

ITEM NO.301

COURT NO.1

SECTION PIL

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A.NOS.1780-1781 IN W.P.(C)NO.202/1995

T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS

Respondent(s)

(For permission to carry out the project work and impleadment)

I.A.NO.735 IN W.P.(C)NO.202/1995

(For directions and recommendation of C.E.C.)

I.A.NOS.1635-1636 in W.P.(C)NO.202/1995

(For direction and exemption from filing O.T. and recommendation of C.E.C.)

I.A.NOS.1637-1638 in in W.P.(C)NO.202/1995

(For impleadment and directions and recommendation of C.E.C.)

I.A.NOS.1666 IN W.P.(C)NO.202/1995

(For impleadment/clarifications/directions and recommendation of C.E.C.)

I.A.NOS.1609-1610 in W.P.(C)NO.202/1995

(For direction and impleadment and recommendation of C.E.C.)

I.A.NO.1166 in 896-898 IN W.P.(C)NO.202/1995

(For directions and exemption from filing O.T. And recommendation of C.E.C. in I.A.No.695-696)

AND I.A.NO.1167 in I.A.Nos.695-696&706 IN W.P.(C)NO.202/1995

(For directions and exemption from filing O.T. And recommendation of CEC in I.A.no.695-696)

I.A.No.2 in C.A.No.4994/2004

(For directions and office report)

AND WITH

SLP(C)No.18973/2005

(With appln.(s) for c/delay in filing SLP and permission to submit addl.documents and with prayer for

interim relief)

2

Date: 05/04/2007 These applications/Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

3

Mr.Harish N.Salve, Sr.Adv.(A.C.)(NP)

Mr.U.U.Lalit, Sr.Adv. (A.C.)

Mr.Siddhartha Chowdhury, Adv.(A.C.)

Ms.Gayatri Goswami, Adv.(A.C.)

Mr.Ranjit Kumar, Sr.Adv.(A.C.)

For Petitioner(s) In person

Mr.Kh.Nobin Singh, Adv.

Mr.Bishwajit Meitei, Adv.

Mr.David Rao, Adv.

For Respondent(s)/  
applicant(s) Mr.A.D.N.Rao, Adv .

Mr. P.K. Manohar, Adv.

In I.A.1635-36 Mr.A.Saran, ASG

Ms.Suvira, Adv.

I.A.2 in CA 4994/04 Mr.K.V.Viswanathan, Adv.

Mr.K.R.Nambiar, Adv.

For UOI-MoEF Mr. Harish Beeran, Adv.

For Mr.R.C.Kathia, Adv.

in I.A.No.1609-10 Mr.Mahendra Anand, Sr.Adv.

Mr.Manoj Saxena, Adv.

Mr.Rajnish Kr.Singh, Adv.

Mr.Rahul Shukla, Adv.

For Dr.Kailash Chand, Adv.

I.A.Nos.1780--81 Mr.Krishan Mahajan, Adv.

Mr.Sanjeev Kr.Bhardwaj, Adv.

For Mr.D.S.Mahra, Adv.

Mr.Hinanshu Shekhar, Adv.

Mr.Shiraz C.Patodia, Adv.

I.A.No.1635-36 Mr.Naveen Sharma, Adv.

4

Mr.B.S.Banthia, Adv.

I.A.No.1666 Mr.R.Nedumaran, Adv.

Mr.S.B.Upadhyay, Sr.Adv.

Mr.Shiv Mangal Sharma, Adv.

Mr.Kumud Lal Das, Adv.

5

I.A.No.1637-38 Mr.S.K.Kulkarni, Adv.

Mr.Vijay Kumar, Adv.

Mr.V.Krishna Murthy, Adv.

Ms.Sangeeta Kumar, Adv.

Mr.Manjit Singh, AAG

Mr.Harikesh Singh, Adv.

Mr.T.V.George, Adv.

Mr.Bharat Sangal, Adv.

Ms.Rachna Srivastava, Adv.

Mr.Prashant Bhushan, Adv.

Ms.Vibha Dutta Makhija, Adv.

Mr.K.R.Sasiprabhu, Adv.(NP)

Mr.Rajesh Srivastava, Adv.

Mr.R.C.Kohli, Adv.

For State of U.P.

Dr.R.G.Padia, Sr.Adv.

Mr.S.W.A.Qadri, Adv.

Mr.Rajiv Dubey, Adv.

For Mr.Kamlendra Mishra, Adv.

Mr.Sanjay R.Hegde, Adv.

Mr.Vikrant Yadav, Adv.

Mr.Amit Kr.Chawla, Adv.

Mr.Ramesh S.Jadhav, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A.Nos.1780-1781:

Issue notice to MoEF and C.E.C. Let their responses be filed within four weeks.

I.A.No.735:

In view of the report of the C.E.C. the I.A. is dismissed without prejudice to the right of

the applicant to pursue his remedy, if any, by way of arbitration proceedings.

I.A.Nos.1635-1636:

Application for exemption from filing O.T. is granted.

Earlier in I.A.No.1011, vide this Court's order dated 16th December, 2005, an extent

of 12.764 ha. of land in the Chambal National Wildlife Sanctuary was transferred to the Ministry of

Railways for laying down the new railway lines. In the present application the Ministry of Railways

seek transfer of 8.87 ha. of land for the same project. The matter was examined by the C.E.C. and

the C.E.C. recommended acceptance of the prayer, subject to the following conditions :

(a)Approval under the F.C.Act.

(b)Payment of 5% of the project cost in the compensatory afforestation fund.

(c)Payment of NPV with an undertaking that additional NPV, if determined by this

Hon'ble Court will have to be paid by the Railways.

(d)other conditions stipulated by MOEF while granting approval under the F.C. Act will

be fulfilled.

(e)Railways will construct pucca retaining walls of suitable dimension of 500 mt. Width

on each side of the railway line on both banks to prevent any damage to the high banks through soil

erosion.

(f)Railway Authorities should carry out stone pitching on both sides of the railway

embankment through its entire length within the Sanctuary area of MP & UP.

(g) Railway Authorities would pay cost of penal compensatory afforestation of locally

occurring species over 50 ha of forest land in the area adjoining the railway line in the Sanctuary of

MP which is a revenue land.

(h) Substantial component of work should be under the eco-development of the

villages falling within 1 km. of the railway line within the Sanctuary area.

(i) Railway to ensure that no garbage is thrown into the Chambal Sanctuary from any

train passing through the Sanctuary.

8

The learned Addl. Solicitor General, appearing for the applicant Ministry of Railways

submitted that the conditions are agreeable to the Ministry of Railway. Subject to the fulfilment of the

above conditions, we direct that 8.87 ha. Of land be transferred to the Ministry of Railways.

I.A.Nos.1635-1636 are disposed of accordingly.

I.A.Nos.1637-1638:

The Karnataka Urban Water Supply & Distribution seeks permission to diversion of 0.3

ha. Of forest land falling within the Cauvery Wildlife Sanctuary for water supply to the Malai

Mahadeswara Hills. The matter has been examined by the C.E.C. and the C.E.C. recommended

acceptance of the prayer, subject to the fulfillment of the following conditions:

(i) Approval under the F.C. Act.

(ii) Payment of 5% of the Project cost in the Compensatory afforestation fund for the

conservation and protection of the Cauvery Wildlife Sanctuary.

(iii) Payment of NPV with in undertaking that additional NPV, if determined will have to be paid.

(iv) Conditions imposed by the Chief Wildlife Warden will be strictly complied with.

(v) No labour camps to be established within the forest area.

According to condition No.2, the applicant shall deposit 5% of the project cost in the

CAMPA Fund. Learned counsel for the Department points out that the total cost of the project is

about 12 crores and 5% of it would be on a higher side. Having regard to the extent of land involved

in the Scheme, we modify the condition and direct that the Department shall deposit Rs.25 lacs in the

CAMPA fund for the conservation and protection of the Cauvery Wildlife Sanctuary.

Subject to the fulfillment of the above conditions, the I.A.s are disposed of.

9

I.A.No.1666:

The applicant State of Tamil Nadu seeks permission for felling of 58 trees of

spontaneous growth in the Reserved Forests of Suranganar Forest in Theni Forest Division for

construction of an irrigation project. The C.E.C. has examined the matter and the C.E.C. has

recommended acceptance of the prayer, subject to the fulfillment of the following conditions :

(i) Before any felling of the trees is undertaken, the approval under the F.C. Act

for the non forest use of the forest land involved in the project will be obtained.

(ii) The Project Authorities will deposit the NPV of the forest land at

the present

rate in the Compensatory afforestation fund with in undertaking that additional NPV, if determined will

have to be paid.

Learned counsel submits that the State of Tamil Nadu is agreeable to the said

conditions. Subject to the fulfillment of the above conditions, the application is allowed.

I.A.Nos.1609-1610:

The State of Andhra Pradesh has sought permission for temporary diversion of forest

land to an extent of 7 ha. situated in the Rajiv Gandhi Wildlife Sanctuary and permission to carry out

construction of Weir at 14.675 km. Downstream of Srisaillam Dam. But even before the permission

was obtained, the concerned officers had already carried out a portion of the work. The C.E.C. had

examined the matter and found that a total number of 180 trees have to be cut from the forest and

directed that NPV at the present rate has to be paid. The C.E.C. had also suggested that as the

officers have already initiated the work even before the permission of this Court, a penalty of Rs.2

crores should be imposed on it.

10

We have heard the learned Amicus Curiae and the learned senior counsel for the

State. Learned counsel for the State submitted that 5% of the total project cost would be a

substantial amount and a further penalty of Rs.2 crores would put the State in a difficult situation. It is

pointed out that the construction of Weir itself a water body and only 168 trees are to be cut

and for

afforestation total cost would be around Rs.6.5 lacs and therefore, the conditions 2 to 4 may be

modified. We have examined the various facts and having regard to these facts, we direct that

towards NPV and the 5% project cost the applicant shall deposit Rs.50 lacs in the CAMPA Fund and

as regards penalty of Rs.2 crores is concerned, we reduce it to Rs.one crore and in total the applicant

shall deposit Rs.1.5 crores in the CAMPA Fund. Subject to the deposit of the above amount, the

prayer is accepted.

I.A. is disposed of accordingly.

I.A.No.1166 in 896-898:

The applicant-State of Tamil Nadu accepts the conditions imposed/recommendations

of the C.E.C. and the project has already been sanctioned. No further orders are required.

The I.A. Is disposed of accordingly.

I.A.No.1167 in I.A.Nos.695-696 & 706:

Application for exemption from filing O.T. is granted.

The applicant has alleged that an extent of 580.2 acre of Reserve Forest land in

Bandhavgarh National Park was being transferred to a private party for development of a trust. The

matter was referred to the State Government and the State Government emphatically stated that

this

land was not given to the private party. This Court on an earlier occasion passed an order on the

basis of the affidavit furnished by the State. Said affidavit of the State states that the 58 0.2 acres had

never been given to the private party and is still in possession of the forest department of the State.

Accordingly, no orders are required on this I.A. and the same is disposed of

accordingly.

The Reliance Telecom Limited sought permission of the M.P. Forest Department to lay

the optical fibres through the Madhav National Park. Even before the matter was examined by the

C.E.C. and/or before the approval of the forest authorities, the then Chief Wildlife Warden of the

State of M.P. Vide his letter dated 16.5.2001 granted permission to the laying the Optical Fiber Cable

through the forest land. The conduct of the Chief Wildlife Warden, M.P. Has to be deprecated. The

Reliance Telecom Ltd. had laid down the cable without obtaining mandatory approval under the

F.C. Act and the permission of this Court and so the C.E.C. has recommended for a direction to the

Reliance Telecom Ltd. for depositing Rs.1 crore in the CAMPA Fund. We approve the

suggestion and direct the Reliance Telecom Ltd. to pay a sum of Rs.1 crore in the CAMPA Fund.

The amount shall be paid within a period of one month, failing which the C.E.C. would be at liberty to

recover this amount as arrears of land revenue under the relevant Land Revenue Act through

appropriate proceedings.

I.A.2 in C.A.No.4994/04:

Delink the matter. Post the appeal and the I.A. separately in the last week of April, 2007.

12

SLP(C)No.18973/05:

Learned counsel for the petitioners submits that the contesting respondent no.1 has died and there are no legal heirs and so the matter has become infructuous. The special leave petition is dismissed as having become infructuous.

(G.V.Ramana)

Court Master

(Veera Verma)

Court Master