

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

.....

Appeal No.20/2023/EZ

IN THE MATTER OF

NTPC Ltd, Pakri-Barwadih Coal Mining Project,
Site Office Sikri, P.O. and P.S.-Barkagaon,
District- Hazaribagh,
Jharkhand-825311

.....Appellant(s)

Versus

- 1. State of Jharkhand,**
through Additional Chief Secretary,
Department of Forest and Environment,
Nepal House, Doranda, Ranchi,
Jharkhand-834002;
- 2. Chairman, Forest Appraisal Committee, MoEF & CC,**
Indira Paryavaran Bhawan, Jorbagh,
New Delhi – 110 003;
- 3. Principal Chief Conservator of Forest & HoFF,**
Van Bhawan, Doranda, Ranchi,
Jharkhand;
- 4. Regional Office Integrated Regional Office,
MoEF & CC, Ranchi,**
2nd Floor, Jharkhand State Housing Board Harmu Chowk,
Harmu Housing Colony, Argora, Ranchi,
Jharkhand-834 002;
- 5. Regional Chief Conservator of Forest,**
Van Bhawan, New Forest Colony, Hazaribagh,
Jharkhand-825303;
- 6. Divisional Forest Officer,**
Hazaribagh (West) Forest Division,
Van Bhawan, New Forest Colony, Hazaribagh,
Jharkhand-825 303

.....Respondent(s)

With

Original Application No.63/2023/EZ
(Earlier O.A. No.158/2023/PB)

IN THE MATTER OF

Anup Kumar,
Human Right Worker,
387, Jaridih Bazar,
Purvi Panchayat, Bermo,
Bokaro, (State of Jharkhand)

.....Applicant(s)

Versus

1. Jharkhand State Pollution Control Board,
H.E.C., Dhurwa, Ranchi,
Jharkhand-834004;

2. Regional Officer, MoEF & CC
Integrated Regional Office,
Bungalow No. A-2, Shyamali Colony,
Ranchi-834002;

3. Divisional Forest Officer, Hazaribagh
Bus Stand, DFO Hazaribagh West Division,
Van Bhavan, Near New, Hazaribagh,
Jharkhand-825301;

4. Central Pollution Control Board,
Through Senior Scientist
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032;

5. Director of Mines, Ranchi
88VM+F64, Nepal House,
Ranchi, Jharkhand;

6. M/S Triveni Sainik Mining Company,
Through its proprietor,
At P.O.-Langatu, Barkagaon,
Dist.-Hazaribagh,
Jharkhand-825311;

7. M/S Pakri Barwadih Coal Mining Project NTPC Ltd.,
Through General Manager/Head of the Project,

At Sikri Site Office, P.O.-Barkagaon,
Dist.-Hazaribagh,
Jharkhand-825311;

.....Respondent(s)

COUNSEL FOR APPELLANT(S):

**Mr. Sanjay Jain, Sr. Advocate a/w
Mr. Uttam Kumar Mandal, Advocate,
Mr. Adarsh Tripathi, Advocate,
Mr. Vikram Singh Baid, Advocate,
Mr. Ajitesh Garg, Advocate,
Ms. Maitree Roy, Advocate (in Virtual Mode) and
Mr. Amit Chowdhury, Advocate**

COUNSEL FOR RESPONDENT(S):

**Ms. Aishwarya Rajyashree, Advocate for R-1,3,5&6 (in Virtual Mode),
Mr. D.N. Ray, Sr. Advocate a/w
Sourav Haldar, Advocate for R-2 & 4 (in Virtual Mode)**

**O.A. No.63/2023/EZ
(Earlier O.A. No.158/2023/PB)**

COUNSEL FOR APPLICANT(S):

None

COUNSEL FOR RESPONDENT(S):

**Mr. Surendra Kumar, Advocate for R-1 (in Virtual Mode),
Ms. Anamika Pandey, Advocate for R-2 (in Virtual Mode),
Ms. Aishwarya Rajyashree, Advocate for R-3 & 5 (in Virtual Mode),
Mr. Dipanjan Ghosh, Advocate for R-4 (in Virtual Mode),
Mr. Sanjay Jain, Sr. Advocate a/w
Mr. Uttam Kumar Mandal, Advocate,
Mr. Adarsh Tripathi, Advocate,
Ms. Maitree Roy, Advocate for R-6 & 7 (in Virtual Mode) and
Mr. Amit Chowdhury, Advocate**

JUDGEMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE Dr. ARUN KUMAR VERMA (EXPERT MEMBER)**

**Reserved On:- January 03rd, 2025
Pronounce On:- January 21st, 2025**

1. Whether the Judgment is allowed to be published on the net? **Yes**

2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

1. The Appellant has filed the present Appeal assailing the order dated 25.05.2023 passed by the Ministry of Environment, Forests and Climate Change, holding the Appellant to be in violation of condition no.8 of the Stage-II Forest Clearance approval and imposing a penalty for the entire forest area (1026.438 hectares) with interest.

2. It is also stated that by another order dated 14.06.2023 a demand notice has been issued by the Divisional Forest Officer, Hazaribagh West Division, computing penal NPV @ Rs.857,52,85,944.32/- (Rupees Eight Hundred Fifty-Seven Crore Fifty-Two Lakhs Eighty-Five Thousand Nine Hundred Forty-Four and Thirty-Two Paisa only).

3. The connected Original Application No.158/2023 was originally registered by the National Green Tribunal, Principal Bench, New Delhi, on the basis of a letter petition dated 18.10.2022 received from Shri Anup Kumar and the matter has been received on being transfer from the Principal Bench to the Eastern Bench of

the Tribunal and re-numbered as Original Application No.63/2023/EZ. Hence, both matters have been taken up for disposal together.

4. The allegation in the letter petition is that in Barwadih Coal Project of Hazaribagh in Jharkhand, illegal mining is being carried out by certain Proponents namely Triveni Sainik Mining Company and National Thermal Power Corporation, in violation of Orders of the Hon'ble Supreme Court, without obtaining clearance from Forest Department though the said land is in a forest area and despite several complaints, concerned authorities have not taken any action in the matter.

5. The submission of the Appellant is that it is in substantial compliance of relevant condition no.8 of the Stage-II Forest Clearance approval dated 17.9.2010, having already developed green belt within 50 meters of two of the three Nallahs, namely, Khora and Pakwa, and the fact that the same cannot be developed in the vicinity of the third Nallah, namely, Do Muhani, stands admitted by the competent authorities, who have already allowed the diversion of Do Muhani Nallah, acknowledging that the same falls in the core mining area.

6. It is further stated that the Appellant has made necessary deposit in ADHOC CAMPA account amounting to Rs. 82,42,29,714/- (Rupees Eighty-Two Crores Forty-Two Lakhs

Twenty-Nine Thousand Seven Hundred Fourteen only) towards Net Present Value of the diverted forest.

7. The Appellant is the NTPC/Pakri-Barwadih and it is stated to be a Maha-Ratna Company and a Public Sector undertaking.

8. Briefly stated the case of the Appellant is that it was allocated the Pakri-Barwadih Coal Mining Project vide letter dated 11.10.2004 by the Ministry of Coal, Government of India. The Mining Plan of the said coal mining block was approved by the Ministry of Coal, Government of India vide its letter dated 25.08.2006 and the Revised Mining Plan was approved vide letter dated 07.03.2016. It is stated that the Appellant was granted Environmental Clearance for the said Coal Mining Project vide letter dated 19.05.2009 with subsequent amendments to the Environmental Clearance granted as under:-

Sl. No.	Amendment	Date
1	Amendment-1	29.06.2016
2	Amendment-2	07.12.2017
3	Amendment-3	14.08.2018
4	Amendment-4	10.11.2020

9. It is stated that the Forest Clearance (FC for short) was accorded for Stage-I on 11.05.2010 and for Stage-II on 17.09.2010. Condition No.8 of Stage-II of the Forest Clearance envisaged that the user will ensure 50 m green belt along the sides of the Pakwa Nallah

and Do Muhani Nallah. It is also stated that there are three Nallahs shown in the Mining Plan of the Appellant namely, Pakwa Nallah, Do Muhani Nallah and Khora Nallah; Pakwa and Khora Nallahs are stated to be in the peripheral region and it is stated that their geographical location in the overall topography of the mining area, would not hamper the mining operations of the Appellant. However, so far as Do Muhani Nallah is concerned, it is stated that the same flows in the very center of the mining area, where mining operations are to take place. The case of the Appellant is that this position with regard to the Do Muhani Nallahs was clear to the authorities which issued the Forest Clearance Certificate and according to the Appellant it appears that by mistake instead of mentioning Khora Nallah, it has been mentioned Do Muhani Nallah. However, according to the Appellant it took appropriate steps to create a green belt in the 50 m radius of Khora and Pakwa Nallahs and realizing the infeasibility of creating a green belt around the Do Muhani Nallah and, therefore, it could not undertake the creation of green belt in respect of the Do Muhani Nallah. According to the Appellant from the site plan it would be clear that green belt near Do Muhani Nallah was not only impractical but would have frustrated the entire mining operations, for which Environmental Clearance and Forest Clearance were granted after due examination of the topography of the area in which the mining operation was to be carried out.

10. According to the Appellant in order to achieve the meaningful and substantial compliance of the EC Condition No.(iv), the Appellant got a study conducted by the Central Water and Power Research Station and Technical and Report No.4813 was submitted by the Central Water and Power Research Station. It is stated that based on this Report the office of Chief Engineer, Project Monitoring and Planning, Water Resource Department accorded No Objection Certificate (NOC for short) for realignment of Do Muhani Nallah. It is also stated that a half-yearly Environmental Monitoring Report of EC for Pakri-Barwadih Project October, 2013-March, 2013, was also submitted by the Appellant to the Additional Principal Conservator of Forest vide his letter dated 26.04.2013 and in this Report, the Appellant also highlighted the requirement for diversion/realignment of Do Muhani Nallah. It is further stated that the Government of Jharkhand vide sanction orders dated 21.02.2013, 20.05.2013, 24.11.2015 and 21.12.2017 handed over the lease land to the Appellant.

11. The categorical case of the Appellant is that from 2010 to 2016, no mining activity could be started on account of issues relating to land acquisition as well as law and order, in fact, the contract to Mining Development Operator (MDO) was awarded only in the year 2015 and, therefore, in the absence of any construction activity, the occasion to divert the Do Muhani Nallah did not arise,

nor was there any occasion to develop the green belt in the 50 m radius of the Do Muhani Nallah.

12. However, it is stated that when the Pakri-Barwadih Mine as opened, intimation notice of the same was given to the Director General of Mines Safety, Dhanbad, Jharkhand, in Form 1 in terms of Clause 3 (2) of Coal Mines Regulation Act, 1957 vide letter dated 17.05.2016. The case of the Appellant further is that it has planted about 12,550 trees to create a green belt around the Pakwa Nallah and around 25,725 trees around the Khora Nallah. It is also stated that on 14.12.2016, a meeting was held in the office of the Divisional Forest Officer (DFO for short), Hazaribagh West Division wherein the Appellant informed that the green belt shall be developed along the Khora Nallah and Pakwa Nallah instead of Do Muhani Nallah; it is stated that the Minutes of the Meeting (MoM) was then forwarded to the Principal Chief Conservator of Forest (PCCF for short) (HOFF) on 20.12.2016. It is further stated that a meeting was held on 17.11.2017 in the office of the PCCF (HOF) with regard to compliance of Stage-II Clearance and vide letter dated 20.11.2017, the PCCF Jharkhand directed the Appellant to furnish Compliance Reports to the DFO, Hazaribagh for necessary action and in compliance thereof, it is stated that the Appellant submitted a detailed Compliance Report mentioning that the green belt around the Do Muhani Nallah is not feasible and that plantation shall be

done along the Pakwa and Khora Nallahs instead of Do Muhani Nallah due to technical reasons.

13. The case of the Appellant further is that upon commencement of mining activities and diversion of Nallahs, it consciously wrote a letter dated 09.10.2018, requesting the Director General of Forest (FC Division), MoEF & CC to amend Condition No.8 of Stage-II of FC approval and Condition No.7 of Stage of FC approval with respect to creation of green belt around Pakwa and Khora Nallahs, considering the creation of green belt around Pakwa and Khora Nallahs and the infeasibility of creation of green belt around Do Muhani Nallah as it would frustrate the proposed mining operations. It is stated that in response, the Assistant Inspector General Forest (FC) vide his letter dated 29.01.2019 directed the Principal Secretary, Forest Division, Government of Jharkhand to furnish his comments on the letter of the Appellant dated 09.10.2018. It is also stated that thereafter a meeting was organized with the Regional Chief Conservator of Forest on 09.03.2019 for reviewing the compliance of various projects of the Appellant and in this meeting the DFO, Hazaribagh, was asked to procure the report submitted by the Appellant to the MoEF & CC for conducting a Joint Visit to the mining area so that a report could be prepared and sent to the Forest Division, MoEF & CC. It is stated that the Appellant vide letter dated 16.08.2019, forwarded the letter dated 29.01.2019 to the DFO, Hazaribagh and thereafter, another letter was sent by the Appellant to the DFO, Hazaribagh dated

17.03.2020 for expediting the process of Forest Clearance amendment.

14. It is further stated that the inspection of the mine was carried out by the DFO, Hazaribagh (West Division) on 16.06.2020 and the Report was submitted vide letter dated 29.06.2020 recommending that keeping in view the long-term impact of mining on water quality and security to the downstream users and the land use plan of the mines, it is important that a 50 m green belt be developed along the sides of Khora Nallah and Pakwa Nallah and at least 25 m greenbelt be developed along the Do Muhani Nallah after diversion. The Appellant received a copy of the letter dated 10.02.2021 address to the Principal Chief Conservator of Forest Division regarding the proceedings that were to be conducted for the alleged violation of FC condition by the Appellant. The DFO, West Division, Hazaribagh, vide his letter dated 02.07.2021 informed the Appellant about the violation of Stage-II of FC approval and also requested to provide the details of persons who were at the relevant time holding the position in the Pakri-Barwadih Coal Mining Project which was to be undertaken by the Appellant. The Appellant vide his letter dated 30.07.2021 addressed to the Special Executive Officer, Department of Forests, Environment and Climate Change, denied allegations of violation of FC condition and also vide its letter dated 28.08.2021 addressed to the DFO, Hazaribagh West Division, brought on record the various compliances met by the Appellant, foreseeing the

techno-economical unviability of constructing a greenbelt around the Do Muhani Nallah. It is also stated that the Appellant had duly informed regarding impending stoppage of mining activities, in the absence of diversion of Do Muhani Nallah and had time and again requested the authorities to carry out inspection and submit report required for amendment of Forest Clearance. It is stated that the Appellant again vide letter dated 15.01.2022 addressed to the Additional Chief Secretary, Department of Forest, Environment and Climate Change, Government of India and vide another letter dated 18.01.2022 addressed to the Director General of Forest (FC Division, Ministry of Environment, Forest and Climate Change), requested for amendment of FC condition and a similar request was sent vide letter dated 02.06.2022 to the DFO, West Division Hazaribagh, requesting to process and forward the application for amendment of FC condition to the Central Government (MOEF & CC, Delhi).

15. The case of the Appellant is that the mine site was again inspected by the DFO, Hazaribagh who held that there has been a violation of FC Condition No.7 of Stage-I and Condition No.8 of Stage-II FC approvals and recommended penalty equal to five times the Penal NPV on an area of 37.2 Ha. of Forest land. The recommendation of the State Forest Department was forwarded by the State Government to the MoEF & CC vide its letter dated 08.07.2022; the Appellant vide letter dated 13.09.2022 was informed

that he has concealed material facts, in order to mislead the authorities. It is stated that a meeting was held by the Forest Advisory Committee (FAC for short) on 21.09.2022, the agenda being "Modification in condition of Stage-II approval and violation of FC Act; Diversion of 1026.438 Ha. of forest land for coal mining Pakri-Barwadih Project in favour of M/s NTPC Ltd. in Hazaribagh West Forest Division in Hazaribagh District of Jharkhand regarding modification of FC condition". It is also stated that the FAC took note of the alleged violation and recommended for formation of a sub-committee to visit the site area to look into the hydrological regime of the area vis-à-vis mining operations of the user agency in general and Do Muhani Nallah in particular and changes brought in by the user agency and its impact on the ecology of the area.

16. It is stated that the site inspection was conducted by the Assistant Director General, Integrated Regional Office on 28.10.2022 and Report was submitted by Integrated Regional Office to MoEFF & CC recommending therein a penalty of Rs.81,89,82,060/- (Rupees Eighty One Crore Eighty Nine Lakhs Eighty Two Thousand and Sixty only) from the user agency for violation of FC conditions and creating fait-accompli situation and proposal for amendment of FC conditions to be considered only after realization of the penalty. It is also stated that the proposal was discussed in the FAC meeting held on 09.12.2022 and a Sub Committee was constituted by the FAC on the following points:-

“ i. Assessment of hydrological regimes of the area and impact of ongoing mining operations of the user agency in general and Do Muhani Nallah in particular and changes brought in by the User Agency and its impact on the ecology of the area.

ii. Efficacy of mitigation measures, if any, undertaken by the user agency in their lease area.

iii. Holistic assessment of 1787 ha of forest land involved in the mining lease of the user agency, its present status and legitimacy of future use proposed by the user agency.”

17. It is stated that the Sub Committee was thereafter reconstituted after transfer of the Additional Commissioner, Ministry of Agriculture and thereafter, the site inspection was conducted on 17.03.2023 and Report was submitted to MoEF & CC by the Integrated Regional Office, Ranchi to MoEF & CC Delhi on 03.04.2023. It is stated that FAC meeting was held on 25.04.2023 which recommended that penalty be imposed equal to five times the normal NPV plus simple interest of 12% from the date of actual violation committed till the deposition of the penalty. It is also stated that in pursuance of the recommendations of the FAC the impugned order dated 25.05.2023 was issued by the MoEF & CC, modifying the Condition No.8 of Stage-II of FC approval. The modified Condition No.8 as mentioned in paragraph-31 of the Memo of Appeal is extracted herein below:-

“The user agency shall restore and conserve the Khora Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no.73E/I, A greenbelt of 100 meters on either side of both Khora Nalla and Pakwa Nalla shall be maintained.”

18. It is stated that this impugned order further recommended that penalty be imposed on the Appellant/User Agency for violation committed over forest area (1026.438 Ha.) without approval equal to five times the normal NPV plus simple interest of 12% from the date of actual violation committed till the deposition of penalty for mining out the area and changing the course of the Do Muhani Nallah which was actually required to be protected and maintained as green belt. The contention of the Appellant is that though the Condition No.8 of the Stage-II Clearance was amended/modified providing that the user agency shall restore and conserve the Khora Nallah (West) and Pakwa Nallah (East) watersheds on priority basis under supervision of the Forest Department and Expert hydrologists/agencies and develop their water shed status as per the Survey of India toposheet No.73E/I and a greenbelt of 100 meters on either side of both Khora Nallah and Pakwa Nallah shall be maintained, the Appellant is aggrieved only by the imposition of the penalty at five times the normal NPV for alleged violations committed over an area of 1026.438 Ha. at five times the normal

NPV plus simple interest of 12%. It is also stated that the Appellant had already deposited Rs.93,02,53,964/- (Rupees Ninety-Three Crore Two Lakhs Fifty-Three Thousand Nine Hundred Sixty-Four only) and Rs.2,20,39,921.73/- (Rupees Two Crore Twenty Lakhs Thirty-Nine Thousand Nine Hundred Twenty-One and Seventy-Three Paise only) for NPV amount for Safety Zone area 11.212 Ha. pertaining to NTPC Pakri-Barwadih Coal Mining Project; it is also stated that the Appellant has also deposited an amount of Rs.1,25,67,32,412/- for management of Wildlife.

19. The Appellant's case further is that the Regional Executive Director, NTPC also sent a request letter dated 02.06.2023 to the PCCF regarding delinking of Stage-II FC approval of Pakri-Barwadih (North-West) with the deposit of penal NPV and that the area of perceived violation, may be changed from 1026.438 Ha. to 37.20 Ha. and the stretch of perceived violation may be changed from 31 km to 3.1 km and that the width of green belt development may be changed from 50 m to 15 m and that the penalty levied is extremely exorbitant and the matter may be reviewed in terms of the Clause No.1.21 (iii) of Chapter-I Part-B of Forest Hand Book. The grievance of the Appellant is that the DFO, Hazaribagh on the contrary, issued the impugned order dated 14.06.2023 demanding a deposit of NPV amounting to Rs.857,52,85,944.32/- (Rupees Eight Hundred Fifty Seven Crore Fifty Two Lakh Eighty Five Thousand Nine Hundred Forty Four and Thirty Two Paise only). The Appellant vide his letter

dated 20.06.2023 pointed out to the DFO, Hazaribagh West Division that as per the Minutes of Meeting of FAC dated 25.04.2023 the alleged violation has been observed to be over a stretch of 31 km involving an area of 37.20 Ha. of Forest land but in the impugned order the area of violation has been computed for the total diverted area of 1026.438 Ha. of forest land which is contrary to the recommendations made by the FAC. The case of the Appellant further is that under Clause 1.21 (ii) (a) of the Chapter-I Part-B of Forest Hand Book penal NPV is to be charged at twice of the normal NPV for the violated area and Clause 1.21 (iii) (b) thereof further mentions that in case of public utility project of the Government, the penalty shall be 20% of the penalty proposed in Clause 1.21 (ii) (a) and, therefore, imposition of five times penalty of NPV @ 12% over the entire area of 1026.438 Ha. is wholly illegal.

20. The Divisional Forest Officer, Hazaribagh, in his affidavit dated 16.10.2023 stated that pursuant to release of 806.658 Ha. of notified forest land vide letter dated 31.03.2011 issued by the Deputy Secretary, Forest & Environment Department, Government of Jharkhand, letter dated 28.04.2011 was issued by the DFO, Hazaribagh West Forest Division releasing the land in favour of the user agency namely the Appellant. It is also stated that the Appellant while carrying out mining activities was supposed to comply with all the conditions of Stage-I and Stage-II Forest Clearance issued by the Government of India for diverting the land

in its favour and in terms of Condition No.7 of Stage-I Clearance and Condition No.8 of Stage-II Clearance, the Appellant was supposed to take up the program for at least 50 m green belt along the sides of Pakwa Nallah and Do Muhani Nallah from the initial years under the supervision of State Forest Department but in violation of the Condition No.7 of Stage-I and Condition No.8 of Stage-II, the Appellant had diverted the course of Do Muhani Nallah and carried out mining activity over the Do Muhani Nallah. It is further stated that pursuant to a letter of Government of India dated 29.01.2019 an enquiry was carried out by the DFO, Hazaribagh West Forest Division and Report dated 29.06.2020 was submitted. The extract of the Report has been given in paragraph-h of the affidavit which is extracted herein below:-

“Accordingly, the site was inspected and the mining area was found to be traversed by three important rivulets i.e. (i) Khorra Nallah along the Western boundary of the mine, (ii) Pakwa Nallah along the Eastern boundary of the mine and (iii) Dumuhani Nallah passing right in the middle of the mining area. All these three rivers originate on the upper catchments area (hilly areas) on the North of the mining area.

As per condition no. 8 of Stage-II and condition no. 7 of Stage-I a green belt of 50m should be maintained along the sides of Pakwa Nallah (East periphery of the mine) and Dumuhani nallah (situated in the middle of the mining area) but no mention has been made of Khorra nallah which is on the Western boundary of the mine. On

inspection it was found that a 50 m green belt could be developed Khorra nallah which is an important rivulet providing water security to people living downstream. Likewise in the Eastern extremity of mining area a 50 m green belt can be developed along the riverside. However, Dumuhani Nallah which is running in the midst of the mining area which is also quarry area has been found to be diverted by the user agency and again reconnected to the same rivulet downstream. But as per the condition a green belt has to be developed along the sides of Dumuhani nallah. And when the issue was raised the user agency they have expressed the difficulty and inability to do plantation as the river is passing through the middle of the mining area that is creating hindrance for mining and allied activities and hence it was diverted and reconnected to the same nallah. And that in future the entire Dumuhani Nallah would be diverted along the northern boundary of the mine and would be connected to Pakwa Nallah on Eastern boundaries as stipulated in the Environment Clearance and CWPRS study recommendations.

Hence, keeping in view the long term impacts of mining on water quality and security to the downstream users and the land use plan of the mines, it is important that a 50 m green belt be developed along the sides of Khorra Nallah and Pakwa Nallah and at least 25 m green belt along the Dumuhani Nallah after diversion, and this amendment would be feasible.”

21. It is, however, stated that the Officer on Special Duty, Department of Forest, Environment & Climate Change, Government

of Jharkhand, vide his letter dated 10.02.2021 called for a report from the Principal Chief Conservator of Forest-cum-Executive Director, Westland Development Board, Jharkhand, Ranchi, eliciting his comments on the following points:-

i. What is the proposed action against the violation and who will take such action?

ii. Information be called from the user agency as to whether the jungle-jhari land involved in the project has been released by the Department of Revenue, Registration & Land Reforms, Government of Jharkhand, Ranchi or not?"

22. It is stated that a report was submitted by the DFO, Hazaribagh West Forest Division with regard to Quarry No.1 made the following recommendations:-

"i. Recovery of 5 times Penal NPV for doing illegal mining over 37.20 ha of forest land.

ii. Imposition of condition to do Penal Compensatory Afforestation over the area which is 5 times the area of 37.20 ha over which illegal mining was done by the user agency."

23. With regard to Quarry No.2 regarding the release of jungle-jhari land by the Department of Revenue, Registration and Land Reforms, it is stated that information was sought from user agency/Appellant herein and the user agency vide its letter dated 30.07.2021 stated as under:-

“It is bring to notice of your kind office that the lease have been granted on all GHJJ and GM lands (including nalas flowing across the coal Mining Block) by the Government of Jharkhand vide its Gazette notification dated 21.02.2013, 20.05.2013, 19.07.2013 & 21.12.2017 etc.”

24. It is further stated that a Report was prepared by the Divisional Forest Officer, Hazaribagh West Forest Division and was forwarded to the Government of Jharkhand vide letter dated 14.06.2022 recommending amendment of Condition No.8 of Stage-II Clearance and it was stated that in place of Do Muhani Nallah, Khora Nallah can be included on following conditions:-

“i. Recovery of 5 times Penal NPV for doing illegal mining over 37.20 ha of forest land.

ii. Imposition of condition to do Penal Compensatory Afforestation over the area which is 5 times the area of 37.20 ha over which illegal mining was done by the user agency.”

25. It is stated that based on the aforesaid recommendation the Government of Jharkhand vide its letter dated 08.07.2022 made a request to the Government of India for amendment of the condition. It is further stated that the FAC in its meeting held on 25.04.2023 advised the necessary recommendations which was approved by the Competent Authority in the Ministry and Condition No.8 of Stage-II Clearance was modified. The modified Condition No.8 of Stage-II Clearance is extracted hereinunder:-

“The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no.73 E/I. A greenbelt of 100 meters on either side of both Khorra Nalla and Pakwa Nalla shall be maintained.”

26. It is stated that the Government of India vide its letter dated 25.05.2023 (order impugned herein) informed the Government of Jharkhand about the modification and further directed that since the user agency/Appellant had mined out the area and changed the course of Do Muhani Nallah which was actually required to be protected and maintained as a greenbelt, it had been decided that the penalty be imposed over the user agency for violation committed over the forest area of 1026.438 Ha. equal to five times the normal NPV plus simple interest of 12% from the date of actual violation till the date of deposition of penalty. It is also stated that in pursuance of the letter of the Government of India dated 25.05.2023 the Divisional Forest Officer, Hazaribagh West Forest Division vide his letter dated 14.06.2023 directed the Appellant to deposit an amount of Rs.857,52,85,944.32/- (Rupees Eight Hundred Fifty-Seven Crore Fifty-Two Lakhs Eighty-Five Thousand Nine Hundred Forty-Four and Thirty-Two Paise only).

27. The MoEF & CC has filed affidavit dated 12.02.2024 stating that Environmental Clearance was granted to the Appellant-M/s National Thermal Power Corporation Ltd. (NTPC) for the Pakri-Barwadih Project in District Hazaribagh, Jharkhand for production capacity of 15 MTPA (Millions Tonnes Per Annum) in a total lease area of 3319.42 Ha. in terms of Section 12 of the Environmental Impact Assessment Notification, 2006. The Government of Jharkhand vide its letter dated 06.08.2009 submitted a proposal under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 1026.438 Ha. of forest land for coal mining in Pakri-Barwadih Project in favour of M/s NTPC Ltd. in the Hazaribagh West Forest Division, Jharkhand. It is also stated that based on the recommendations of the Forest Advisory Committee (FAC) Stage-I Clearance was granted on 11.05.2010 for division of 1026.438 Ha. of forest land for coal mining in Pakri-Barwadih Project in favour of M/s NTPC Ltd. in the Hazaribagh West Forest Division, Hazaribagh. Thereafter, based on the Compliance Report of Stage-I approval submitted by the State Government, the MoEF & CC granted State-II on 17.09.2010 for diversion of 1026.438 Ha. of forest land. The Condition No.7 of Stage-I approval and Condition No.8 of Stage-II approval and the same has also been extracted in paragraph-9 of the affidavit which read as under:-

“The user agency will take up programme for at least 50 m green belt along the sides of the pakwa nallah and

dumuhani nalla from the initial years under the supervision of the state forest department.”

28. It is stated that the Appellant submitted a representation on 09.08.2018 to the Ministry recommending amendment in Condition No.8 of Stage-II/Final Approval granted on 17.09.2010 and Condition No.7 of Stage-I approval granted on 11.05.2010. It is also stated that thereafter, the Ministry vide its letter dated 29.01.2019 requested the State Government to furnish comments. It is further stated that a site inspection was carried out by a Committee on 15.03.2019 and it was observed that some condition of the FC approval Stage-I and Stage-II were still partially complied/or where the Project Proponent has taken action for complete compliance whereupon the Ministry vide its letter dated 03.09.2019 and 23.02.2022 requested the Regional Office, Ranchi to take appropriate action in the matter. It is stated that the NTPC submitted further representation on 18.01.2022 requesting the Ministry for amendment of Condition No.8 of Stage-II and Condition No.7 of Stage-I approval stating the Do Muhani Nallah is flowing across the mining leases and will be re-aligned for which approval of the Water Resources Department, Government of Jharkhand has also been obtained.

29. It is stated that the Government of Jharkhand also vide its letter dated 08.07.2022 submitted as under:-

“i. The area has been inspected by the DFO Hazaribagh and it has been reported in his report that a 50 m green belt could be developed along Khorra nallah which is an important rivulet providing water security to people living downstream. Likewise, in the Eastern extremity of mining area a 50 m green belt can be developed along the riverside. However, Dumuhani Nallah which is running in the midst of the mining area which is also the quarry area has been found to be diverted by the user agency.

ii. The State Government has further informed that the user agency has violated the provisions of condition no. 8 of the Stage-II approval as the user agency at its own diverted the Dumuhani nallah without prior approval of the Central Government under the Forest (Conservation) Act, 1980. State Government has further informed that despite standing directions of the CCF to abide by the condition no. 8 of approval till a time amendment in the same is granted by the Central Government, the user agency has violated the provisions of the said condition. The land used in violation of the conditions of approval has been reported to be 37.20 ha by undertaking mining over a stretch of 3.1 km without prior approval of the Central Government.

iii. The State Government has also mentioned that Ministry of Water Resources, Government of India has granted approval for diversion of Dumuhani nallah.

iv. However, examination of conclusion of the report of the Ministry of Water Resource, Government of India revealed that shifting of alignment of Khorra and Pakwa

Nala have been studied by comparing the alignment during 1928 and 1978 surveys. Results indicate that there is no major shift in the alignment and location of Khora and Pakwa Nallah. No mention of shifting of Dumuhani Nala is mentioned in the said report.”

30. It is stated that the proposal was considered by the Forest Advisory Committee (FAC) in its meeting held on 09.12.2022 and the Advisory Committee observed that since the lease area of the Appellant is transversed by various nallahs, the issue relating to impact assessment on hydrological regimes by shifting of nallahs needs to be considered holistically and accordingly, the Committee recommended that a Sub-Committee of the Advisory Committee may be reconstituted to consider the following aspects:-

“i. Assessment of hydrological regimes of the area and impact of ongoing mining operations of the user agency in general and Dumuhani Nallah in particular and changes brought in by the User Agency and its impact on the ecology of the area.

ii. Efficacy of mitigation measures, if any, undertaken by the user agency in their lease area.

iii. Holistic assessment of 1787 ha of forest land involved in the mining lease of the user agency, its present status and legitimacy of future use proposed by the user agency.”

31. It is stated that the Sub-Committee and the Regional Office, MoEF & CC, Ranchi, vide its letter dated 03.04.2023 submitted the Report of the Sub-Committee which reads as under:-

“a) Prima-facie the three watersheds (Khorra, Pakwa and Dumuhani) have been subject to extreme diversion by locals for their livelihood amelioration well before the mining activities begun in the region.

b) The technical expert member of the committee has suggested that the green belt development can be notified for Khorra Nalla instead of Dumuhani Nalla (a tributary of Khorra Nalla).

c) The hydrological expert member of the committee, after taking into consideration the holistic approach, has concluded with the recommendation of (i) diversion of the Dumuhani Nalla (a tributary of Khorra Nalla) for coal mining and (ii) restoration and conservation of the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no.73 E/I.”

32. The Sub-Committee recommended as under:-

“i. A team of specialists from field of Soil Engg, Agriculture Engg, Hydrology, GIS & AMP; Geology may be constituted under chairpersonship of DFO who shall continuously study the area for assessing the impact of on-going mining on various environmental/ecological parameter and shall submit finding report to IRO annually.

ii. User agency shall generate drone survey Data on spatial and seasonal status of Khorra Nalla & Pakwa Nalla watersheds for having first-hand information on

the current status of the Khorra and Pakwa Nalla watershed parallel to the ongoing mining activities. The data hence collected shall help user agency to design and develop green belt under supervision of Forest Department. For this purpose, a reputed institute, preferably located in the State, may be engaged for data collection, processing and interpretation in effective and exclusive manner. The institute can also be requested to study the entire region of 10 km from the lease boundaries for temporal land use and its changes.

iii. Study of river-aquifer interaction using non-invasive geo-physical technique in 10 km radius of NTPC Pakribarwadih Coal mine site. The study may help in delineation of groundwater potential zones, groundwater variation in these zones and may help in water budgeting to the surrounding.”

33. It is stated that the proposal for modification in condition of Stage-II approval along with the Report of the Sub-Committee was considered by the FAC in its meeting held on 25.04.2023 and thereafter, the Committee recommended to modify the Condition No.8 in Stage-II approval as under:-

“The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no. 73 E/I. A greenbelt of 100 meters on either side of both Khorra Nalla and Pakwa Nalla shall be maintained.”

34. The Committee further recommended that since the user agency had mined out the area and changed the course of the Do Muhani Nallah in violation of the Condition No.8 of Stage-II Clearance, penalty be imposed on it for violation committed over the forest area of 1026.438 Ha. equal to five times the normal NPV plus simple interest of 12% from the date of actual violation committed till the date of deposition of penalty.

35. We have heard the learned Counsel for the parties and perused the documents on record.

36. The submission of Mr. Sanjay Jain, learned Senior Counsel for the Appellant submitted that though Forest Clearance of Stage-I and Stage-II was granted by the MoEF & CC in 2010, it was found that the Do Muhani Nallah passed through the mining area and therefore, the Appellant represented to the authorities for modification of the Stage-I and Stage-II Conditions since greenbelt of 50 m in the Do Muhani Nallah would not be feasible and that the recommendation after considerable exchange of letters between the MoEF & CC and the Forest Department, Government of Jharkhand which also recommended amendment of the Condition No.8 of Stage-II Clearance, the FAC ultimately advised the amendment of the Condition No.8 of the Stage-II Clearance which was accepted by the MoEF & CC and by the impugned order Condition No.8 of the Stage-II Clearance was infact amended, which has already extracted

hereinabove. It is, however, stated that the Appellant is aggrieved by the imposition of penalty of Rs.857,52,85,944.32/- (Rupees Eight Hundred Fifty-Seven Crore Fifty-Two Lakhs Eighty-Five Thousand Nine Hundred Forty-Four and Thirty-Two Paise only) computed at five times of NPV for an area of 1026.438 Ha. i.e. the entire diverted forest land with 12% interest which according to the Appellant is absolutely illegal and in violation of the specific provisions of the Chapter-I Part-B of Forest Hand Book. Learned Senior Counsel submitted that even as per the Department of Forest, Government of Jharkhand, if at all there was any degradation of forest land it was over an area of 37.2 Ha. and, therefore, penalty could not have been imposed upon the Appellant taking the entire diverted forest area of 1026.438 Ha.

37. Learned Senior Counsel further submitted that in terms of Chapter-I Part-B of Forest Hand Book, penalty, if at all, could have been imposed only at two times of the NPV which in the case of public undertakings of the Government would be 20% of the said amount provided in Clause-1.21 (ii) (a) of Chapter-I Part-B of Forest Hand Book and, therefore, computation of penalty at five times of NPV was without application of mind and wholly contrary to the provisions of Chapter-I Part-B of Forest Hand Book.

38. During the pendency of the proceedings Mr. Sanjay Jain, learned Senior Counsel also pointed out that the Appellant had

submitted a representation dated 09.11.2023 to the MoEF & CC which was forwarded to the State Government for its comments. However, since the said representation was not placed on record, the Tribunal by its order dated 02.04.2024 directed the Appellant as well as the MoEF & CC to place the Appellant's representation dated 09.11.2023 on record. The order of the Tribunal dated 02.04.2024 reads as under:-

"1. Affidavit dated 12.02.2024 has been filed by Respondent Nos. 2 & 4, Ministry of Environment, Forests and Climate Change; the same is taken on record.

2. In this affidavit, it is stated that representation dated 09.11.2023 has been filed by the Appellant-NTPC Ltd. which has been considered by the MoEF&CC and the matter is now pending before the State Government as would also be clear from the Minutes of the Meeting filed as Annexure-VI to the paper book. The representation dated 09.11.2023 is not on record.

3. Mr. Sanjay Jain, learned Counsel for the Appellant as well as Mr. D.N. Ray, learned Counsel for the Respondent Nos.2 & 4, Ministry of Environment, Forests and Climate Change are directed to place the representation dated 09.11.2023 on record.

4. Mr. Sanjay Jain, learned Senior Counsel for the Appellant states that copy of the affidavit of Respondent Nos.2 & 4 has been served upon him only yesterday night. Learned Counsel prays for two weeks time to study the same.

5. Interim order granted on 01.08.2023 is extended till the next date of listing.

6. List on 03.05.2024.”

39. Thereafter, the MoEF & CC filed affidavit dated 30.04.2024 bringing on record the Appellant's representation dated 09.11.2023.

40. Along with this affidavit, the MoEFF & CC has also filed the letter of the Ministry of Power dated 30.10.2023 addressed to the Secretary, Ministry of Coal, New Delhi proposing a meeting between the Ministry of Power, Ministry of Environment, Forests and Climate Change (MoEF & CC) & Ministry of Coal for amicable resolution of the issue. This Tribunal, therefore, by its order dated 03.05.2024 directed the MoEF & CC to take a decision in the matter expeditiously within three months and file affidavit in this regard. Copy of the order of the Tribunal dated 03.05.2024 reads as under:-

Order dated 03.05.2024

“1. Mr. Sanjay Jain, learned Senior Counsel assisted by Mr. Uttam Kumar Mandal and Mr. Adarsh Tripathi, learned Counsel, is present for the Appellant.

2. Additional affidavit dated 30.04.2024 has been filed on behalf of the Respondent Nos.2&4, Ministry of Environment, Forest & Climate Change; the same is taken on record.

3. Rejoinder affidavit dated 01.05.2024 has been filed on behalf of the Appellant; the same is taken on record.

4. Along with the affidavit of the Ministry of Environment, Forest and Climate Change, an order dated 09.11.2023 has been filed as Annexure-1, which is a representation of the NTPC Ltd., Appellant, addressed to the Director General of Forest & Special Secretary, MoEF&CC, New Delhi, wherein the Appellant herein has raised certain issues for reconsideration of the Penal NPV etc.

5. Along with this affidavit, another letter of the NTPC Ltd., Appellant, dated 17.10.2023 addressed to the Joint Secretary (Thermal), Ministry of Power, Government of India, has been filed wherein it is stated that 'Ministry of Power intervention is requested to take up the matter with MoEF & CC for resolution of the issue through mutual consultation'.

6. The Ministry of Environment, Forest and Climate Change has also filed a letter of the Ministry of Power dated 30.10.2023 addressed to the Secretary, Ministry of Coal, New Delhi, wherein also it is stated that 'may I propose a meeting between Ministry of Power, Ministry of Environment Forest and Climate Change (MoEF&C) & Ministry of Coal for amicable resolution of the issue'.

7. In view of above, we are of the view that a decision with regard to the imposition of penalty of 857,52,85,944.32/- (Rupees Eight Hundred Fifty Seven Crores Fifty Two Lakhs Eighty Five Thousand Nine Hundred Forty Four and Thirty Two Paisa only) against the NTPC Ltd., Appellant, needs to be taken by the Ministry of Environment, Forest and Climate Change expeditiously at its level, since Stage-II Forest Clearance

of PB-NW is interlinked with the deposition of Penal NPV of PBCMP as mentioned in the letter dated 09.11.2023.

8. We, therefore, direct the Ministry of Environment, Forest and Climate Change, Respondent Nos.2&4 herein, to take a decision in the matter expeditiously within a period of three months i.e., by 31.07.2024 and file affidavit in this regard by 16.08.2024.

9. List on 22.08.2024.

10. Till such decision is taken, the recovery of impugned demand notice dated 14.06.2023 shall remain in abeyance.”

41. In compliance thereof, an affidavit dated 06.11.2024 has been filed by the MoEF & CC bringing on record the order dated 27.08.2024.

42. The matter relating to the mining block area Pakri-Barwadih of the Appellant has been considered by the Forest Advisory Committee (FAC) as would be clear from the Minutes of the Meeting of the Advisory Committee held on 27.08.2024. Agenda No.8 is extracted herein below:-

“Agenda No.8

F. No. 8-56/2009-FC (pt)

Subject: Diversion of 1026.438 ha of forest land for coal mining Pakribarwadih Project in favour of M/s NTPC Ltd. in Hazaribag West Forest Division in Hazaribagh District of Jharkhand – regarding.

1. The agenda for above subject proposal was considered by the Advisory Committee in its meeting held on 27.08.2024. The corresponding agenda note may be seen at www.parivesh.nic.in. The Dy. DGF (Central), RO, Ranchi and Nodal Officer, Government of Jharkhand attended 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 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.

3. While deliberating on the proposal, Advisory Committee observed that:

i. The above cited proposal was accorded Stage-I approval vide Ministry's letter dated 11.05.2010 and Stage-II/ final approval vide letter dated 17.09.2010, subject to fulfilment of conditions prescribed therein.

ii. User Agency i.e. M/s NTPC submitted a representation dated 09.10.2018 requesting for amendment in condition no. 8 of Stage-II/ final approval dated 17.09.2010 and condition no. 7 of Stage-I approval dated 11.05.2010 which states that “ The user agency will take up

programme for at least 50 m green belt along the sides of the Pakwa nallah and Dumhani nallah from the initial years under the supervision of the state forest department ”.

iii. In this regard, the Ministry vide its letter dated 29.01.2019 requested the State Government to furnish comments on the said representation and provide documents as available with the State Government related to the instant proposal.

iv. The Regional Office, Ranchi of this Ministry vide their letter no. 5- JHA104/2009-BHU/3277 dated 09.07.2019 informed that Hon’ble NGT vide its order dated 18.02.2019 in OA No. 182/2016(EZ), constituted a committee to inspect the Pakri Barwadih Coal Mining Project of M/s NTPC Ltd. and to verify as to whether the conditions of the Forest Clearance (FC) and Environmental Clearance (EC) are meticulously complied with by the M/s NTPC and the inspection was carried out by the committee on 15.03.2019. During inspection, it was observed that some of the condition of FC approval (Stage-I and Stage-II) were still

partially complied/ or where the project proponent has to take actions for complete compliance. Ministry vide its letter dated 03.09.2019 and subsequent letter dated 23.02.2022 requested the RO, Ranchi to take appropriate action in this matter as per provisions of Ministry's guidelines given under para 1.21 (iii) of Handbook of Forest (Conservation) Act, 1980.

v. The User Agency i. e. M/s NTPC vide their representation dated 18.01.2022 again requested for amendment in condition no. 8 of StageII/ final approval dated 17.09.2010 and condition no. 7 of Stage-I approval dated 11.05.2010 which states that “ The user agency will take up program for at least 50 m green belt along the sides of the Pakwa nallah and Dumhani nallah from the initial years under the supervision of the state forest department” citing the justification that Dumuhani nallah, flowing across the mining leases will be re- aligned for which approval of Water Resource Department, Government of Jharkhand has been obtained. In this regard,

Ministry vide its letter dated 23.02.2022 requested the State Government to provide additional information/comments.

vi. The Government of Jharkhand vide letter no. vanbhumi-75/2009-1915 V.P. dated 08.07.2022 adverting PCCF, Government of Jharkhand's letter no. 893 dated 22.10.2020, letter no. 490 dated 13.06.2022 and letter no. 507 dated 16.06.2022 submitted their reply in response to Ministry's letter dated 29.01.2019 and 23.02.2022. From the examination of reply of the State, the following is revealed:

a. The State Government informed that the user agency has violated the provisions of condition no 8 of the Stage-II approval as the user agency at its own diverted the Dumhani nallah without prior approval of the Central Government under the Forest (Conservation) Act, 1980. State Government has further informed that despite standing directions of the CCF to abide by the condition no. 8 of approval till a

time amendment in the same is granted by the Central Government, the user agency has violated the provisions of said condition. The land used in violation of the conditions of approval has been reported to be 37.20 ha. The State Government has recommended to levy penal CA and Penal NPV in respect of 37.20 ha of forest land used by the user agency in violation of Forest (Conservation) Act, 1980.

vii. The Regional Office vide their letter dated 25.11.2022 submitted the site inspection report and assessed that the area involved in violation is 156 ha and gave a tentative assessment of penalty amounting to Rs. 818982060 (Eighty-one crores, eighty-nine lakhs eighty-two thousand and sixty). In assessment of the quantum of violation, the following points are considered by the Regional Office:

a. Penal NPV: - 2 times of the Normal NPV as per para 1.21(iii) of the FC Guidelines Handbook.

b. Loss of Eco-system services that the green belt would have provided: - Equal to the NPV.

c. The greenbelt along the Nalla would have served as a good Habitat for avian fauna and other several biodiversity. Therefore, 50% of NPV is accounted for Habitat Destruction as per the guideline dated 1/8/2017.

d. Compensatory afforestation and soil moisture conservation cost that the user agency should have borne as per the laid condition. Since afforestation was to be done in linear patches, considering the increased fencing the rate of Afforestation is considered as 5₹ Lakh per Ha.

e. Therefore, the Penalty assessed for the Fait-accomplis violation is: 156 X

(3.5 times NPV+ Afforestation cost)
=156 X (3.5X1357110+500000) =
₹818982060/-.

viii. The proposal was considered by the Advisory Committee (AC) in its meeting held on 09.12.2022 and the AC observed that since the lease area of the user agency is transacted by various nallah and therefore, the issue related to impact assessment on hydrological regimes by shifting of nallah needs to be considered holistically and accordingly, the Committee recommended that Sub-Committee of the AC may be reconstituted to ascertain and report on the following:

a. Assessment of hydrological regimes of the area and impact of ongoing mining operations of the user agency in general and Dumuhani Nallah in particular and changes brought in by the User Agency and its impact on the ecology of the area.

b. Efficacy of mitigation measures, if any, undertaken by the user agency in their lease area.

c. Holistic assessment of 1787 ha of forest land involved in the mining lease of the user agency, its present status and legitimacy of future use proposed by the user agency.

ix. The Regional Office, Ranchi vide their letter dated FP/JH/Min/38798/2019/1014 dated 03.04.2023 submitted a report of Sub-Committee of AC.

x. The said report was considered by the Advisory Committee in its meeting held on 25.04.2023 wherein the Committee recommended to modify the condition no. 8 in Stage-II approval as under:

‘The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no. 73 E/I. A greenbelt of 100 meters

on either side of both Khorra Nala and Pakwa Nalla shall be maintained’.

The Committee further observed that in total disregard to the conditions of approval the user agency has mined out the area and changed the course of the Dumuhani nala, which was actually required to be protected and maintained as green belt. Keeping this in view the Committee recommended that the penalty shall be imposed for violation committed over the forest area (1026.438 ha) without approval equal to five times the normal NPV plus simple interest of 12 % from the date of actual violation committed till the deposition of penalty shall be imposed.

xi. On the basis of the above said recommendations of the Advisory Committee, and with the approval of the competent authority the Ministry vide letter dated 25.05.2023 has issued Modification in condition of Stage-II approval.

xii. Thereafter the User Agency has filed a case in Hon'ble NGT against the demand for penal NPV raised by the State Government and in an

another case violations regarding EC and FC was reported to the Hon'ble NGT. The ministry has filed replies in both the cases, therefore, the status of sub judice cases should also be taken into account while deliberating the matter. It is imperative to mention that the prayers of the NTPC in the petition are as under:

- a. To set aside the letter dated 25.05.2023 issued by the MoEF;*
- b. To set aside the demand notice dated 14.06.2023 received from DFO Hazaribagh for realizing of penal NPV;*
- c. To stay the letter dated 25.05.2023 issued by the MoEF;*
- d. For such further and other reliefs as the nature and circumstances of the case may require.*

xiii. Further the Secretary, Ministry of Power vide their DO No. 11/25/2023- Th.1 dated 30.10.2023 proposed to hold a meeting between Ministry of Power, Ministry of Environment Forest and Climate Change

(MoEF&CC) & Ministry of Coal for amicable resolution of the issue.

xiv. Thereafter, the Ministry vide letter dated 10.11.2023 requested the State Government to furnish the updated status of the proposal and status of the compliance of the conditions stipulated in the Stage-I approval along with the report/comments on the court matter in the instant case.

xv. Further, the user agency i.e. NTPC Limited vide their representation dated 09.11.2023 requested to reconsider the matter as below:

- a. Waival of penal NPV imposed on the NTPC for Pakri-Barwadih coal mining project.*
- b. Delinking of Stage-II forest clearance of Pakri Barwadih (NorthWest) with the deposition of penal NPV of PBCMP.*
- c. Permit to maintaining of green belt of 15 m along Pakwa and Khora Nala in line with the regulation no. 149 of Coal Mines regulation, 2017.*

xvi. The matter was discussed in the Ministry and it was decided that since the conditions have been stipulated in the approval as per the

recommendations of the Advisory Committee, therefore the State Government shall submit a point wise report/comments on the representation of the User Agency along with its recommendations and thereafter the matter would be placed before the Advisory Committee for appropriate decision in the matter. The same was conveyed to the State Government vide letter dated 22.01.2024.

xvii. The State Government vide their letter dated 05.04.2024 furnished their comments without any recommendation stating that the Central Government is the competent authority for amendment or 11-91/2012FC I/82102/2024 803 reconsideration of the conditions imposed in approvals granted under Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980.

xviii. The Advisory Committee (AC) observed that the proposal was placed before the AC in its meeting held on 30.04.2024 wherein the Committee observed that the State Govt. has just forwarded the representation of the User Agency without any specific comments,

recommendations and view point of the state on the matter. Accordingly, it was decided that the State Govt. be requested to carry out an in-depth analysis of the matter and the relaxations sought by the User Agency, keeping in view the factual position/field situation and submit a point-wise detailed report to the Ministry. The committee also took note of the court case filed by the User Agency with respect to challenging the decision of the Ministry and the demand note of penal NPV raised by the DFO and sought the update in this regard in the future meetings.

xix. The Ministry vide its letter dated 20.05.2024 requested the State Government to carry out an in-depth analysis of the matter and the relaxations sought by the User Agency, keeping in view the factual position/field situation and the Nodal Officer, Government of Jharkhand shall present the same before the Advisory Committee.

xx. In this regard the Nodal Officer, Government of Jharkhand informed the committee that the PCCF, Government of Jharkhand vide their

letter dated 04.06.2024 has submitted the reply.

xxi. The proposal was again considered by the AC in its meeting held on 07.06.2024 wherein the Committee observed that the State Govt. has not provided any specific comments, recommendations and view point of the state on the matter and keeping in view the factual position/field situation the Nodal Officer, Government of Jharkhand was requested to give a presentation before the Advisory Committee which has not been done. Accordingly, it was decided that the State Govt. shall carry out an in-depth analysis of the matter and the relaxations sought by the User Agency, keeping in view the factual position/field situation and the PCCF (HoFF) Government of Jharkhand shall present the same before the Advisory Committee in its next meeting.

xxii. The Ministry vide letter dated 26.06.2024 has requested the State Government to carry out an in-depth analysis of the matter and the relaxations sought by the User Agency, keeping

in view the factual position/field situation and the PCCF (HoFF), Government of Jharkhand shall present the same before the Advisory Committee in its next meeting.

xxiii. The proposal was again considered by the AC in its meeting held on 04.07.2024 wherein the Committee observed that the PCCF (HoFF), Government of Jharkhand was requested to give a presentation before the Advisory Committee which has not been done. Accordingly, it is again re-iterated that the State Govt. shall carry out an in-depth analysis of the matter and the relaxations sought by the User Agency, keeping in view the factual position/field situation and the PCCF (HoFF), Government of Jharkhand shall present the same before the Advisory Committee in its next meeting.

xxiv. The Ministry vide letter dated 26.07.2024 has requested the State Government to carry out an in-depth analysis of the matter and the 11-91/2012FC I/82102/2024 804 relaxations sought by the User Agency, keeping in view the factual position/field situation and the PCCF

(HoFF), Government of Jharkhand shall present the same before the Advisory Committee in its next meeting.

xxv. The PCCF (HoFF), Government of Jharkhand has given a detail presentation in front of Advisory Committee and informed that

a. Pakri-Barwadih Coal Mining Project is Captive Block of M/s NTPC Limited.

Located in North Karanpura Coalfield in Hazaribagh West Forest Division in Hazaribagh District. Total Lease Area: 4695 Ha (including North – West Project).

b. The User Agency has violated the condition No. 8 of Stage- II approval and diverted Dumuhani Nallah and carried out mining on the land which was to be developed as green belt. c. The matter

was discussed by FAC in its meetings held on 21.09.2022, 09.12.2022, and 25.04.2023.

d. The FAC in its meeting dated 25.04.2023 discussed in detail and agreed to amend the condition no. 8 of Stage-II approval as “The UA shall

restore and conserve the Khora Nalla and Pakwa Nalla watersheds on priority basis under supervision of the forest department and expert hydrologists / agencies and develop their watershed status as per the SOI toposheet no. 73 E/I. A greenbelt of 100 meters on either side of both Khora Nalla and Pakwa Nalla shall be maintained". FAC also recommended that the penalty shall be imposed for violation committed over the forest area (1026.438 ha) without approval equal to 5 times the normal NPV plus simple interest of 12% from the date of actual violation committed till the deposition of penalty shall be imposed.

e. DFO Hazaribagh West Forest Division vide its letter dated 14.06.2023 raised demand of Rs. 857.52 crore from UA, as the amount of penalty imposed (in FAC meeting on 25.04.2023). UA filed appeal before the NGT [Appeal No. 20 / 2023 (EZ)] against the penalty imposed by GoI. NGT vide its order dated 01.08.2023 has

stayed the DFO Hazaribagh West Forest Division demand letter dated 14.06.2023.

f. Further PCCF (HoFF) informed the committee that the following inspection of violation by various Teams/Committees has been carried out in the instant proposal as under:

S No.	Committee/Team	Remarks
1	Inspection by officials of Hazaribagh West Forest Division	As per inspection report of the DFO dated 16.03.2022, it was found that UA have done mining over 37.2 ha of land in violation of the Stage-2 forest clearance condition. • Length of Dumhani Nalla affected due to violation: 3.1 Km • Average width of Nalla: 20 m • Width of green belt as per FC condition: 50 m + 50 m = 100 m • Total violation = 3.1 Km x (100+20)m = 37.2 ha
2	Inspection by IRO, GOI Ranchi	Inspection report submitted to GOI vide IRO Ranchi letter dated 25.11.2022 ▪ Violation committed by UA over 156 ha area ▪ Recommended penalty of Rs. 81.9 crore It also recommended that the proposal of forestry clearance of Pakri Barwadih North West project should

		<i>only be considered after the penalty of ₹81.9 crore is realized from user agency.</i>
3	<i>Inspection by FAC appointed committee (FAC date: 21.09.2022)</i>	<i>Inspection could not be done by the subcommittee headed by FAC member Shri O. P. Sharma due to unavailability of Hydrologist therein</i>
4	<i>Inspection by FAC appointed sub-committee (FAC date: 09.12.2022)</i>	<i>Inspection report submitted to GOI vide IRO Ranchi letter dated 03.04.2023</i>
5	<i>FAC meeting held on 25.04.2023 and modified the FC condition and imposed penalty</i>	

g. The User Agency has submitted a representation dated 09.11.2023 to MoEF&CC and requested as under:

- *Waival of penal NPV imposed*
- *Delinking of Stage-II forest clearance of Pakri Barwadih (North-West) (331.198 ha) with the deposition of penal NPV of Pakri Barwadih (1026.438 ha)*
- *Permission to maintain green belt of 15 meter along Pakwa→ and Khora Nala in line with the regulation no. 149 of Coal Mines regulation, 2017.*

xxvi. The Advisory Committee noted that user agency has represented for a specific condition i.e. the penal NPV which was imposed for the entire area proposed for diversion(1026.438 ha) and accordingly the demand note was raised

by the concerned DFO. In view of presentation given by PCCF (HoFF) and available facts with regard to area reported to be in violation and considering the fact that the user agency has broken up the area in total disregard to the conditions of approval, the Committee observed that the condition of penal NPV has been rightly imposed. The User Agency or the State has not produced any new facts or details which may prove that all due precautions were taken and the violation was not wilful and intentional act of the user agency. Accordingly, the committee observed that the condition wrt penal NPV does not require any modification. xxvi. The committee also noted that considering the request for delinking of Stage-II approval of Pakri Barwadih (North-West) (331.198 ha) with the deposition of penal NPV of Pakri Barwadih (1026.438 ha) will be appropriate as the two proposals are separate proposals and the user agency is not able to comply the stipulated condition in Pakri Barwadih 11-91/2012FC I/82102/2024 806 (North-West) (331.198 ha)

proposal for which Stage-I approval has been granted.

xxvii. The committee also considered the request of the user agency for maintaining a green belt of 15 m instead of 100 meters along Pakwa and Khora Nala, and observed that as per the guidelines issued by the Ministry, a green belt of only 50 meter width along the Nalas/streams can be allowed in the instant case.

4. Decision of Advisory Committee: *The Committee had detailed discussion and deliberation with the Dy. DGF (Central), RO, Ranchi, PCCF(HoFF) and Nodal Officer, Government of Jharkhand. After going through the facts of the proposal, the Committee recommended the following:*

- i. The condition no. 8 in the Stage-II approval issued vide Ministry's letter dated 17.09.2010 for diversion of 1026.438 ha of forest land for coal mining Pakribarwadih Project in favour of M/s NTPC Ltd. in Hazaribag West Forest Division in Hazaribag District of Jharkhand may be modified as under:*

‘The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no. 73 E/I. A greenbelt of 50 meters on either side of both Khorra Nala and Pakwa Nalla shall be maintained’.

The Committee further observed that in total disregard to the conditions of approval the user agency has mined out the area and changed the course of the Dumuhani nala, which was actually required to be protected and maintained as green belt. Keeping this in view the Committee recommended to continue with the penalty imposed for violation committed over the forest area (1026.438 ha) without approval equal to five times the normal NPV plus simple interest of 12 % from the date of actual

*violation committed till the deposition of
penalty shall be imposed.*

*ii. The condition no. (x) of Stage-I approval
issued vide Ministry's letter dated 26.05.2023
for Pakri Barwadih (North-West) (331.198 ha)
proposal may be waived off".*

43. The Report of the Advisory Committee was considered by the MoEF & CC in its letter dated 01.10.2024. A perusal of the said order (page no.809 of the paper book) would show that the recommendations made in impugned order dated 25.05.2023 have been maintained by the MoEF & CC without any change.

44. Mr. D.N. Ray, learned Senior Counsel and Ms. Anamika Pandey, learned Counsel for the MoEF & CC raised a preliminary objection that the Appellant has not challenged the order dated 01.10.2024 and in absence of such challenge this Appeal cannot be heard and would not be maintainable.

45. Mr. Sanjay Jain, learned Senior Counsel for the Appellant on the other hand submitted that a plain reading of the order dated 01.10.2024 would show that the contents of the previous impugned order dated 25.05.2023 have been maintained and in any case the Appellant's representation has not been rejected by the MoEF & CC and, therefore, there is no occasion for the Appellant to challenge the order dated 01.10.2024 since there is nothing new emerging in

the order dated 01.10.2024 which is not already under challenge in the impugned order of 25.05.2023 and he further submits that the only additional factor in the order of 01.10.2024 is that Condition No.X of Stage-I approval issued by the Ministry vide letter dated 26.05.2023 for Pakri-Barwadih (North-West) (331.198 Ha.) proposal has been waived off.

46. We have considered the preliminary objection of Ms. D.N. Ray and the reply submission of Mr. Sanjay Jain and are of the view that the submissions of Mr. Jain are supported by the documents on record and, therefore, we hold the present Appeal to be maintainable.

47. The contention of the Appellant is that the Mining Plan for the site in question was approved by the Ministry of Coal, Government of India as far back as on 25.08.2006 and thereafter, a Revised Mining Plan was also approved on 07.03.2016; Environmental Clearance for the Project was granted to the Appellant on 19.05.2009 with subsequent amendments dated 29.06.2016, 07.12.2017 14.08.2018 and 10.11.2020.

48. Mr. Jain pointing to the Specific Condition No.iv of the Environmental Clearance submitted that the Environmental Clearance itself mandated that mining shall be carried out as per statuette from the streams/nallas flowing within the lease. The CWPRS would be engaged from the design and study of realignment

of the drains/nalas flowing across the Mining Lease (ML) and creation of embankment, and also obtain approval of the State Government for diversion of the nalas. Learned Senior Counsel submitted that Forest Clearance was also accorded for mining in the project area for Stage-I and Stage-II on 11.05.2010 and 17.09.2010 and Condition No.8 of the Stage-II Forest Clearance stipulated that the user will ensure 50 m greenbelt along the sides of Pakwa Nallah and Do Muhani Nallah. Mr. Jain further submitted that the Appellant in compliance of EC Specific Condition No.iv also got a study conducted by the Central Water and Power Research Station (CPWRS) and Technical Report No.4813 was submitted by CWPRS based upon which the Chief Engineer, Project Monitoring and Planning Water Resource Department accorded No Objection Certificate (NOC) for realignment of Do Muhani Nallah vide its order dated 19.03.2013. Learned Senior Counsel submitted that all these documents were available before the MoEF & CC and the Appellant had also filed half-yearly Environmental Monitoring Report of EC for the Pakri-Barwadih Project (October, 2013 - March, 2013) to the Additional Principal Conservator of Forest vide its letter dated 26.04.2013 and had categorically pointed out the requirement for the diversion/realignment of Do Muhani Nallah but no action was taken by the Respondent-MoEF & CC till the passing of the impugned order dated 25.05.2023. Learned Senior Counsel also submitted that by the impugned order dated 25.05.2023, the MoEF

& CC accorded its approval to modify Condition No.8 of Stage-II approval dated 17.09.2010 to read as under:-

“The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no.73 E/I. A greenbelt of 100 meters on either side of both Khorra Nala and Pakwa Nalla shall be maintained.”

49. Mr. Jain further submitted that the Appellant has filed the present Appeal being aggrieved by that part of the order dated 25.05.2023 whereby the MoEF & CC has imposed penalty on the Appellant for alleged violation committed over the entire forest area of 1026.438 Ha. equal to five times the normal NPV plus simple interest of 12% from the date of actual violation committed till the deposition of penalty. Learned Senior Counsel submitted that the computation of the area of violation as 1026.438 Ha. is absolutely illegal, erroneous and contrary to record and if at all there has been degradation of the land in the mined area the said area extents to not more than 37.2 Ha. of forest land. Learned Senior Counsel submitted that even the Divisional Forest Officer, Hazaribagh vide his letter dated 03.06.2022 (page no.549 of the paper book) had held the area of violation of FC condition to be 37.2 Ha. of forest land though in the same letter he also suggested that penalty should be computed equal to five times of NPV.

50. We find that in the impugned order which has been passed the penalty has been assessed on an area of 1026.438 Ha. at five times of the NPV even though the State Government had assessed violation of the Forest Clearance Conditions extending to 37.2 Ha. of forest land. The document at page no.799 of the paper book is the Minutes of the Meeting of the Forest Advisory Committee (FAC) held on 27.08.2024 and Agenda No.8 deals with the subject of diversion of 1026.438 Ha. of forest land for coal mining Pakri-Barwadih Project in favour of M/s NTPC Ltd. in Hazaribagh West Forest Division in Hazaribagh District of Jharkhand. The Minutes of the Meeting show that the MoEF & CC vide its letter dated 29.01.2019 had requested the State Government to furnish comments on the representation of the Appellant and also provide documents as available with the State Government. The Government of Jharkhand submitted their reply to MoEF & CC vide their letter dated 08.07.2022 adverting to PCCF, Government of Jharkhand letter dated 22.10.2020, 13.06.2022 and 16.06.2022. The relevant extract of the Minutes of the Meeting vi (a) which makes a note of the State Government reads as under:-

“a. The State Government informed that the user agency has violated the provisions of condition no 8 of the Stage-II approval as the user agency at its own diverted the Dumhani nallah without prior approval of the Central Government under the Forest (Conservation) Act, 1980. State Government has further informed that despite standing directions of the

CCF to abide by the condition no. 8 of approval till a time amendment in the same is granted by the Central Government, the user agency has violated the provisions of said condition. The land used in violation of the conditions of approval has been reported to be 37.20 ha. The State Government has recommended to levy penal CA and Penal NPV in respect of 37.20 ha of forest land used by the user agency in violation of Forest (Conservation) Act, 1980.”

51. The Minutes of the Meeting further record that the Regional Office of the MoEF & CC vide its letter dated 25.11.2022 submitted the Site Inspection Report and assessed the area involved in violation as 156 Ha. and gave a tentative assessment of penalty amounting to Rs.81,89,82,060/- (Rupees Eighty-One Crores Eighty-Nine Lakhs Eighty-Two Thousand and Sixty only). The Point No.vii of the Minutes of the Meeting under Agenda No.8 reads as under:-

“vii. The Regional Office vide their letter dated 25.11.2022 submitted the site inspection report and assessed that the area involved in violation is 156 ha and gave a tentative assessment of penalty amounting to Rs. 818982060 (Eighty-one crores, eighty-nine lakhs eighty-two thousand and sixty). In assessment of the quantum of violation, the following points are considered by the Regional Office.”

52. It is interesting to note here that even though it is acknowledged by the MoEF & CC that penal NPV is equal to two times of the normal NPV as per 1.21 (iii) of the FC Guidelines Handbook but the penalty proposed has been computed at 3.5

times of the NPV + afforestation cost i.e. $156 \times (3.5 \text{ times NPV} + \text{Afforestation cost}) = \text{Rs.}81,89,82,060/-$.

53. Item No.viii of the Agenda No.8 would show that this proposal was also considered by the Advisory Committee and the Forest Advisory Committee recommended reconstitution of the Sub-Committee of the Advisory Committee to determine the following points:-

“a. Assessment of hydrological regimes of the area and impact of ongoing mining operations of the user agency in general and Dumuhani Nallah in particular and changes brought in by the User Agency and its impact on the ecology of the area.

b. Efficacy of mitigation measures, if any, undertaken by the user agency in their lease area.

c. Holistic assessment of 1787 ha of forest land involved in the mining lease of the user agency, its present status and legitimacy of future use proposed by the user agency.”

54. Point No.c mentions holistic assessment of 1787 Ha. of forest land involved in the mining lease of the user agency. The Regional Office, MoEF & CC, Ranchi submitted the Report of the Sub-Committee dated 03.04.2023 which was considered by the Advisory Committee and the Committee recommended to modify the Condition No.8 in Stage-II approval in the following terms at Item No.x of the Agenda No.8:-

“The user agency shall restore and conserve the Khorra Nalla (west) and Pakwa Nalla (east) watersheds on priority basis under supervision of the forest department and expert hydrologists/agencies and develop their watershed status as per the Survey of India toposheet no. 73 E/I. A greenbelt of 100 meters on either side of both Khorra Nalla and Pakwa Nalla shall be maintained’.

The Committee further observed that in total disregard to the conditions of approval the user agency has mined out the area and changed the course of the Dumuhani nala, which was actually required to be protected and maintained as green belt. Keeping this in view the Committee recommended that the penalty shall be imposed for violation committed over the forest area (1026.438 ha) without approval equal to five times the normal NPV plus simple interest of 12 % from the date of actual violation committed till the deposition of penalty shall be imposed.”

55. We fail to understand as to how the Forest Advisory Committee (FAC) has computed the violation for the entire forest area of 1026.438 Ha. as being without approval even though in the Forest Clearance the greenbelt provided on both sides of the Khorra Nallah and Pakwa Nallah was 50 m and not 100 m and it was increased to 100 m on either side of both Khorra Nallah and Pakwa Nallah only after bringing about the amendment in Condition No.8 of the Stage-II. We also fail to understand as to how the Forest Advisory Committee (FAC) observed that the user agency has mined out the

area and changed the course of Do Muhani Nallah which was required to be protected and maintained as greenbelt completely ignoring the fact that the Mining Plan included Do Muhani Nallah for mining purposes and it was pointed out by the user agency in its representation of 2018 that the Do Muhani Nallah flowed right through the mine area thereby frustrating mining operations and creation of a greenbelt and, therefore, it had requested that Condition No.8 of the Stage-II Clearance be modified accordingly.

56. Though the Appellant claims exception of any penalty under provision of 1.21(iv) of Handbook of Forest (Conservation) Act, 1980, and Forest Conservation Rules, 2003 (Guidelines and Clarifications) as the change in mining plan is duly approved by the Ministry of Coal and also diversion of Do Muhani Nalla has been approved by the Ministry of Water Resources and the same was communicated to the Ministry of Environment, Forest and Climate Change, before mining started, however, advertent to the Report of the Forest Advisory Committee (FAC) in the meeting held on 27.08.2024 the fact cannot be ignored that the course of the Do Muhani Nallah has been altered and as determined by the State Government the degradation of land due to mining by the Appellant extends to 37.2 Ha. which we accept.

57. The Minutes of the Meeting held on 27.08.2024 further mentions that after the letter of the State Government

recommending levying of penal CA and penal NPV in respect of 37.2 Ha. of forest land used by the user agency in violation of the Forest (Conservation) Act, 1980, the Regional Office, MoEF & CC, Ranchi, submitted letter dated 25.11.2022 referred to in the Agenda No.8 of the Minutes of the Meeting with a site Inspection Report and assessed the area involved in violation to be 156 Ha. and made a tentative assessment of penalty amounting to Rs.81,89,82,060/- (Rupees Eighty-One Crore Eighty-Nine Lakhs Eighty-Two Thousand and Sixty only). We have considered this aspect of the matter and we find that this 156 Ha. was already a part of the entire mining area other than the mining area of 37.2 Ha. of forest land falling within the Do Muhani Nallah area and, therefore, it cannot be said that the damage or degradation caused to the environment as a result of the mining activities of the Appellant would be in violation of Condition No.8 of Stage-II Forest Clearance over the entire area of 156 Ha. We also find that in the letter of the Regional Office, MoEF & CC dated 25.11.2022 it is acknowledged that as per the Forest Conservation Guidelines Handbook penal NPV is two times of the normal NPV as per para 1.21 (iii) of the Forest Conservation Guidelines Handbook yet it has assessed penalty for "Fait-accomplish" violation at 156×35 times NPV + Afforestation cost amounting to Rs.81,89,82,060/- (Rupees Eighty-One Crore Eighty-Nine Lakhs Eighty-Two Thousand and Sixty only). We find that there is absolutely no basis for computing penal NPV at 3.5 times of the NPV

and the Respondents have to strictly follow the FC Guidelines Para 1.21 (iii) of the Forest Conservation Guidelines Handbook and penal NPV cannot be computed at more than two times of the normal NPV. We also do not find any basis for extending the total area of violation of forest area to be 1026.438 Ha. when in fact the area which is actually affected as assessed by the State Government is 37.2 Ha.

58. We are, therefore, of the view that the entire computation of penalty in the impugned order dated 25.05.2023 and the order dated 14.06.2023 is absolutely illegal and erroneous and needs to be re-examined by the MoEF & CC.

59. The conspectus of the details, documents and guidelines clearly indicate that it is not the case of violation of Forest (Conservation) Act, 1980, but violation of a condition stipulated under the grant of Forest Clearance. The condition extends only to 37.2 Ha. and the NTPC is a public utility body.

60. We, therefore, allow this Appeal and set aside that part of the order dated 25.05.2023 in so far as it imposes penalty on the Appellant at the five times of the NPV on the entire forest area of 1026.438 Ha. and the order dated 14.06.2023 imposing penalty at Rs.857,52,85,944.32/- (Rupees Eight Hundred Fifty-Seven Crore Fifty-Two Lakhs Eighty-Five Thousand Nine Hundred Forty-Four and Thirty-Two Paise only) on the Appellant. The matter is remitted

to the MoEF & CC to re-consider the same and determine penalty strictly in accordance with law and the observations made hereinabove.

61. In view of the directions passed in Appeal No.20/2023/EZ, the Original Application No.63/2023/EZ is accordingly disposed of.

62. I.As, if any, stand disposed of accordingly.

63. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

**January 21st, 2025,
Appeal No.20/2023/EZ
With Original Application No.63/2023/EZ
(Earlier O.A. No.158/2023/PB)
MN**

NGT