestation Fund with an undertaking to pay additional NPV as per the decision taken by this Hon’ble Court;
- e (iii) 5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the sanctuary;
- (iv) as recommended by the Standing Committee of the National Board for Wildlife, a ten year master plan for the revitalisation of the sanctuary with focused attention and concerted efforts on wildlife conservation and management will be immediately prepared and implemented for rehabilitation of the sanctuary area. Funds for this purpose will be made available by the State Government on priority basis; and
- f (v) no area presently falling within the sanctuary will be used for mining purposes in future.”

- g **27.** IAs Nos. 863 and 905 are disposed of accordingly.

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2023 SCC OnLine SC 504

In the Supreme Court of India

(BEFORE B.R. GAVAI, VIKRAM NATH AND SANJAY KAROL, JJ.)

I.A. Nos. 131377, 147102, 195467, 195468, 205092 of 2022

I.A. Nos. 162283 and 162284 of 2022

In

I.A. D. No. 125746 of 2022

With

I.A. Nos. 118604, 118606, 119400, 119401, 119404, 137132,
137138, 137140 And 137143 of 2022

I.A. Nos. 5764, 6804 and 10911 of 2023

In the Matter of:

Writ Petition (Civil) No. 202 of 1995

In Re : T.N. Godavarman Thirumulpad ... Petitioner
(s);

Versus

Union of India and Others ... Respondent(s).

I.A. Nos. 131377, 147102, 195467, 195468, 205092 of 2022, I.A.
Nos. 162283 and 162284 of 2022, I.A. D. No. 125746 of 2022, I.A.
Nos. 118604, 118606, 119400, 119401, 119404, 137132, 137138,
137140 And 137143 of 2022, I.A. Nos. 5764, 6804 and 10911 of
2023 and Writ Petition (Civil) No. 202 of 1995

Decided on April 26, 2023

Advocates who appeared in this case:

Amicus Curiae Mr. A.D.N. Rao, Sr.Adv.

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Mr. M.V. Mukunda, Adv.

Ms. Arti Gupta, Adv.

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Ms. Suhasini Sen, Adv.

Ms. Shagun Thakur, Adv.

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Mr. K.M. Natraj, ASG

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Mr. Syed Mehdi Imam, AOR
Mr. T. Harish Kumar, AOR
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Mr. Punit Dutt Tyagi, AOR
Mr. Rathin Das, AOR
Mr. Ratan Kumar Choudhuri, AOR
Mr. G. Prakash, AOR
Mr. Rauf Rahim, AOR
Mrs. Rekha Pandey, AOR
Mr. Gopal Singh, AOR
Mr. Sudhir Kumar Gupta, AOR
Mr. A. N. Arora, AOR
Mr. Irshad Ahmad, AOR
Ms. C. K. Sucharita, AOR
Mrs. Anjani Aiyagari, AOR
Ms. Hemantika Wahi, AOR
Mr. Mohd. Irshad Hanif, AOR
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Mr. Naresh K. Sharma, AOR
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Mr. Ram Swarup Sharma, AOR

Mrs. Bina Gupta, AOR
Mrs. Rani Chhabra, AOR
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Mr. Ravindra S. Garia, AOR
Mr. Shashank Singh, Adv.
Mr. Madan Chandra Karnatka, Adv.

The Judgment of the Court was delivered by

B.R. GAVAL, J.:—

I.A. NO. 131377 OF 2022:

1. The present I.A. is filed by the Union of India praying for modification/clarification of the order passed by this Court dated 3rd June 2022¹ in I.A. No. 1000 of 2003 in WP(C) No. 202 of 1995.

2. The applicant specifically seeks modification of the directions contained in paragraphs 56.1 and 56.5 of the order dated 3rd June 2022 (supra). The said paragraphs are reproduced hereinbelow:

"56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned.

.....

56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this

order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ."

3. The clarification/modification of paragraph 56.1 of the order dated 3rd June 2022 (supra) is sought to the extent that the Eco-Sensitive Zones (for short, "ESZs") which have already been notified (final and draft) by the Ministry of Environment Forests and Climate Change (for short, "MoEF & CC") or the proposals for which have been received in the Ministry be exempted from the directions therein. The applicant also sought modification to the extent that paragraph 56.1 of the order dated 3rd June 2022 (supra) may not be made applicable where National Parks and Wildlife Sanctuaries are located along inter-State boundaries and/or common boundaries. Modification/clarification of the directions in paragraph 56.5 of the order dated 3rd June 2022 (supra) in its entirety is additionally sought.

4. We have heard Ms. Aishwarya Bhati, learned Additional Solicitor General (for short, "ASG") appearing on behalf of the applicant, Shri K. Parameshwar, learned *amicus curiae* as well as Senior Counsel appearing on behalf of various State Governments.

5. It is submitted that the Government of India has already issued Guidelines on 9th February 2011 (hereinafter referred to as the "said Guidelines") for declaration of ESZs around National Parks and Wildlife Sanctuaries. The said Guidelines were framed after consulting the National Board for Wildlife (hereinafter referred to as "NBWL"), and all the State and Union Territory Governments. The said Guidelines provide a detailed procedure for submitting a proposal for declaration of the areas around National Parks and Wildlife Sanctuaries as ESZs. It is further submitted that the said Guidelines itself contain various activities which have been categorized as prohibited, regulated and permitted.

6. It is further submitted that the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) is likely to cause great hardship to the citizens residing in the ESZs. It is further submitted that the said directions provide that if any activity is already being undertaken within one kilometre or extended buffer zone (ESZ), and which does not come within the ambit of prohibited activities as per the said Guidelines, such activities may continue with the permission of the Principal Chief Conservator of Forests (for short, "PCCF") of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. The said Guidelines further provide that such permission shall be given once the PCCF is satisfied that the activities concerned do not come within the prohibited list and were

continuing prior to passing of this Court's order dated 3rd June 2022 (supra) in a legitimate manner. It is further submitted that the direction that no new permanent structure shall be permitted to come up for whatsoever purpose within the ESZs would also cause great hardship.

7. It is further submitted that insofar as the direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is concerned, it mandates that each protected forest, that is, National Park or Wildlife Sanctuary, must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the said Guidelines shall be strictly adhered to. Insofar as Jamua Ramgarh Wildlife Sanctuary is concerned, it is directed that the ESZ shall be 500 meters so far as subsisting activities are concerned.

8. The learned ASG, *amicus curiae* and Senior Counsel appearing on behalf of various States submitted that in respect of various National Parks and Wildlife Sanctuaries, already final notifications had been issued, prescribing the boundaries for the ESZs. In some cases, the draft notifications are pending and in some other cases, the proposals for issuance of draft and final notifications are pending with the Government of India.

9. It is submitted that there cannot be a uniform boundary for all the National Parks and Wildlife Sanctuaries. It is further submitted that there cannot also be a uniform boundary for a particular National Park or Wildlife Sanctuary. At times, it may be longer on one side and shorter on the other side depending on various circumstances.

10. It is submitted that the rights of the citizens who are residing in the Protected Areas are settled under the provisions of Sections 18 to 25A of the Wild Life (Protection) Act, 1972 (hereinafter referred to as "1972 Act") whereas there is no settlement of rights of citizens residing in ESZs. The citizens therein continue to reside and are also continuing with their daily avocation like farming etc. It is submitted that various developmental activities like construction of schools, dispensaries, anganwadis, public health centres etc. are required to be undertaken in such areas. Not only that, but if the direction not to make any construction is continued, the persons residing therein would not be in a position to construct or reconstruct houses on their own land. It is submitted that the procedure prescribed for obtaining the permission of the PCCF is very tedious. If such a direction is issued, the PCCF would be left with no other work but to consider the applications for continuation of such activities.

11. It is further submitted that though this Court has observed in paragraph 54 of the order dated 3rd June 2022 (supra) that the said

Guidelines are reasonable, it has nevertheless issued directions which are in conflict with the said Guidelines.

12. It is further contended that the issue in I.A. No. 1000 of 2003 was restricted to prohibition of mining activities in and around Jamua Ramgarh Wildlife Sanctuary and prescribing ESZs for the said Wildlife Sanctuary only. As such, various State Governments did not have an opportunity to address this Court.

13. Having considered the rival submissions, we find it appropriate to refer to various orders passed by this Court on the issue of ESZs/Buffer Zones.

14. The first of such orders was passed by this Court on 16th September 2005². It will be relevant to refer to paragraph 13 of the said order, which reads thus:

"13. We have perused the affidavit dated 14-9-2005 filed by Mr Anurag Bajpai on behalf of MoEF and the statement showing the grant of temporary working permit in the last two years i.e. from 1-1-2003 to 31-12-2004 in the national parks, sanctuaries and forest area. This is despite the order passed by this Court restraining the mining activities in these areas. Learned amicus curiae submits that the inspection of the government record shows a dismal picture and he would shortly file an application for taking appropriate action against the persons concerned. Pending filing of the said application and further orders, we again reiterate that without compliance with the environmental laws, in particular the permission under the Forest (Conservation) Act, 1980, no temporary working permission or temporary permit or any other permission by whatever name called shall be granted for mining activities in the aforesaid areas. *We further direct that no mining activity would continue under any temporary working permit or permission which may have been granted. It appears from the chart filed with the affidavit of Mr Anurag Bajpai that no temporary working permission is in operation as of today. If it is otherwise, an affidavit to that effect shall be filed within two weeks giving the particulars of such permission.*"

[emphasis supplied]

15. It can thus clearly be seen that this Court directed that no mining activity would be permitted to continue under any temporary working permit or permission which may have been granted.

16. It will further be relevant to refer paragraph 15 of the said order, which reads thus:

"15. MoEF is directed to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific. This should

be done after also obtaining the viewpoint of the National Board of Wildlife.”

17. It can thus be seen from the said paragraph that this Court directed MoEF to place on record within three weeks its viewpoint on the question of area of buffer zone and other related matters such as should it be universal or place specific. The Court further directed that this should be done after obtaining the viewpoint of the NBWL.

18. The second of such orders is passed on 4th August 2006³. The said order basically pertains to banning the mining activities in the National Parks, Sanctuaries and forest areas. The Court laid down various pre-conditions wherein temporary working permits could be granted.

19. The next order is passed on 4th December 2006⁴. In the said order, the Court expressed its anguish towards the various State Governments for not responding to the letter issued by MoEF dated 27th May 2005 requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. It will be relevant to refer to paragraphs 3 and 4 of the said order, which read thus:

“3. The order earlier passed on 30-1-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 793] refers to the decision which was taken on 21-1-2002 to notify the areas within 10 km of the boundaries of national parks and sanctuaries as eco-sensitive areas. The Letter dated 27-5-2005 is a departure from the decision of 21-1-2002. For the present, in this case, we are not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance that is required to be given to most of the laws to protect environment made after Rio Declaration, 1992.

4. The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now

fail to respond, they would do so at their own risk and peril.”

20. It can be seen that this Court refers to its earlier order dated 30th January 2006 wherein a reference is made to the decision dated 21st January 2002 to notify the areas within 10 kilometres of the boundaries of National Parks and Sanctuaries as ESZs. Though the order records that the letter dated 27th May 2005 is a departure from the decision taken on 21st January 2002, the Court observes that, in the said case, the Court was not considering the correctness of the said departure. The Court therefore directed the Ministry to give a final opportunity to all States/Union Territories to respond to its Letter dated 27th May 2005. The said order states that the communication should mention that if the proposals were not sent within a period of four weeks from the receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January 2002, i.e., notification of the areas within 10 kilometres of the boundaries of the sanctuaries and National Parks as ESZs.

21. The next order of this Court is dated 21st April 2014 in the case of *Goa Foundation v. Union of India*⁵. It will be relevant to refer to the following observations of this Court in the said order:

“49.The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.”

22. The Court has clarified that there shall be no mining activity within one kilometre of the safety zone around National Park or Wildlife Sanctuary and that this has to be enforced. It is also reiterated that there can be no mining activities within this area of one kilometre from the boundaries of National Parks and Wildlife Sanctuaries in the State of Goa.

23. The Court thereafter refers to the earlier order dated 4th December 2006 (supra) in the said case and observed thus:

“50.It will be clear from the order dated 4-12-2006 [*Goa Foundation v. Union of India*, (2011) 15 SCC 791] of this Court that this Court has not passed any orders for implementation of the decision taken on 21-1-2002 to notify areas within 10 km of the boundaries of national parks or wildlife sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 4-12-2006 [*Goa Foundation v. Union of India*,

(2011) 15 SCC 791] of this Court, however, the Ministry of Environment and Forests, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the cases in which environment clearance has already been granted in respect of activities within the 10 km zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 km of the boundaries of national parks or wildlife sanctuaries."

24. It could thus be seen that the Court has specifically observed that this Court had not passed any orders for implementation of the decision taken on 21st January 2002 to notify areas within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries as ESZs with a view to conserve the forest, wildlife and environment. The Court therefore clarified that there is no direction, interim or final, prohibiting mining activities within 10 kilometres of the boundaries of National Parks or Wildlife Sanctuaries.

25. It will be relevant to refer to paragraphs 87.3 and 88.1 of the said order, which read thus:

"87.3. Until the order dated 4-8-2006 [*T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740] of this Court is modified by this Court in IA No. 1000 in *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of national parks and sanctuaries in Goa.

88.1. MoEF will issue the notification of eco-sensitive zones around the national park and wildlife sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months from today."

26. It can thus be seen that this Court has held that until the order dated 4th August 2006 (*supra*) is modified by this Court in IA No. 1000 of 2003 in the case of *T.N. Godavarman Thirumulpad v. Union of India*, there can be no mining activities within one kilometre from the boundaries of National Parks and Sanctuaries in Goa. The Court further directed MoEF to issue the notification of ESZs around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in the said judgment. The same was directed to be done within a period of six months from the date of the said order.

27. The next relevant order would be dated 11th December 2018. It will be relevant to refer to the following part of the said order:

"The learned ASG has informed us that there are 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National

Parks and Wildlife Sanctuaries in the country.

The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments/UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.

The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.

The declaration with regard to Eco Sensitive Zone is under process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 4146 National Parks and Wildlife Sanctuaries.

We expect the Ministry of Environment, Forests and Climate Change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.

The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows:—

.....

It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF."

28. It can be seen that this Court has recorded the submissions of the learned ASG that there were 104 National Parks and 558 Wildlife Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country. It was further recorded that the proposals for declaring areas around these National Parks and Wildlife Sanctuaries as ESZs had been received from the State Governments/Union Territories. It can further be seen that no proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries. It further recorded that the proposals had been accepted and notification had been issued in respect of 289 National Parks and Wildlife Sanctuaries as

on 26th November 2018 and draft notification had been prepared in respect of 206 National Parks and Wildlife Sanctuaries. The Court therefore expected the MoEF & CC to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest. The Court then recorded 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MoEF & CC alongside its anguish that though 12 years had been passed, no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries named in the said order. Therefore, the Court directed that an area of 10 kilometres around these 21 National Parks and Wildlife Sanctuaries be declared as ESZs by the MoEF & CC. Liberty was granted to the State Governments to move an application for modification of the said order. However, it further directed that the application should be along with the proposal for declaration of ESZs.

29. It is to be noted that the learned Judges of this Court, in the case of *Goa Foundation*⁶, had directed that the MoEF & CC shall follow the procedure and issue notification of ESZs under Rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as "1986 Rules"). The relevant provisions of the 1986 Rules are reproduced hereinbelow:

"5. Prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas.—(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:

- (i) Standards for quality of environment in its various aspects laid down for an area.
- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.
- (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
- (iv) The topographic and climatic features of an area.
- (v.) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.
- (vi) Environmentally compatible land use.
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary,

National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area. (c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication in the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may [within [seven hundred and twenty-five days [, and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days,]] from such date of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area:

[Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-2022 shall be extended up to

[30th June, 2022] or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.]

[(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).]”

30. It is to be noted that Rule 5 of the 1986 Rules prescribes a detailed procedure for issuing notification prohibiting or restricting various activities in the specified areas. The said power flows from Sections 3(v) of the Environment (Protection) Act, 1986 (hereinafter referred to as “1986 Act”).

31. A perusal of clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules would reveal that one of the factors that has to be taken into consideration for declaring ESZ is the proximity to a sanctuary, National Park, game reserve or closed area notified, as such under the 1972 Act. Sub-rule 3(a) of Rule 5 of the 1986 Rules requires that whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions, it is required to give notice of its intention to do so by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. As per sub-rule 3(b) of Rule 5, every such notification is required to give a brief description of the area, the industries, operations processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries on carrying out of the processes or operations in that area. Accordingly, as per sub-rule 3(c) of Rule 5, any person interested in filing an objection is entitled to file an objection to the Central Government within sixty days from the date of publication in the notification in the Official Gazette. The Central Government thereafter within the prescribed period provided under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules is required to issue a notification in the Official Gazette imposing such prohibition or restrictions in an area. This is required to be done only after considering all the objections received under clause (c) of sub-rule (3) of Rule 5 of the 1986 Rules. It can thus be seen that a detailed procedure is prescribed under the 1986 Rules for notifying ESZs.

32. It is to be noted that MoEF & CC has issued the said Guidelines for declaration of ESZs around the National Parks and Wildlife Sanctuaries.

33. The said Guidelines refer to a meeting of the Indian Board for Wildlife held on 21st January 2002, in which “Wildlife Conservation Strategy-2002” was adopted. Point No. 9 of the said Strategy

envisaged that lands falling within 10 kilometres of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under Section 3(v) of the 1972 Act and clause (viii) of sub-rule (1) of Rule 5 of the 1986 Rules. It further states that when the views were obtained from all the State Governments, some of the State Governments had raised concern over applicability of 10 kilometres range from the Protected Area boundary and informed that most of the human habitation and other areas including important cities in these States would come under the purview of ESZs and will adversely affect the development. The said Guidelines also refer to the National Wildlife Action Plan (2002-2016). The NBWL, in its meeting held on 17th March 2005, decided that the delineation of ESZs would have to be site specific and relate to regulation rather than prohibition of specific activities. The said decision was communicated to all the State Governments for compliance vide letter dated 27th May 2005.

34. The said Guidelines thereafter refer to the directions of this Court dated 4th December 2006. It also refers to the statutory provisions as contained in Section 5C (1) of the 1972 Act, Section 3 of the 1986 Act and Rule 5 of the 1986 Rules. The said Guidelines state that the purpose of declaring ESZs around National Parks and Sanctuaries is to create some kind of Shock Absorber for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. It also reiterates the decision of the NBWL that the activities in the ESZs would be of a regulatory nature rather than prohibitive nature unless and otherwise so required. Paragraph 4 of the said Guidelines notes that many of the existing Protected Areas have already undergone tremendous development in close vicinity to their boundaries. It refers to the Guindy National Park, Tamil Nadu, Sanjay Gandhi National Park, Maharashtra, etc. and notes that the Protected Areas are lying in the urban set up. It therefore observes that defining the extent of ESZs around Protected Areas will have to be kept flexible and Protected Area specific. It notes that the width of ESZs and type of regulations will differ from one Protected Area to another Protected Area. It however notes that, as a general principle, the width of the ESZs could go up to 10 kilometres around a Protected Area as provided in the Wildlife Conservation Strategy-2002. It further notes that in case where sensitive corridors, connectivity and ecologically important patches, crucial for landscape linkage, are even beyond 10 kilometres width, these should be included in the ESZs. It further notes that even in context of a particular Protected Area, the distribution of an area of the ESZ and the extent of regulation may not be uniform all around and it could be of variable width and extent. The said Guidelines notes that though the directions were issued by this Court to all the

States/Union Territories, except a few States, several other States/Union Territories have not come forward with the proposals for declaration of ESZs. It was observed that this could be perhaps for want of guidelines in this regard. It further notes that this Court in its judgment and order dated 3rd December 2010 in a case relating to construction of park at Noida near Okhla Bird Sanctuary, observed that the ESZs around the Protected Areas had not been notified as the Government of India had not issued any guidelines in this regard.

35. It thereafter refers to the Committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India.

36. The said Guidelines thereafter state in paragraph 6 that the basic aim of notifying ESZs is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impact of such activities on the fragile ecosystem encompassing the Protected Area. It states that the first step towards it is to prepare an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area as well as important Corridors. It states that the inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 kilometres of the range. It further notes that a Committee comprising of the concerned Wildlife Warden, an Ecologist, an official from the Local Self Government and an official of the Revenue Department of the concerned area, could be formed to suggest the following:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.
- (ii) The requirement of such a zone to act as a shock absorber
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.
- (iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

37. It further notes that based on the above, the Chief Wildlife Warden could group the activities under the following categories:—

- (i) Prohibited
- (ii) Restricted with safeguards.
- (iii) Permissible

38. The said Guidelines thereafter note that once the proposal for ESZs has been finalized, the same should be forwarded to the MoEF & CC for further processing and notification. An indicative list of details that need to be submitted along with the proposals is also appended to the said Guidelines.

39. The said Guidelines further note that where the boundary of a

Protected Area abuts the boundary of another State/Union Territory where it does not form part of any Protected Area, it should be the endeavour of both the State/Union Territory Governments to have a mutual consultation and decide upon the width of the ESZs around the Protected Area in question. The said Guidelines emphasize that the State Government should endeavour to convey a very strong message to the public that ESZs are not meant to hamper their day to day activities, but instead, are meant to protect the precious forests/Protected Areas in their locality from any negative impact, and also to refine the environment around the Protected Areas. It further notes that these guidelines are indicative in nature and the State/Union Territory Governments may use these as basic framework to develop specific guidelines applicable in the context of their National Parks, Wildlife Sanctuaries, important corridors etc. with a view to minimizing and preferably eliminating any negative impact on Protected Areas.

40. A list of the activities which are prohibited, regulated and permitted is contained in Annexure-I of the said Guidelines, which reads thus:

Sl. No.	Activity	Prohibited	Regulated	Permitted	Remarks
1.	Commercial mining	Y			Regulation will not prohibit the digging of earth for construction or repair of houses for manufacture of country tiles or bricks for housing for personal
2.	Felling of trees		Y		With permission from appropriate authority
3.	Setting of saw mills	Y			
4.	Setting of industries causing pollution	Y			

	(Water, Air, Soil., Noise, etc.)				
5.	Establishment of hotels and resorts		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals
6.	Commercial use of firewood	Y			For hotels and other business related establishment
7.	Drastic change of agriculture systems		Y		
8.	Commercial use of natural water resources including ground water harvesting		Y		As per approved master plan, which takes care of habitats allowing no restriction on movement of wild animals.
9.	Establishment of major hydroelectric projects	Y			
10.	Erection of electrical cable		Y		Promote underground cabling
11.	Ongoing agriculture and horticulture			Y	However, excessive expansion of some of these

	practices local communities				activities should be regulated as per the master plan
12.	Rain Water harvesting			Y	Should be actively promoted
13.	Fencing of premises of hotels and lodges		Y		
14.	Organic farming			Y	Should be actively promoted
15.	Use of polythene bags by shopkeepers		Y		
16.	Use of renewable energy sources			Y	Should be actively promoted
17.	Widening of roads		Y		This should be done with proper EIA and mitigation measures
18.	Movement of vehicular traffic at night		Y		For commercial purpose
19.	Introduction of exotic species		Y		
20.	Use of production of any hazardous substances	Y			
21.	Undertaking activities				

	related to tourism like over-flying the National Park are by any aircraft, hot-air balloons				
22.	Protection of hill slopes and river banks		Y		As per the master plan
23.	Discharge of effluents and solid waste in natural water bodies or terrestrial are	Y			
24.	Air and vehicular pollution		Y		
25.	Sign board & hoardings		Y		As per the master plan
26.	Adoption of green technology for all activities			Y	Should be actively promoted.

41. It is to be noted that this Court in paragraph 54 of the order dated 3rd June 2022 (supra) has, in fact, held the said Guidelines to be reasonable and also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each sanctuary or National Park for maintaining the ESZs. It is also observed that the sanctuaries like Sanjay Gandhi National Park and Guindy National Park in Mumbai shall form special cases. The said paragraph 54 is reproduced hereinunder:

"54. In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be

maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases."

42. It is to be noted that an elaborate and exhaustive list has been prepared by MoEF & CC of the activities which shall be prohibited, the activities which shall be regulated and the activities which shall be permitted.

43. In the application, it is stated that after the proposals are received from the State Governments/Union Territory Administrations, they are scrutinized in consultation with the Wildlife Institute of India, Dehradun, and in case of tiger reserves, with the National Tiger Conservation Authority. They are thereafter published in the Official Gazette of the Central Government in both Hindi and English. They are also placed in the public domain for 60 days for seeking comments of concerned stakeholders. The comments so received are compiled and scrutinized and observation of the concerned State Government/Union Territory Administration is sought on the same. The aforesaid requirements are in tune with the provisions of Rule 5 of 1986 Rules.

44. The application further states that the proposal is thereafter placed before an Expert Committee constituted for ESZ within the MoEF & CC. The said Committee comprises of the following:

- (i) Indian Institute of Remote Sensing/Indian Space Research Organization,
- (ii) Ministry of Jal Shakti,
- (iii) Ministry of Rural Development,
- (iv) Forest Survey of India,
- (v) Town & Country Planning Organization, Government of India,
- (vi) National Tiger Conservation Authority,
- (vii) Wildlife Institute of India,
- (viii) GB Pant Institute of Himalayan Environment & Development,
- (ix) Indian Council of Forestry Research and Education,
- (x) World Wildlife Fund,
- (xi) Zoological Survey of India,

(xii) Botanical Survey of India,

(xiii) Salim Ali Centre for Ornithology and Natural History (SACON).

45. It is further stated in the application that based on the recommendation of the Expert Committee (ESZ), the Ministry finalizes the notification of ESZs and after due legal vetting by the Ministry of Law & Justice, final notifications specifying the ESZs around the Protected Areas are notified. It could thus be seen that an elaborate procedure including consideration by a Committee of Experts coming from 13 organizations having expertise in wildlife ecology, forest etc. is followed before a final notification prescribing ESZs is notified.

46. In the application filed by the Union of India, various illustrations have been given to point out as to how if the directions issued in paragraph 56.5 of the order dated 3rd June 2022 (supra) are not modified, a severe hardship would be caused to the millions of people. We refer to the same hereunder:

- (i) "The ESZ around Nagarjunasagar Srisaillam Tiger Reserve in Andhra Pradesh extends from 0 to 26 kilometres and 100 villages are situated within it (*Zero extent of ESZ is due to Krishna River and interstate boundary with Telangana*);
- (ii) The ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar extends from 0 to 9 kilometres and 323 villages are situated within it (*zero extent of ESZ is towards Western side sharing inter-state boundaries with Uttar Pradesh and towards Northern side sharing international boundary with Nepal*);
- (iii) The ESZ around Betla National Park, Palamau Wildlife Sanctuary, and Mahuadanr Wolf Sanctuary in Jharkhand extends from 0 to 9 kilometres and 382 villages are situated within it (*Zero extent of ESZ is due to Inter-State boundary*);
- (iv) The ESZ around Cauvery Wildlife Sanctuary in Karnataka extends from 1 to 14.5 kilometres and 107 villages are situated within it;
- (v) The ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh extends from 0 to 30 kilometres and 168 villages are situated within it (*Zero extent of Eco-sensitive Zone is towards the eastern side having interstate boundary with Chhattisgarh*);
- (vi) The ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra extends from 3 to 6 kilometres and 150 villages are situated within it;
- (vii) The ESZ around Jaisamand Wildlife Sanctuary in Rajasthan extends from 1.6 to 8.9 kilometres and 83 villages are situated in it;

(viii) Even a small ESZ such as the one around Keoladeo National Park in Rajasthan which extends from 0.5 to 1.5 kilometres has 22 villages situated in it.”

47. It would thus reveal that in the ESZ around Nagarjunasagar Srisaillam Tiger Reserve in Andhra Pradesh, 100 villages are situated within it. In the ESZ around Valmiki Wildlife Sanctuary, Valmiki National Park and Valmiki Tiger Reserve in Bihar, 323 villages are situated within it. In the ESZ around Betla National Park, Palamau Wildlife Sanctuary, and Mahuadanr Wolf Sanctuary in Jharkhand, 382 villages are situated within it. In the ESZ around Cauvery Wildlife Sanctuary in Karnataka, 107 villages are situated within it. In the ESZ around Kanha National Park and Phen Wildlife Sanctuary in Madhya Pradesh, 168 villages are situated within it. In the ESZ around Tadoba-Andhari Tiger Reserve in Maharashtra, 150 villages are situated within it. In the ESZ around Jaisamand Wildlife Sanctuary in Rajasthan, 83 villages are situated in it. Even in a small ESZ around Keoladeo National Park in Rajasthan, 22 villages situated in it.

48. If the direction as issued by this Court in paragraph 56.5 of the order dated 3rd June 2022 (supra) is continued, then no permanent structure would be permitted to come up for whatsoever purpose in the aforesaid ESZs. As already pointed out from the aforesaid examples, hundreds of villages are situated within the ESZs in the country. If no permanent construction is to be permitted for any purpose, a villager who is desirous to reconstruct his house would not be permitted. Similarly, if there is an extension in their family and some additional construction is required for accommodating the enlarged family, the same would also not be permitted. Similarly, if the Government decides to construct schools, dispensaries, anganwadis, village stores, water tanks and other basic structures for improvement of the life of the villagers, the same would also not be permitted. The effect of the order will be to prevent the State or the Central Government from constructing roads and provide other facilities to the villagers.

49. If the order dated 3rd June 2022 (supra) is not modified, it will also be impossible for the Forest Departments to conduct eco-development activities around National Parks and Sanctuaries. The said activities are required with the dual objectives of protection of wildlife and provision of benefits for the local communities. MoEF & CC provides financial assistance to the States under the Centrally Sponsored Scheme-Integrated Development of Wildlife Habitats, which includes assistance for eco-development activities. These activities often involve construction of small structures which are permanent in nature in areas including ESZs. For example, the said activities which are likely to be prohibited are thus:

- (i) The construction of community halls, bridges, threshing floors, fish-drying platforms, drinking water storage, etc., for the benefit of local communities/villages;
- (ii) The construction of forest chowkies, watch towers, and other structures for protection of wildlife and forests;
- (iii) The construction of interpretation centres, toilets and other basic structures for the environmental education of visitors to National Parks and sanctuaries.

50. It is further to be noted that there are various regulated and permissible activities. There are also certain projects of national and strategic importance such as construction of National Highways, Railways, Defence related infrastructure etc. The effect of the direction in 56.5 of the order dated 3rd June 2022 (supra) is that all such activities will be permanently prohibited. In this respect, it is to be noted that MoEF & CC has issued an Office Memorandum dated 17th May 2022 which required that any activity listed in Schedule of the EIA Notification 2006, when conducted in a notified ESZs, or in the case of *National Parks and Sanctuaries* for which no ESZ has been finally notified, when conducted within 10 kilometres of such National Park or Sanctuary, requires the consideration and recommendation of the NBWL or its Standing Committee in addition to the Environment Clearance under the 1986 Act. Additionally, activities which are regulated as per the specific ESZ notification, require approval as per that notification. As such, we find that there are inbuilt safeguards for preventing rampant construction and abuse of process which may be detrimental to the development and maintenance of wildlife habitats. It is further to be noted that if the direction as contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) that even for continuation of existing activities, the permission of the PCCF of each State or Union Territory would be necessary, remains unmodified, taking into consideration that in each State or Union Territory there will be hundreds of villages wherein millions of people would be residing, the PCCF would be left with no other job except to consider such applications for permission to continue such activities. Even a farmer desirous to continue farming activities would be required to seek such permission. We find that such a direction is impossible to be implemented.

51. We are of the view that if such a direction is continued, rather than avoiding man-animal conflict, it will intensify the same. As observed in the said Guidelines, the requirement of declaring ESZs is not to hamper day to day activities of the citizens but is meant to protect the precious forests/Protected Areas from any negative impact, and to refine the environment around the Protected Areas.

52. As already discussed hereinabove, the necessity to have ESZs is to provide a buffer zone around the Protected Areas. The rights of the villagers residing in the Protected Areas are required to be settled in accordance with the provisions contained in the 1972 Act and such villagers are rehabilitated outside the Protected Areas. However, no such settlement of rights is available to the villagers residing in the ESZs areas. As stated in the said Guidelines, the purpose of declaring ESZs is not to hamper the day to day activities of the citizens. If the direction as issued is continued, it would certainly hamper the day to day activities of the citizens residing in ESZs. As such, we find that the said direction needs to be modified.

53. It is further to be noted that the NBWL, in its meeting dated 17th March 2005, has also recommended that the delineation of ESZs should project as regulation rather than prohibition of activities.

54. As was pointed out by the counsel for one of the States, the entire municipal area of the Sulthan Bathery Block Panchayat is situated within the ESZ area.

55. Insofar as direction in paragraph 56.1 of the order dated 3rd June 2022 (supra) is concerned, a perusal of various orders would reveal that this Court has not directed any minimum area from the demarcated boundary of such Protected Areas. The area to be declared as ESZ cannot be uniform and will be Protected Area specific. In some cases, it may be 10 kilometres on one side and 500 meters on the other side. In certain cases, it may not be possible to have a uniform minimum area by virtue of inter-state boundaries or a sea or a river beyond one side of the Protected Area. In any case, a detailed procedure is required to be followed as prescribed under Rule 5 of the 1986 Rules which we have already referred hereinabove. We find that once such a notification is issued after following the procedure prescribed under the 1986 Rules, the ESZs will have to be as per the said notification.

56. It is further to be noted that, as required under sub-rule (3) of Rule 5 of the 1986 Rules, before any final notification is issued, a draft notification is required to be published in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time. Any person interested in filing any objection to such a draft notification is entitled to file objection within a period of 60 days from the date of publication of the draft notification in the Official Gazette. We find that the Central Government can be directed to give a wide publicity to the draft notification so that all persons interested have knowledge about issuance of such draft notification.

57. It is pertinent to note that after following the aforesaid procedure, the matter is placed before the Expert Committee consisting

of 13 organizations having expertise in the relative field. As such, before an ESZ area is specified, various factors are taken into consideration. There are various factors which will determine the ESZs for a particular Protected Area. The circumstances may differ from one Protected Area to another Protected Area. As such, we find that the direction which prescribes a uniform one kilometre ESZ requires to be modified.

58. It is further to be noted that on the date of filing of the present application, final notifications have been issued in respect of 474 Protected Areas whereas draft notifications have been issued in respect of 102 Protected Areas. 73 proposals are pending. As already discussed hereinabove, this Court has already found the said Guidelines to be reasonable and has accepted the same. The Court has also accepted the view of the Standing Committee of the NBWL that uniform guidelines may not be possible in respect of each Sanctuary or National Park for maintaining ESZs. Though the Court has observed that a minimum width of one kilometre in ESZ ought to be maintained, in paragraph 56.6 of the order dated 3rd June 2022 (*supra*) itself, it has observed that minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned is required to approach Central Empowered Committee (CEC) and MoEF & CC. It has further observed that both these bodies shall give their respective recommendations before this Court and on that basis, the Court should pass appropriate order.

59. As already discussed hereinabove, the ESZs are required to be notified after following the procedure as prescribed under the 1986 Rules and the said Guidelines. Such notifications cannot be issued unless a close scrutiny at various levels including the scrutiny by Expert Committee consisting of experts from 13 organizations. As such, we find that the direction as contained in paragraph 56.6 of the order dated 3rd June 2022 (*supra*) also needs to be modified.

60. Insofar as the restriction on mining is concerned, we are of the considered view that it has been the consistent view of this Court that the mining activities within an area of one kilometre of the boundary of the Protected Areas will be hazardous for the wildlife. Though in the case of *Goa Foundation* (*supra*), the said directions were issued in respect of State of Goa, we find that such directions need to be issued on Pan-India basis.

61. We are therefore inclined to allow the present I.A. The direction in paragraph 56.1 of the order dated 3rd June 2022 (*supra*) is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final notification has been issued by the MoEF & CC and in respect of the proposals

which have been received by the Ministry.

62. We, however, direct the Central Government that wide publicity should be given to the draft notification which is required to be published under the provisions of clause (a) of sub-rule (3) of Rule 5 of the 1986 Rules. We further direct that the final notification to be published under clause (d) of sub-rule (3) of Rule 5 of the 1986 Rules shall not be given effect for a period of 30 days from the date of issuance thereof.

63. It is further directed that any person who is aggrieved with such a final notification would be entitled to approach this Court directly by filing an application in the present proceedings.

64. We further clarify that the direction contained in paragraph 56.1 of the order dated 3rd June 2022 (supra) would not be applicable where the National Parks and Sanctuaries are located on inter-State borders and/or share common boundaries.

65. We also modify the direction contained in paragraph 56.4 of the order dated 3rd June 2022 (supra) and direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.

66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under:

- (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective Protected Areas with regard to prohibited activities, regulated activities and permissible activities;
- (ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF & CC.

67. All the other present I.As shall stand disposed of in terms of the above. No costs.

¹ (2022) 10 SCC 544

² (2006) 5 SCC 25

³ (2010) 13 SCC 740

⁴ (2011) 15 SCC 791

⁵ (2014) 6 SCC 590

⁶ (2014) 6 SCC 590

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Government of India
Ministry of Environment, Forest and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan
Aliganj, Jor bagh Road
New Delhi – 1100 03

Dated: As per e-Signature

To,

The Special Chief Secretary (Forests),
Department of Forest and Environment,
Government of Assam,
Dispur.

Subject: Proposal for seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 in favour of M/s. Oil India Ltd., Tinsukia for non-forestry use of 0.069 ha. of forest land for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division, Tinsukia in the State of Assam (Online Proposal No. FP/AS/MIN/28749/2017)-regarding.

Sir/Madam,

I am directed to refer to Government of Assam letter No. FRS.21/2021/30 dated 17.07.2021 on the above-mentioned subject seeking prior approval of Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. In this regard it is informed that the matter was discussed in the Advisory Committee (AC) in its meeting held on 04.07.2024. The detailed minutes of the said AC meeting are uploaded at parivesh.nic.in.

The Committee after detailed discussion and deliberation with the DDGF (Central), RO Shillong, officials of the Government of Assam and after going through the facts of the proposal, decided to recommend for **rejection** of the proposal for non-forestry use of 0.069 ha. of Dibru Saikhowa National Park area for Extended Reach Drilling (ERD) under Dibru Saikhowa National Park from Baghjan PML in Tinsukia Wildlife Division, Tinsukia in the State of Assam in accordance with the orders of the Hon'ble Supreme Court dated 04.08.2006, reiterated vide its order on 26.04.2023 in T.N. Godavarman Thirumulpad v. Union of India & Ors (WP(C) No. 202 of 2015) read with the Ministry letter No. 11/46/2020-FC dated 12.09.2023.

Keeping this in view the above proposal for diversion of forest land stands **rejected**.

This issues with the approval of competent authority.

Yours faithfully,

Sd-

(S. Sundar)

Assistant Inspector General of Forests

Copy to: -

1. The Principal Chief Conservator of Forests (HoFF), Government of Assam, Dispur.
2. The DDGF (Central), Regional Office, Shillong of MoEF&CC.
3. The APCCF-cum-Nodal Officer, Government of Assam, Dispur.
4. User Agency.
5. Monitoring Cell, FC Division, MoEF& CC, New Delhi, for uploading.

Minutes of Meeting to discuss issue related to Extended Reach Drilling (ERD) under the Chairmanship of DGF&SS, MoEF&CC on 11.11.2024.

A meeting under the chairmanship of DGF&SS, MoEF&CC was held on 11.11.2024 to discuss the ERD proposal submitted by the Wildlife Institute of India (WII) to assess the environmental impacts of Extended Reach Drilling (ERD) technology on above-ground biodiversity and establish region-specific guidelines. Following officers were present in the meeting:

1. Shri Jitendra Kumar, DGF&SS, MoEF&CC.
 2. Dr. Pallavi Jain Govil, Director General, Directorate General of Hydrocarbons.
 3. Shri Ramesh Kumar Pandey, IGF (FC), MoEF&CC.
 4. Shri Kaustav Nag, ADG (Exploration), Directorate General of Hydrocarbons.
 5. Shri Saloma Yomdo, Director (Exploration & Development), Oil India Limited.
 6. Shri Virendra Tiwari, Director, Wildlife Institute of India.
 7. Dr. Bilal Habib, Scientist, Wildlife Institute of India.
 8. Shri S. Sundar, AIGF (FC), MoEF&CC.
 9. Shri G.L Das, Directorate General of Hydrocarbons.
 10. Miss Pooja Verma, Directorate General of Hydrocarbons.
 11. Shri Pranjal Saharia, Oil India Limited.
 12. Shri Ashutosh Narayan Pandey, Oil India Limited.
1. DG, DGH presented the background and complete chronology of the ERD proposal, covering the progression from the inclusion of the policy agenda in the Empowered Coordination Committee (ECC) in 2020 to approval granted by the MoEFCC in 2023 for use of ERD technology for drilling under Forest land. Further, DGH explained the Extended Reach Drilling (ERD) technology to be used for extracting hydrocarbon beneath 3900-4000 meters of Dibru Saikhowa National Park.
 2. Director (Exploration & Development), Oil India Limited informed that DGH in collaboration with OIL, has proposed four potential ERD well locations BJG/BJE/BJD/BJF for research purposes.
 3. These wells are part of the larger 7-well ERD for which the Forest Clearance proposal has been rejected during the Forest Advisory Committee (FAC) meeting held on 4th July 2024, citing Supreme Court orders of 2006 & 2023 and the MoEFCC's Office Memorandum dated 12th September 2023.
 4. One of the proposed sites is planned for drilling at a depth of approximately 3,900 meters and a horizontal reach of approx. 700 meters below the Dibru-Saikhowa National Park. A video presentation on ERD technology was also shown in meeting to illustrate the operations and environmental impact mitigation measures involved in the drilling process.
 5. IGF (FC) briefed the officers present about the ERD proposal for Mining and various orders of Hon'ble Supreme Court as well as SOP issued by WII for drilling.
 6. DG, DGH informed the officers that the proposal for carrying out R&D study by WII to assess the environmental impacts of Extended Reach Drilling (ERD) technology

on above-ground biodiversity and establish region-specific guidelines be allowed in the interest of leveraging the benefits of ERD technology.

7. Director, Wildlife Institute of India concurred with DG, DGH and stated that it is only after the actual drilling is done that the impact of the drilling on the above-ground biodiversity may be studied and reported on by WII. It was further informed that the same study shall be carried out with conditions mentioned in SOP submitted by WII which were accepted by the Ministry.
8. DGF&SS informed that since issue of extraction via ERD into the National Park lead to violation of Hon'ble Supreme Court order dated 04.08.2006 and 26.04.2023 in T.N. Godavarman Thirumulpad vs Union of India & Ors (WP(C) No. 202 of 2015) the proposal for extraction was rejected by the Ministry.
9. On the matter of carrying out the R&D Study in the same oil well for which the extraction proposal was rejected, the DGF&SS stated that a fresh proposal for R&D purpose may be submitted in PARIVESH 2.0 portal seeking permission for using ERD Technology.

The meeting ended with vote of thanks to the chair.

(PARIVESH 1.0)

Minutes of the Meeting of the Advisory Committee (AC) meeting held on
27.01.2025

Agenda No. 1

File No: 8-123/2003-FCVol.

Subject: Proposal for seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 for renewal of mining lease over 80.77 ha forest land for Durgapur Open Cast Mine Project by M/s Western Coalfields Limited in compartment No 400 and 401 of Chandrapur Forest Division, Chandrapur District of Maharashtra State (Online No. FP/MH/MIN/6704/2014)- regarding.

1. The agenda item was considered by the AC in its meeting held on 27.01.2025. The corresponding agenda note may be seen at www.parivesh.nic.in. The Dy. DGF (Central), RO, Nagpur and Nodal Officer, Government of Maharashtra were present in the meeting.
2. During the meeting, all the facts and background of the proposal, along with examination of the proposal in the DSS were presented and explained by the Member Secretary before the. Committee was also apprised of the relevant provisions under other Acts, Rules and Guidelines relevant to the proposal and their significance.
3. The Advisory Committee (AC) after thorough deliberation and discussion observed the following:
 - i. The Government of Maharashtra vide their letter No. FLD-2019/CR-310/F-10 dated 19.06.2024 forwarded a proposal on the above subject to obtain prior approval of the Central Government, in terms of the under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.
 - ii. The total mine lease of Durgapur Opencast Project is 1597.50 ha excluding 25.00 Ha for rehabilitation purpose. The proposed 80.77 ha forest land was acquired vide CBA (A&D) Act 1957 Notification vide SO No.450E, dated 04.08.1979.
 - iii. The forest land of 80.77 ha of Durgapur Opencast mine had received Stage II approval vide Ministry letter No.8-123/2003-FC dated 08.11.2005 for the period of 8 years. The 80.77 ha land has been handed over for mining activities to Western Coalfields Limited on 25.08.2006 and the FC was valid up to 07.11.2013. The Western Coalfields submitted proposal for renewal of forest approval on 01.01.2013. Thereafter, regular correspondence between State Forest Department and WCL has happened to resolve shortcomings of the proposal. Revised Project Report of Durgapur Extn. (Deep) Opencast Project was approved by the WCL. Board on 21.02.2017. Proposal was recommended by the Nodal Officer, Government of Maharashtra vide letter dated 23.08.2019. Renewal of forest approval was recommended by the Government of Maharashtra vide letter FLD-2019/CR-310/F-10 dated 19.06.2024.

4. **Decision of the Advisory Committee:** After detailed deliberations with the Regional Offices, Nodal Officers and officers of the Forest Conservation Division, the Advisory Committee observed that construction of tunnels for irrigation or other similar purposes such as hydel projects is an environment friendly activity as it does not interfere with surface flora, fauna and causes no surface disturbances. Accordingly the Committee recommended that all underground works in the forest land linked to linear, irrigation, hydel and other developmental projects should be considered at par with the underground mining proposals and accordingly, applicability of the provisions of raising compensatory afforestation, Net present Value should be decided and prescribed by the processing authorities in such cases involving underground works such as construction of tunnels.

Agenda No. 3

Sub: Formulation of policy/guidelines for Penal Compensatory Afforestation (PCA) to ensure transparency, rationality and uniformity while imposing condition of raising penal CA in proposals involving violation of Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 (F. No. 813/UP/06/34/2018-FC). (File No. 11/126/2024-FC)

The policy agenda was deferred by the Advisory Committee for the next meeting. The Committee desired that the Nodal Officer, Rajasthan and Nodal Officer Himachal Pradesh to remain present in the next meeting of the Advisory Committee and the DDG, Regional Office, Bhopal will make detailed presentation before the Committee on the recommendation made in the report submitted for formulation of policy guidelines for Penal Compensatory Afforestation (PCA).

Agenda No. 4

Sub: Request for approval to conduct Research and Development (R&D) drilling activity to assess the impact of Extended Reach Drilling (ERD) without commercial implication – regarding (File No. FC-11/1/2025-FC)

1. The policy agenda item was considered by the Advisory Committee in its meeting held on 27.01.2025. The DDGF (Central), from the various Regional Officers, and Nodal Officers of the States also attended the meeting.
2. The Member Secretary briefed the Advisory Committee about the issue, request for submitted by the Directorate General of Hydrocarbon (DGH) and other relevant developments that took place in the matter.
3. The Committee, after deliberations, noted the following:
 - i. The Secretary, DGH, Ministry of Petroleum & Natural Gas, DGH vide his DO dated 19.12.2024, adverting to the minutes of the meeting held on 11.11.2024 under the chairmanship of DGF&SS to decide one suitable location for the R&D Study to be conducted by the WII, has requested this Ministry to accord approval for carrying out drilling as a Research and Development (R&D) activity without any implication, bypassing the online route. Following submissions were made by the Secretary, DGH: under:

- ii. In the minutes of the meeting dated 11.11.2024, it was decided that one fresh proposal may be submitted in PARIVESH 2.0 portal, seeking permission to drill any Extended Reach Drilling (ERD) well locations (BJG/BJE/BJD/BJF) to facilitate the development of region-specific guidelines.
 - iii. While perusing the process of online application, it was noticed that no appropriate category is available in PARIVESH 2.0 for this drilling activity under R&D purpose. There is a requirement of developing one new category as 'R&D' in PARIVESH, which would involve a multi-level scrutiny process, starting from State Government departments to the MoEFCC. Consequently, it is anticipated that the clearance process may require a minimum of 6 to 7 months to complete.
 - iv. The WII has been awarded with a long-term R&D project spanning five years, with a milestone of completing one study in a designated region within a one-year time frame. The job order with necessary funds for the first study in NE region has already been awarded and project timing, as per the agreement, has already started. The R&D study must be completed before the onset of the monsoon, taking into account the logistical challenges associated with the NE region.
 - v. It was acknowledged during the meeting that the identified locations (BJG/BJE/BJD/BJF) are the most suitable for conducting this study to develop region-specific guidelines and the outcomes of this study will contribute towards national goals for energy security and environmental conservation.
 - vi. Drilling will be carried out without any forest diversion. The Wildlife clearance for the ERD portion is already in place by SC-NBWL.
 - vii. Citing the above circumstances, the Secretary, DGH has requested to accord approval for carrying out drilling as R&D activity without any commercial implication, by passing the online route.
4. The Committee, after examining the request made by the DGF, note the following;
- i. In the meeting held in the Ministry on 11.11.2024, it was concluded that extraction via ERD technology in the National Parks will lead to violation of Hon'ble Supreme Court order dated 4.08.2006 and 26.04.2023 in W.P. 202 of 1995.
 - ii. The Central Government, based on a study report submitted by the DGH and General SoP provided by the Wildlife Institute of India as per their preliminary study, has exempted the ERD technology from the purview of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. The relevant guidelines given at para 7.10 of the Consolidated Guidelines. The exemption provided therein is inter-alia subject to the following conditions:
 - (a) *The DGH will facilitate the formulation of detailed regional-specific guidelines by the Wildlife Institute of India. The necessary financial support, as will be required by the WII, will be arranged by the DGH.*
 - (b) *The exemption considered for the ERD technology will not be applicable if the drilling area falls inside the Protected Areas notified under the Wild Life (Protection) Act, 1972 and Eco-Sensitive zone of Protected Areas.*
 - iii. The SoP prescribed by the WII inter-alia mention that "*Based on the site visit by the WII team, there is a need to understand the impact of ERD on the above-ground biodiversity of forest areas and associated wildlife species. Once a detailed study on animal distribution, activity, behaviour, and response to anthropogenic disturbance is carried out, we shall be able to*

submit detailed and site-specific recommendations to mitigate the adverse effect of drilling and exploration on wildlife species. Drillings sites in different biogeographic zones and habitat types will be selected to monitor the impact of anthropogenic disturbance on wildlife activity and their responses. The study outcomes will incorporate the relevant environmental protection measures and provide essential mitigation measures to reduce the adverse impacts of drilling on wildlife and surrounding forest areas. Since most of the disturbance is during the drilling process, mitigation measures must be implemented along with the ERD activities. The measures across different drilling sites in India will be based on a comprehensive study proposed by WII based on credible primary data concerning wildlife species in our country.

- iv. The above SoP, along with the report of the DGH was considered and recommended by the Advisory Committee in its meeting held on held on 17th July, 2023. Based on the recommendation of the Advisory Committee, the Central Government, accepted the report of DGH and SoP of the WII recommending to exempt the Extended Reach Drilling Technology from the purview of the Adhinyam to undertake drilling in the forest areas, located outside the Protected Areas and Eco-sensitive Zones, subject to fulfillment of certain conditions mentioned therein. Accordingly, guidelines exempting the ERD technology from the purview of the Adhinyam were issued on 12.09.2023 which were incorporated at para 7.10 of the Consolidated Guidelines.
- v. The proposed drilling for R&D, proposed by the DGH, is in consonance with the approval granted by the Central Government on 12.09.2023 wherein inter-alai it was conveyed that 'Drillings sites in different biogeographic zones and habitat types will be selected to monitor the impact of anthropogenic disturbance on wildlife activity and their responses. The study outcomes will incorporate the relevant environmental protection measures and provide essential mitigation measures to reduce the adverse impacts of drilling on wildlife and surrounding forest areas'.
- vi. In the instant case, 4 locations inside the Dibru Saikhova National Park have been selected for the purpose of a research study to be conducted by the WII to assess the impact of Extended Reach Drilling on the surrounding flora and fauna. Therefore, provisions of the Guidelines given at para 7.10 of the Consolidated Guidelines are not applicable for extraction of oil.
- vii. The Standing Committee of the NBWL in its meeting held on 29.07.2017 recommended the proposals of the DGH for undertaking exploration at the proposed locations in the Dibru Saikhova National Park. Subsequent to recommendation of NBWL, the Hon'ble Supreme Court vide its order dated 7.09.2017 has also granted approval for extraction of Hydrocarbon from the Dibru Saikhova National Park as proposed by the User Agency.
- viii. As the SC-NBWL and Hon'ble Supreme Court have already granted permission for extraction of Hydrocarbon from a depth of 3900-4000 meters below surface, the proposed activity, therefore, do not involve violation of Hon'ble Supreme Court.
- ix. Extant proposal submitted by the DGH is for the purpose of R&D study involving no diversion of forest land. Earlier, the Ministry has allowed research study in the State of Uttar Pradesh wherein a pilot study for backfilling of mining voids with fly ash and red mud involving forest area of

0.55 ha forest land in the State of Uttar Pradesh was assigned to IIFM, TERI, IIT-BHU and CPCB.

5. **Decision of the Advisory Committee:** After detailed deliberations with the Regional Offices, Nodal Officers and officers of the Forest Conservation Division, the Advisory Committee observed that extant proposal has been proposed within a National Park for undertaking a study by the WII, Dehradun to assess the impact of ERD technology on surrounding the flora and fauna without any commercial implications and in the recent past also the Ministry has allowed a pilot research and development study for backfilling of mining voids. The Committee, therefore, recommended that proposed research and development study as proposed by the DGH may be allowed in the proposed locations in the Dibru Saikhova National Park subject to following conditions:
- i. The Research and Development study proposed by the DGH will not cause any diversion of forest land on the surface.
 - ii. The outcome of the proposed activity will not be used for any commercial purpose and will be used purely for research purpose to monitor the impact of anthropogenic disturbance on forests and wildlife for prescribing for not result into any commercial implications.

Additional Agenda No. 1

Proposal No: FP/BR/Approach/152066/2022

Subject:- Proposal for Ex-post facto approval of the Central Government under section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 for diversion of 0.015 ha of forest land for approach access for establishment of retail on the side of Gaya-Sherghati Road, Khata No. 02, Plot No. 647, Thana No.703, Thana- Gurua, Mauza- Samda of M/s NX100 Pacific Biofuel Pvt. Ltd. by Shri Ajit Kumar in Gaya district of Bihar State (Online No. FP/BR/Approach/152066/2022) – regarding.

1. The above stated agenda item was considered by the AC in its meeting held on 27.01.2025. The corresponding agenda note may be seen at www.parivesh.nic.in. The Dy. DGF (Central), RO, Ranchi were present in the meeting. Nodal Officer, Government of Bihar was not present in the meeting.
2. During the meeting, all the facts and background of the proposal, along with examination of the proposal in the DSS were presented and explained by the Member Secretary before the AC. Committee was also apprised of the relevant provisions under other Acts, Rules and Guidelines relevant to the proposal and their significance.
3. The Advisory Committee (AC) after thorough deliberation and discussion observed the following:
 - i. The Government of Bihar vide their letter No. Van Bhumi-67/2023-82(E)/P.V.J.P. dated 09.02.2024 has submitted the above cited proposal seeking prior approval of the Central Government under Section 2 (1) (ii) of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 to Regional Office, Ranchi..
 - ii. The proposal is for approach access for establishment of retail on the side of Gaya-Sherghati Road of M/s NX100 Pacific Biofuel Pvt. Ltd.
 - iii. Legal status of the proposed area is notified Forest and Density of the proposed area reported as 0.1 with Eco Class 3.
 - iv. As reported, details of violation and action taken are as under:

F.No. IA3-22/10/2022-IA.III [E 177258]

Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi – 110003

Dates: 11th April, 2022

OFFICE MEMORANDUM

Sub.: Clarification on calculating the validity of prior Environmental Clearance (EC) granted under the provisions of EIA Notification 2006, which involve forest land – Regarding.

The Ministry has been making continuous efforts to streamline the procedure to be followed for consideration of projects involving forest land, for prior EC, by issuing various OMs from time to time.

2. The Hon'ble Supreme Court judgment in W.P (C) No. 202 of 1995 in the Lafarge case pronounced inter-alia that the EC in respect of projects involving forest land will only be granted after the project proponent obtains Stage-I Forest Clearance (FC) in respect of the forest land involved in the project, so that *fait accompli* situation does not arise. In line with the directions of the Hon'ble Supreme Court, the Ministry grants EC only after the grant of Stage-I FC, even while the projects/activities get appraised in anticipation of grant of FC.

3. As per the provisions of the Forest (Conservation) Act, 1980, the FC for the forest land is granted in two stages i.e., (a) In-principle or Stage-I approval, and (b) Stage-II approval on compliance of the conditions of Stage-I approval. The project proponent can start the work at site only after getting the Stage-II FC in addition to the other statutory permissions/ approvals under the various Acts/Rules.

4. In this regard, especially in the context of large projects such as hydro power projects which involve large forest areas considerable time may get consumed in obtaining Stage-II FC and the project proponent may be unable to implement the project/activity within the validity period of the EC and may be constrained to approach the Ministry for extension of the validity of EC, and in some cases may be even compelled to start the EC process *de novo*.

5. The matter has been examined in the Ministry and it has been observed that there is a need to rationalise the impact of the time taken in obtaining Stage –II FC, on the validity of EC. In this context, it has been decided that the time taken for obtaining stage-II FC, after the grant of EC, may not be considered as a part of the

EC validity up to a maximum period of two years, so as not to compromise with the environmental safeguards.

6. In this regard, it is hereby directed that, for the projects which involve forest land and require Stage-I and Stage-II FC under the provisions of the Forest (Conservation) Act, 1980, the validity period of the prior EC granted [after stage-I FC], shall be reckoned from the date of grant of Stage-II FC, or a maximum period of two years, whichever is less.

7. This is issued with the approval of the Competent Authority.


(A.K. Agrawal)
Director

To

1. Chairman / Member Secretary Central Pollution Control Board
2. Chairperson/ Member Secretaries of all Expert Appraisal Committees
3. Chairperson/Member Secretaries of all SEIAAs/SEACs
4. Chairperson/Member Secretaries of all State / UT Pollution Control Boards
5. All Officers of IA Division

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3. PPS to Secretary, EF&CC
4. PPS to DGF&SS, EF&CC
5. PPS to AS (TK)/JS (SKB)
6. Website, MoEF&CC /Guard file

2631



Litigation . <litigation@dclawchambers.com>

Additional Affidavit on behalf of the Appellant in Appeal No. 04 of 2020 Bimal Gogoi versus. Union of india & ors.

1 message

Litigation . <litigation@dclawchambers.com>

Thu, May 29, 2025 at 2:43 PM

To: Anamika Pandey <legumjure@gmail.com>, "rahulpratap.adv@gmail.com" <rahulpratap.adv@gmail.com>, shayamvar_deb@hotmail.com, "mrdey@rediffmail.com" <mrdey@rediffmail.com>

Cc: Kol Office <kol_office@dclawchambers.com>

Dear Sir/madam,

Please find attached-Additional Affidavit on behalf of the Appellant in Appeal No. 04 of 2020 Bimal Gogoi versus. Union of india & ors.

Thanks & Regards
Counsel for the Appellant

 **Additional Affidavit.pdf**
10777K