

IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
I.A. NO. 137 OF 2024
IN
ORIGINAL APPLICATION NO. 59 OF 2024

IN THE MATTER OF:

IN RE: NEWS ITEM TITLED "DEFORESTATION FOR MINING RESUMES IN HASDEO LOCALS ACTIVISTS ALLEGE DETENTION" APPEARING IN THE HINDU DATED 22.12.2023

IN THE MATTER OF:

Dr. D.S. Srivastava Applicant

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Next Date of Hearing: 15.10.2024

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

It is most respectfully showeth:

1. That in the present proceedings, this Hon'ble Tribunal has taken *suo moto* cognisance of news reports on the deforestation that taking place for a coal mining project in the Parsa East and Kente Basan (PEKB) block in the State of Chhattisgarh, and the consequential protests. As recorded in order dated 04.09.2024, the Applicant herein seeks leave to assist the Hon'ble Tribunal in the present proceedings. The present written submissions are being filed to provide an overview of the key issues that may be considered by this Hon'ble Tribunal for the just and proper adjudication of the matter. The Applicant craves leave to make such additional submissions as may be called for by this Hon'ble Tribunal at any subsequent stage, or maybe required in the interest of justice.
2. That there are 23 coal blocks in the Hasdeo Arand Coal Fields (HACF). Out of these 23 blocks, three blocks - Parsa East and Kente Basan (PEKB), Parsa, and Kente Extension have been allocated to Rajasthan Rajya Vidyut

Utpadan Nigam Limited (RRVUNL), Respondent No. 4 herein. The news report of 22.12.2023 that this Hon'ble Tribunal has taken cognisance of, along with two other news reports that form the basis of two connected *suo moto* proceedings (O.A. No. 128 of 2024 and O.A. No. 133 of 2024) refer to the tree felling that is taking place in the PEKB block.

3. That the HACF region hosts one of the richest forest areas in the country. The Hasdeo Arand landscape is biodiversity rich and supports an intact faunal diversity typical to peninsular India. According to a report prepared by the Wildlife Institute of India titled '*Biodiversity assessment with emphasis on select faunal groups in the Hasdeo Arand Coal Field, Chhattisgarh*' which formed Volume II of the Report titled '*Biodiversity study in the entire Hasdeo-Arand Coalfield comprising of Tara, Parsa, Parsa East & Kanta Basan and Kente Extension coal blocks in Chhattisgarh*' submitted by ICFRE to the State of Chhattisgarh, the area supports a minimum of 25 species of mammals including 9 mammal species that are on Schedule I of the Wildlife (Protection) Act, 1972 and thus accorded the highest level of legal protection under Indian law. According to the Report even this list of 25 mammals is best considered minimal. The Report also stated a total of 92 species of birds belonging to 44 families were recorded of which six species are protected under the Schedule I of Wildlife (Protection) Act and 19 species are range restricted to the only Indian subcontinent.
4. That this landscape is an integral part of the elephant range in northern Chhattisgarh. According to the WII report a minimal estimate of 40 to 50 elephants could be using the area at different times of the year. For the period 2018 - 2020 elephant occurrence was reported by Forest Department in a minimum of 148 out of 640 forest compartments in this landscape. The elephants use the area as both habitat as well as corridor for movement.
5. That deforestation and mining in this area will decimate and fragment the forests and lead to significant and irreversible adverse impacts on the biodiversity and rich wild habitats. The area is home to socially, economically backward vulnerable schedule population dominated by

scheduled tribes and others traditional forest dwellers, and their lives and ways of living is under serious threat.

KEY DATES AND EVENTS

6. That the PEKB block includes 1861 ha of forest land. Before this area can be diverted for non-forest purpose (i.e. mining), an order of the State Government, after obtaining prior approval of the Central Government, is mandatory under Section 2 of the Forest (Conservation) Act 1980 [FC Act]. Following is a list of key dates and events with regard to PEKB block and the process under the FC Act:

Date	Events/ Particulars
28.04.2010	State of Chhattisgarh submitted a proposal seeking prior approval of the Central Government under Section 2 of the FC Act for the diversion of 1898.328 hectares of forestland for PEKB coal block open cast mining.
20.06.2011/ 21.06.2011	The Forest Advisory Committee (FAC) rejected the proposal for diversion of 1898.328 hectares of forest land in the PEKB block for open case coal mining by RRVUNL. The FAC relied on the report of a sub-committee constituted by it which <i>inter alia</i> identified the significant forest cover in the area; found that it is a suitable and existing habitat for wild vertebrates including large mammals that are on Schedule 1 of the Wildlife (Protection) Act 1972; recorded the presence of elephants in the area; and held that the process under the Forest Rights Act had not been completed, especially settlement of community rights.
23.06.2011	The then Minister of Ministry of Environment and Forests (MoEF) overruled the recommendation of the FAC rejecting the proposed diversion and approved

	<p>mining in the PEKB block. One of the stated reasons for overriding the FAC's recommendation was that mining can be done with minimal impact to the environment by doing it in two phases. The Minister suggested that phase I will be for 15 years over 762 ha, and then renewal for phase II over remaining 1136 ha will be linked to the performance on reforestation and biodiversity management in Phase I.</p>
06.07.2011	<p>In-principle approval (Forest Clearance Stage 1) is granted for diversion of 1898.328 ha of forestland for coal mining in PEKB block. Condition No. 9 of the approval stated that the mining shall be done in two phases –</p> <ol style="list-style-type: none"> 1) In Phase I, covering 15 years, mining shall be restricted to 762 hectares of forest land 2) In Phase II, the mining permission over the remaining 1136 hectares will be linked to the reforestation and biodiversity management in Phase-I <p>The project proponent was directed to submit the application for permission to commence Phase II mining along with compliance report of Phase I.</p>
21.12.2011	<p>Environmental clearance under the EIA Notification 2006 was granted to the project with production capacity of 10 MTPA.</p>
15.03.2012	<p>Final approval (Forest Clearance Stage 2) was granted by MoEF. Condition No. 8 prescribed that the mining would be permitted in two Phases (the same condition as in the Forest Clearance Stage 1).</p>
28.03.2012	<p>State of Chhattisgarh issues an order under Section 2 of the FC Act permitting the diversion of 1898.328</p>

	hectares of forestland in the PEKB block for open cast coal mining in two phases.
24.03.2014	<p>Order of 28.03.2012 issued by State of Chhattisgarh challenged before this Hon'ble Tribunal in <i>Sudiep Shrivastava v State of Chhattisgarh and Others</i> Appeal No. 73 of 2012.</p> <p>A five-member bench of this Hon'ble Tribunal pronounced a detailed judgment on 24.03.2014 setting aside the letter of 23.06.2011 issued by the Minister and the consequential order of 28.03.2012 passed by the State of Chhattisgarh. The operative part of the judgment reads as follows –</p> <p>“Hence, the order:</p> <p><u>1. Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;</u></p> <p><u>2. The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the proposal discussed herein above</u> with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and</p>

fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora? (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties. 3. The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.

4. All work commenced by the respondent no. 3 project proponent and respondent no. 4 pursuant to the order dated 28th March, 2012 passed by

	<p>the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.</p> <p>5. No order as to costs.” (emphasis added)</p> <p>It is important to note here that the Hon’ble Tribunal set aside not only the Section 2 order issued by the State Government but also the Minister’s letter that lay the foundation for the process under FC Act to commence.</p>
28.04.2014	<p>Respondent No. 4 herein filed <i>Rajasthan Rajya Vidyut Utpadan Nigam Ltd v Sudiep Shrivastava and Others</i> C.A. No. 4395 of 2014 in the Hon’ble Supreme Court challenging the judgment of 28.03.2014 of this Hon’ble Tribunal.</p> <p>On 28.04.2014, the Hon’ble Supreme Court issued notice and <u>granted a partial stay on para 4 of the Hon’ble Tribunal judgment</u> –</p> <p>“In the meanwhile, we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of Environment and Forests.”</p> <p>Due to this interim order, Respondent No. 4 was permitted to continue mining in the PEKB block. However, the rest of the directions issued by this</p>

	Hon'ble Tribunal continued in operation including the setting aside of the Minister's letter dated 23.06.2011 and the Section 2 order of the State of Chhattisgarh under the FC Act.
26.10.2017	The FAC while considering the proposal for prospecting of 1745.883 hectares of forestland of Kente Extension coal block in favour of RRVUNL for exploration of coal reserves recommended that a biodiversity assessment study be conducted by the state government through ICFRE Dehradun in consultation with Wildlife Institute of India, Dehradun for the whole HACF comprising of Tara, Parsa, Parsa East, Kante to be funded by RRVUNL.
10.08.2018	Respondent No. 4 was granted an environmental clearance for expansion of PEKB Opencast mining from 10 MTPA to 15 MTPA, and expansion of PEKB Pit Head Coal Washery from 10 MTPA to 15 MTPA.
29.01.2019	State of Chhattisgarh awarded a biodiversity assessment study of the Hasdeo-Arand Coalfield (HAC) comprising of 23 coal blocks including Tara, Parsa, Parsa East & Kanta Basan and Kente Extension blocks to ICFRE to be undertaken in consultation with WII.
22.02.2021	State of Chhattisgarh sought approval of the Central Government for Phase II mining operations in the balance area of 1136 ha of forest land in the PEKB coal block. Part of the reason for seeking this approval in advance of 2028 (15 years from the commencement of the Phase I mining) was the enhancement of production capacity of the mine from 10 MTPA to 15 MTPA. It is understood that another reason for seeking this

	approval was that the project proponent could not access the rest of the coal.
08.10.2021	The Biodiversity Assessment Study was submitted by the State of Chhattisgarh to the MoEFCC. The Study included two volumes and an Executive Summary. Volume I was prepared by ICFRE and Volume II was the study submitted by WII.
02.02.2022	<p>MoEFCC granted permission to RRVUNL for Phase II mining in the 1136 ha forest land in the PEKB block. The permission was conditional on <i>inter alia</i> –</p> <p>“iv. Grant of permission for mining operations in the Phase-II area of 1136 ha is subject to change as per the directions of Hon’ble Supreme Court, as may be directed in final decision, in Civil Appeal 4395 of 2014.</p> <p>vi. The State Government and the user agency shall ensure that concerned orders/ directions of Courts/Tribunals, relevant provisions of all concerned Acts, Rules, Regulations and Guidelines pertaining to this project, if any, for the time being in force, as applicable to the project.</p> <p>viii. State Government shall ensure that conditions stipulated in the Stage-II approval dated 15.03.2012 be complied with by the user agency; and</p> <p>ix. Violation of any of these conditions will amount to violation of Forest (Conservation) Act, 1980 and action would be taken as per the provisions made under the Act and Forest (Conservation) Rules.”</p>

	Significantly, there is no valid forest clearance for mining in the PEKB block at this point, as the same had been set aside by this Hon'ble Tribunal's 24.03.2014 and the same direction had not been stayed by the Hon'ble Supreme Court. Mining had been permitted to continue based on the Court's limited interim order, which ceased to operate once the final order was delivered in the Civil Appeal on 16.10.2023.
14.02.2022	Respondent No. 4 was granted an environmental clearance for expansion of PEKB Opencast mining from 15 MTPA to 18 MTPA.
25.03.2022	State of Chhattisgarh permits Phase II mining in PEKB block prescribing the same conditions as prescribed by the MoEFCC in its letter dated 02.02.2022
05.05.2022	Permission was granted by the office of the PCCF, Chhattisgarh to fell 7960 trees on 43.63 ha area of the forest land as part of Phase II mining in the PEKB block.
26.07.2022	The Chhattisgarh State Assembly passed a resolution unanimously stating that all the Coal Blocks allotted in the Hasdeo Area be cancelled.
16.10.2023	The Hon'ble Supreme Court disposed of the Civil Appeal No. 4395 of 2014 as the Appellant did not wish to press it. The Hon'ble Court did not make any observations with regard to the impugned judgment of the Hon'ble Tribunal. Therefore, the judgment continues to hold the field, and there is no valid Section 2 order under the FC Act issued by the State Government as of date. Further, as the appeal was disposed of, the interim order issued by the Hon'ble Court also ceased to operate. The Hon'ble Court refers to letters permitting

	<p>Phase II mining in PEKB but does not adjudicate on their legal validity.</p> <p>The Hon'ble Court also disposed of SLP No. 18103 of 2022 recording that the Hon'ble High Court of Chhattisgarh had not granted relief to the petitioners in I.A. No. 5 in W.P. (C) 1346 of 2016 (seeking a stay on the felling of trees) because the matter was pending before the Hon'ble Supreme Court and there was no challenge to them in the Writ Petition. The Hon'ble Supreme Court directed the Petitioners to approach the High Court for appropriate remedy.</p>
11.12.2023	<p>Permission was granted by the office of the PCCF, Chhattisgarh to fell 15,307 trees on 91.130 ha area of the forest land as part of Phase II mining in the PEKB block.</p>
22.12.2023	<p>News item titled "<i>Deforestation For Mining Resumes In Hasdeo Locals Activists Allege Detention</i>" appeared in The Hindu.</p>
11.01.2024	<p>This Hon'ble Tribunal took <i>suo moto</i> cognisance of the news item published in the Hindu and O.A. No. 59 of 2024 was registered based on the same.</p>

NO ORDER UNDER SECTION 2 OF THE FOREST (CONSERVATION) ACT

7. That as of this date, there is no order under Section 2 of the FC Act issued by the State Government that permits Respondent No. 4 to divert forest land and fell trees for mining in the PEKB block.
8. That the order dated 28.03.2012 issued under Section 2, FC Act, by the State of Chhattisgarh for diversion of forestland for mining in the PEKB block was challenged before this Hon'ble Tribunal in in *Sudiep Shrivastava v State of Chhattisgarh and Others* Appeal No. 73 of 2012. This Hon'ble Tribunal vide its judgment dated 24.03.2014 categorically set aside the Section 2

order. In its judgment, this Hon'ble Tribunal provides an in-depth analysis of the recommendations of the FAC regarding the PEKB block mining proposal, the sub-committee report that formed the basis of the FAC's recommendations rejecting the proposal, as well as the Minister's letter dated 23.06.2011 overruling the FAC's recommendations. This Hon'ble Tribunal found the FAC's engagement with the issue to be inadequate and the letter of 23.06.2011 of the Minister to be arbitrary. In its judgment, the Hon'ble Tribunal observed –

'In view of the aforesaid discussion it is evident that the FAC did not examine all the relevant facts and circumstances while rendering its advice and to cap it the Minister acted arbitrarily and rejected the FACs advice for the reasons having no basis either in any authoritative study or experience in the relevant fields. In short the reasons adduced by the Minister fail to outweigh the advice rendered by the FAC. This calls for quashing of the Minister's order dated 23rd June, 2011 rejecting the FACs advice and consequential order dated 28th March, 2012 passed by the respondent no. 1- State of Chhattisgarh in order to have holistic reappraisal of the entire issue. It is therefore, just and necessary to remand back the entire case to the Minister with appropriate directions to get a fresh advice from the FAC on the material issues in the present case and to reconsider the entire matter afresh in accordance with law...'

9. That the judgment of the Hon'ble Tribunal dated 24.03.2014 was challenged in a statutory appeal before the Hon'ble Supreme Court in *Rajasthan Rajya Vidyut Utpadan Nigam Ltd v Sudiep Shrivastava and Others* C.A. No. 4395 of 2014. Vide an interim order dated 28.04.2024, the Hon'ble Supreme Court stayed only para 4 of this Hon'ble Tribunal which had suspended all work (with limited exception) that had started pursuant to the forest clearance dated 28.03.2012. Significantly, no other findings of the impugned judgment were stayed in the interim order. Thus, mining in the PEKB block was permitted to continue due to this interim stay by the Hon'ble Supreme Court.

10. That the C.A. No. 4395 of 2014 was disposed of by the Hon'ble Supreme Court vide its order dated 16.10.2023 as the counsel for Respondent No. 4 stated during the proceedings that the appeal was not pressed. The order refers to letters of 02.02.2022 issued by the MoEFCC and letter dated 25.03.2022 issued by the State of Chhattisgarh. But as is evident from the Hon'ble Court's order, there was no judicial application of mind on the legal sanctity of these letters and whether the letter issued by the State of Chhattisgarh can be construed to be an order under Section 2 of the FC Act. Furthermore, once the Appeal is disposed of, the stay order issued by the Hon'ble Supreme Court is no longer in operation.
11. That the Hon'ble Supreme Court in its order of 16.10.2023 has not made any observations on the impugned judgment of this Hon'ble Tribunal, and therefore the judgment of 24.03.2014 now holds the field. As a result, the forest clearance/ Section 2 order dated 28.03.2012 that was set aside by this Hon'ble Tribunal after detailed analysis of the facts and circumstances retains that legal status – i.e. not legally tenable. In the absence of a judicial determination by the appellate court on whether the subsequent letters could be considered as an order under Section 2 of the FC Act, this *status quo* must hold. Therefore, at this point of time, there is no valid forest clearance for the PEKB block.
12. It is important to note here that the Hon'ble Tribunal's judgment categorically struck down the Minister's letter which was the very foundation for the in-principle approval and the final approval granted by the Central Government subsequently, leading to the Section 2 order being issued by the State Government. If the 23.06.2011 letter and the final Section 2 order have been set-aside, the two approvals issued by MoEF as part of the process have no legal standing and cannot provide the basis for permitting the diversion of forest land subsequently. Furthermore, the Hon'ble Tribunal made categorical findings that the MoEF had to consider the *entire matter afresh*. To assume that the Hon'ble Tribunal had only set aside the Section 2 order,

and the final approval (of 15.03.2012) was still valid would be a clear and deliberate misinterpretation of this Hon'ble Tribunal's judgment.

13. That this Hon'ble Tribunal in *Vimal Bhai and Another v Union of India and Others* Appeal No. 7 of 2012 (judgment of 07.11.2012), while considering whether a Stage 1 approval by the MoEF could be challenged before this Hon'ble Tribunal in an appeal under Section 16(e), NGT Act, held that -

22. The questions now arises as to whether the approval granted by the Central Government under Section 2 of the FC Act granting in-principle sanction can be assailed by filing an Appeal, the said order not being the final allotment order. The language of the Section stipulates that before permitting user of forest land for non-forest purposes, the State Government has to obtained prior approval of the Central Government, thus there is no ambiguity that the State Government is the authority to grant permission for use of forest land for non-forest purpose, but then such permission can be granted only after the Central Government accords approval. Further a right to use the forest land for non-forest purpose accrues only after the State Government passes the order, and not from the date of granting Stage - I or Stage – II Clearance.

30 ...In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be *ab initio void*...'
(emphasis added)

In view of this clear statement of law, it is respectfully submitted that in the absence of a Section 2 order by the State of Chhattisgarh, forest-land cannot be used for mining in the PEKB block. Letters dated 02.02.2022 and 25.03.2022 permitting Phase II mining in the PEKB are not Section 2 orders and cannot legally substitute the mandatory statutory requirement of a

Section 2 order before mining commences in forest land. Tree felling being undertaken on the basis of these two letters are illegal, and must be stopped forthwith.

LETTERS DATED 02.02.2022 AND 25.03.2022 ARE NOT LEGALLY VALID

14. That the letter dated 02.02.2022 of the MoEFCC and the subsequent letter dated 25.03.2022 of the State of Chhattisgarh permitting Phase II mining have no legal validity after the order of 16.10.2023 of the Hon'ble Supreme Court. It is respectfully submitted that both letters have conditions stating that the grant of permission for Phase II mining is subject to the orders of the Hon'ble Supreme Court in C.A. No. 4395 of 2014.
15. That the Hon'ble Supreme Court did not make any observations on the impugned judgment of the Hon'ble Tribunal setting aside the Section 2 order of 25.03.2012. Therefore, the letter dated 02.02.2022 of the MoEFCC and the subsequent letter dated 25.03.2022 of the State of Chhattisgarh permitting Phase II mining have no basis in law to stand. There is no Section 2 order under FC Act permitting any mining in PEKB block and the question of commencing Phase II mining does not arise.
16. That it is evident that the MoEFCC and the State Government were also aware that a valid order under Section 2 of the FC Act did not exist because both letters require the user agency to comply with the conditions of the final approval/ Stage 2 clearance dated 15.03.2012. As submitted above, diversion of forest land without a Section 2 order is illegal, and the final approval letter issued by the MoEF has no basis as the Hon'ble Tribunal had found the Minister's letter (which led to the in-principle and final approvals) to be arbitrary and had directed the entire matter to be considered afresh. To assume that the final approval of 15.03.2012 was still valid would be a clear and deliberate misinterpretation of this Hon'ble Tribunal's judgment.

17. That both letters require the user agency to comply with all applicable laws and state that violation of any of the conditions prescribed in the letters would amount to a violation of the FC Act. It is respectfully submitted that diverting forestland for mining without an order under Section 2 is a violation of the FC Act, and appropriate action should be considered as per law.

PENDENCY OF W.P. (C) 1346 OF 2016 BEFORE HON'BLE HIGH COURT IS NOT A BAR FOR THE PRESENT PROCEEDINGS

18. That it is respectfully submitted that the averment made by the Respondents regarding the 02.02.2022 letter and the consequent letter of 25.03.2022 issued by the State Government being the subject matter before the Hon'ble High Court of Chhattisgarh in W.P. (C) 1346 of 2016 is misleading. The grounds raised in the writ petition relate to the compliance of requirements under the Forest Rights Act, and whether the rights, including community forest rights, of the affected persons could have been cancelled. No grounds have been raised in W.P. (C) 1346 of 2016 regarding the absence of an order under Section 2 of the FC Act, and that the two letters lack legal validity. While this Hon'ble Tribunal has the statutory mandate to ensure the proper implementation of the FC Act, issues relating to Forest Rights Act will fall outside its jurisdiction, and therefore grounds raised in W.P. (C) 1346 of 2016 cannot be agitated before this Hon'ble Tribunal.
19. That although I.A. No. 10 of 2023 in W.P. (C) 1346 of 2016 to amend the writ petition and quash the letters dated 02.02.2022 and 25.03.2023 was filed in October 2023, the Hon'ble High Court allowed the Application for amendment only vide its order dated 02.05.2024. In fact, vide order dated 30.09.2022, the Hon'ble High Court had refused to consider staying the operation of the letters dated 02.02.2022 and 25.03.2022, along with letter of the APCCF dated 05.05.2022 permitting tree felling in 43.63 hectares of forestland, as the letters were not part of the writ petition.
20. That the Hon'ble Supreme Court's order of 16.10.2023 in SLP No. 18103 of 2022 records that the Hon'ble High Court had not granted relief to the

petitioners in I.A. No. 5 in W.P. (C) 1346 of 2016 (seeking a stay on the felling of trees) because the matter was pending before the Hon'ble Supreme Court and there was no challenge to them in the Writ Petition. While disposing of the SLP, the Hon'ble Court directed –

“Since the writ petition under Article 226 of the Constitution is pending before the High Court, it would be appropriate and proper to relegate the petitioners to pursue their rights and remedies in accordance with law. Since the application for interim relief in IA No 5 of 2022 was not considered by the High Court for the reasons which have been indicated above, we clarify that it will be open to the petitioners to move an application for seeking interim relief.”

Therefore, the issue of whether mining could be permitted under these letters without prior settlement of forest rights had not considered by the Hon'ble Court till it was relegated back to the Hon'ble High Court and it allowed the I.A. No. 10 vide its order dated 02.05.2024. The present *suo moto* proceedings were registered by this Hon'ble Tribunal on 11.01.2024 – before the Hon'ble High Court (partly) allowed the application for amendment of the Writ Petition.

DEFORESTATION AND MINING IN HACF WILL INTENSIFY HUMAN ELEPHANT CONFLICT

21. That the State of Chhattisgarh already witnesses a high number of Human Elephant Conflicts (HECs) and this will only intensify as the deforestation and mining leads to fragmentation of the natural habitats of the elephants.
22. That the Wildlife Institute of India (WII) in its report (submitted as part of the ICFRE' biodiversity assessment report to the State of Chhattisgarh) has a chapter on 'Elephant Habitat Use, Movement Patterns and aspects of Human-Elephant Conflict'. The report states –

“The increasing levels of HEC is primarily due to loss, fragmentation of degradation of in-tact elephant habitats, which had led to frequent dispersal of elephants from their forested

home ranges into human-dominated areas. The central Indian elephant habitat is one of the most fragmented and degraded due to mining activities (Rangarajan et al. 2010). Degradation, fragmentation and loss of forest cover due to developmental activities have severely threatened long ranging species like elephants as they require large, undisturbed inviolate landscapes to fulfill their ecological needs. Activities like mining have depleted and fragmented the elephant habitats. This has led to increase in negative interaction of elephants and humans resulting in loss of previous human lives, injuries and structural damages in the landscape.”

23. That the WII’s report refers to the contradiction of low elephant numbers but high HEC in Chhattisgarh. It records -

“In general, one of the reasons for HEC being disproportionately high in EC region is the elephant dispersal from forest habitats through fragmented human use areas. This large scale elephant dispersal out of intact forests coincide with commencement of large-scale mining projects and associate infrastructure developments in the EC region, particularly in the states of Odisha and Jharkhand.”

24. That increasing land fragmentation and forest degradation in the region has led to an increase in human elephant conflict (HEC). The WII Report reports 2357 elephant related crop and property damage incidents during 2015-2018 in the Hasdeo Arand Coal fields and 10 human elephant conflict related fatalities were reported between 2018 and 2019. A categorical finding is made in the conclusion of the report:

“The coal mines along with the associated infrastructure development would result in loss and fragmentation of habitat. Mitigating such effects on wildlife, particularly the animals with large home ranges such as elephants is seldom possible. The human-elephant conflict in the state is already acute and has been escalating with huge social and economic costs on the marginal, indigenous local communities. Any further threat to elephants’ intact habitats in this landscape could potentially deflect human-elephant conflict into other newer areas in the state, where conflict mitigation would be impossible for the state to manage. Opening up of coal blocks for min[ing] in the HACF would compromise the imperatives of biodiversity conservation and livelihood of forest-dependent local. Even the effects of the

operational PEKB mine need to be tactfully mitigated too, wherever possible.”

(emphasis added)

The WII's report was completed before any work commenced on Phase II mining and therefore its recommendation on the effects of the 'operational PEKB mine' could only be referring to Phase I mining in PEKB that had commenced in 2013. In response to a specific question listed in this Hon'ble Tribunal's judgment of 24.03.2014, the WII states –

“(vii) What conditions and restriction do they propose on the mining in question, if they favour such mining?”

As certain portions of the PEKB block has already been opened for mining, the mining operation may only be permitted in the already operational mine of the block. The other areas in HACF and landscape surrounding it should be declared as “no-go areas” and no mining should be carried out considering the irreplaceable, rich biodiversity and socio cultural values.”

25. That the habitat connectivity for large mammals like tigers and elephants between Hasdeo Arand area and Achanakmar Tiger Reserve is strong. Intact habitat connectivity with tiger source population and relative vastness of the landscape could augur well for recovering tigers. However, tiger conservation would be conditional on maintaining habitat connectivity, retaining forest cover, and augmenting prey species in select areas.
26. That maintaining the ecological integrity of intact natural habitats without fragmentation and degradation is critical. Any additional deforestation and mining leading to loss of habitat would escalate HEC. Major disturbances to habitats such as mining not only cause habitat loss and fragmentation but can affect home ranges of individual herds. As stated in the WII Report, the effect of mining on elephant habitat may not reflect in the same habitat but could be a silent trigger for HEC in some other area within the landscape. The habitat needs to be protected from further levels of degradation and fragmentation. The WII report recommends that loss of any forest cover due to anthropogenic activities should strictly be avoided.

27. That the ICFRE in its report also notes the adverse impacts of mining on habitats –

Major disturbances to habitats such as that in the case of mining will not only cause habitat loss and fragmentation (as understood generally), but can affect avifaunal habitat, wild fauna including large mammals and individual herd's home ranges. Such disturbances can lead to abandonment of habitats as threats to home ranges have a threshold limits. Infrastructure development and mining will have negative impact on quality habitat available due to fragmentation and mitigation will be a huge challenge.

28. That a report published by the Wildlife Trust of India titled 'Right of Passage: Elephant Corridors of India' (2017, 2nd Edition) records significant findings about elephant corridors across the country. In Chhattisgarh, it finds the Surguja- Jashpur elephant corridor to be of high ecological priority and states that about 40-50 elephants extensively use this corridor as part of their annual seasonal migration, especially from August to November/ December. According to the report many villages in the corridor area including Parsa are affected by depredations caused by elephants. The report also states that the central Indian elephant habitats are one of the most fragmented and degraded because of encroachment, shifting cultivation and mining activities. It further states that the degradation of elephant habitats in Jharkhand and Odisha has resulted in migration of elephants to the adjoining areas of Chhattisgarh, leading to increased human elephant conflict. It is respectfully submitted that felling of trees and mining in these areas will only exacerbate the HEC and put the villagers' life and source of sustenance in harm's way, along with endangering the lives of elephants passing through the area.

GHG EMISSIONS ASSOCIATED WITH COAL VIOLATE FUNDAMENTAL RIGHT TO BE FREE FROM ADVERSE EFFECTS OF CLIMATE CHANGE

29. That India's international commitments under the UN Framework Convention on Climate Change (UNFCCC) require India to reduce its greenhouse gas (GHG) emissions and therefore its reliance on coal-based thermal power plants that are significant GHG emitters. India has been actively engaged at various international forums on climate issues. A key feature of India's first update of its Nationally Determined Contribution (NDC) under the Paris Agreement is:

To achieve approximately 50 per cent cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030, with support from the transfer of technology and low-cost international finance, including from the Green Climate Fund;

Therefore, India must move towards scaling back its coal-based thermal power production and that would mean less reliance on coal and mining in ecologically sensitive areas.

30. That the Hon'ble Supreme Court of India in a landmark judgment *MK Ranjitsinh v Union of India* 2024 INSC 280 has observed '*It is imperative for India to not only find alternatives to coal-based fuels but also secure its energy demands in a sustainable manner*'. The Hon'ble Court also took note of the need to switch to cleaner fuels to combat air pollution caused by fossil fuels. The Hon'ble Court articulated a fundamental right to be free from the adverse effects of climate change which finds its source both in Article 14 and Article 21 of the Constitution of India. Coal-based thermal power plants are significant producers of the greenhouse gases, and it incumbent on the State to reduce its reliance on such power plants and transition to cleaner sources of energy-

Therefore, the right to a healthy environment encapsulates the principle that every individual has the entitlement to live in an environment that is clean, safe, and conducive to their well-being. By recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are

compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the wellbeing of present and future generations. It is imperative for states like India, to uphold their obligations under international law, including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment.

(emphasis added)

31. That the State cannot abdicate its duty to protect the country's natural assets by permitting rampant felling of trees without taking into account relevant considerations, particularly when forests are invaluable carbon sinks. The Hon'ble Supreme Court has observed in *T.N. Godavarman Thirumulpad, In re v. Union of India* (2022) 10 SCC 544-

"33. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large."

(emphasis added)

32. That the forests are India's national assets and felling of trees in the PEKB block will violate the people's right to live in a pollution-free environment. The state is the trustee of natural resources such as forests, and permitting the destruction of the pristine forests of the HACF region amounts to the state's failure to discharge its duty as a trustee under the public trust doctrine. The Hon'ble Supreme Court in *Narinder Singh and Others v Divesh Bhutani and Others* 2022 INSC 737 has laid down the principles that must govern the interpretation of laws relating to forests and environment-

“THE APPROACH OF THE COURT IN INTERPRETING THE LAWS RELATING TO FORESTS AND THE ENVIRONMENT

25. While interpreting the laws relating to forests, the Courts will be guided by the following considerations:

i. Under clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, it is the obligation of the State to protect and improve the environment and to safeguard the forests;

ii. Under clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;

iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;

iv. It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gains;

v. Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

vi. While interpreting and applying the laws relating to the environment, the principle of sustainable development must be borne in mind. In the case of *Rajeev Suri v. Delhi Development Authority*, a Bench of this Court to which one of us is a party (A.M. Khanwilkar, J.) has very succinctly dealt with the concept of sustainable development. ...

vii. Even 'environmental rule of law' has a role to play. This Court in the case of *Citizens for Green Doon v. Union of India* has dealt with another important issue of lack of consistent and uniform standards for analysing the impact of development projects. This Court observed that the principle of sustainable development may create differing and arbitrary metrics depending on the nature of individual projects. Therefore, this Court advocated and accepted the need to apply and adopt the standard of 'environmental rule of law'. Paragraph 40 of the said decision reads thus:

"40. A cogent remedy to this problem is to adopt the standard of the 'environmental rule of law' to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled "Environmental Rule of Law: Critical to Sustainable Development", the United Nations Environment Programme has recommended the adoption of such an approach in the following terms:

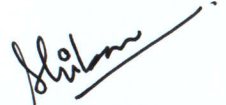
"Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable."

(emphasis added)

33. That in light of the submissions made above, this Applicant respectfully requests this Hon'ble Tribunal to pass appropriate directions prohibiting tree felling in the PEKB block and other parts of the HACF. There is no statutory basis to allow tree felling to continue in the PEKB block. Continued mining will only increase fragmentation of forests and intensify human elephant conflicts in the area. The HACF region is an extremely biodiverse area, and

the costs of prioritising coal mining over the rich biodiversity in these forests is prohibitively high, and should not be permitted. The fundamental right to pollution-free environment and to be free from the adverse effects of climate change must be protected.

THROUGH



SHIBANI GHOSH
ADVOCATE FOR THE APPLICANT

NEW DELHI

14.10.2024

1819



Shibani Ghosh <shibanighosh83@gmail.com>

Service of Written Submissions in IA No. 137 of 2024 in OA No. 59 of 2024

1 message

Shibani Ghosh <shibanighosh83@gmail.com>

14 October 2024 at 12:11

To: pandey.abhishek12@yahoo.in, officeofkunalverma@gmail.com, architkrishnaoffice@gmail.com, "lawchambers.ut@gmail.com" <lawchambers.ut@gmail.com>

Dear Sir/ Madam,

Please find attached written submissions being filed on behalf of the Applicant in IA No. 137 of 2024 in OA No. 59 of 2024.

Please acknowledge the receipt of the same.

The next date of hearing is 15.10.2024.

A copy of this email will be provided as proof of service of the written submissions on the parties.

Regards,

Shibani Ghosh

Advocate for the Applicant

9871437801

**OA 59 of 2024 - WS on behalf of the Applicant in IA 137 of 2024.pdf**

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