

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI,
NEW DELHI**

Appeal no. 73/2012

In the matter of:

Sudiep Shrivastava
r/o Dharam Prakash Chawl
Mungeli Naka Bilaspur
Chhattisgarh- 495001

..... Appellant

Versus

1. State of Chhattisgarh
Through the Principal Secretary (Forests)
Government of Chhattisgarh
Raipur
2. Union of India
Through the Secretary
Ministry of Environment and Forests
Government of India
Paryavaran Bhawan, C.G.O Complex
Lodhi Road, New Delhi – 110003
3. M/S Rajasthan Rajya Vidyut Utpadan Nigam Ltd
Vidyut Bhawan
Jyoti Nagar, Janpath
Jaipur- 302005
4. Kente Basan Coilleries co. Ltd
C/O M/S Rajasthan Rajya Vidyut Utpadan Nigam Ltd
Vidyut Bhawan
Jyoti Nagar, Janpath
Jaipur- 302005

.....Respondents

Counsel for appellant:

Mr. Raj Panjwani, sr. advocate along with
Mr. Rahul Choudhary, Mr. Ritwick Dutta
and Srilekha Advocate

Counsel for Respondents:

Mr. Atul Jha, Advocate for respondent no. 1
Ms. Neelam Rathore, Mr. Vikramjeet,
Ms. Syed Amber Advocates for respondent no. 2
Mr. Parag Tripathi sr. Advocate along with
Mr. Kunal Verma Advocates for respondent no. 3
Mr. Pinaki Mishra, sr. Advocate, Mr. Ravi Nair
and Mr. Arjun Khera, Advocates for respondent no. 4

Present:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)
Hon'ble Dr. R. C. Trivedi (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Dated: 24th March, 2014

1. A diversion of 1898.328 hectares of forest land at Parsa East and Kante-Basan captive coal blocks (shortly referred to as PEKB Coal Blocks) situated in Hasdeo-Arand coal fields in Hasdeo-Arand forest- South Sarguja Forest Division, District Sarguja, Chhattisgarh in favour of M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd (shortly referred to as RVUNL) - the respondent no. 3 herein vide order no. F 5-4/2010/10-2 dated 28th March,2012 passed by the State of Chhattisgarh - the respondent no. 1 herein in pursuance to the approval under section 2 the Forest (conservation) Act 1980 (shortly referred to as FC Act) accorded by

the Central Government the respondent no. 2 herein, finds challenge in the present Appeal.

2. Undisputed facts leading to the present appeal are as under: Tara, Parsa, and PEKB Coal Blocks are part of Hasdeo-Arand Coal Fields of Chhattisgarh, which fall in South Sarguja Forest Division. PEKB Coal Blocks ad measure 2388.525 hectares. Initially, the proposal dated 12th January, 2009 for diversion of 1898.328 hectares of forest land in PEKB Coal Blocks was forwarded by the State Government- State of Chhattisgarh the respondent no. 1 herein to MoEF- the respondent no.2 on 20th April, 2010. The respondent no.3- the project proponent on its own submitted a revised proposal regarding sequential mining of coal in two phases on 02nd March, 2011. Such revised proposal was the subject matter for deliberations before FAC on 10th March, 2011. The FAC appointed a sub-Committee to inspect, enquire into and to submit its report giving its findings in relation to Tara, Parsa and PEKB Coal Blocks. This sub-committee inspected some locations situated within the above coal blocks on 14th and 15th May, 2011 and submitted its observations/findings before the FAC. In its meeting convened on June, 20th and 21st 2011, the FAC considered the sub-Committee's observations/findings and took decision not to recommend the diversion of proposed forest area. In the said meeting, the FAC also dealt with the proposals for diversion of forest land falling in neighbouring coal fields, namely, Tara. On 22nd June, 2011 the final recommendations of the FAC rejecting the proposals for opening of Tara and PEKB Coal Blocks for mining

were placed before the Minister of State, Environment and Forest. The Hon'ble Minister preferred to disagree with the final recommendations of FAC, rejecting the proposal and decided to give stage-I approval in respect of the said proposals for forest clearance on 23rd June, 2011.

3. The Hon'ble Minister of State gave six reasons for his disagreement with the FAC, which are as follows:

(i) The coal blocks are clearly in the **Fringe** and actually not **in the Bio-diversity rich Hasedo Arand forest region (a "No Go" area); and are separated** by a well-defined high hilly ridge with drainage into Aten river flowing towards Hariyarpur in the opposite direction making it fall in totally different watershed;

(ii) **Substantial changes in the mining plans** as originally envisaged i.e. the revised proposal envisaging **sequential mining in two phases**- each phase of 15 years, firstly covering 762 hectares and in the next phase 1136 hectares, with reclamation of the mined out area to commence from the 3rd year onwards thus making it possible to link renewal for phase-II to performance on reforestation and bio-diversity management in phase-I;

(iii) **Wildlife concerns** to be taken care of through a **well prepared and well executed Wildlife Management Plan** under the aegis of independent institutions like the Wildlife Institute of India (WII) with involvement of other independent institutions with expertise on elephant related issues like the Nature Conservation Foundation, Wildlife Trust of India and the Centre for Ecological Studies at the Indian Institute of Science;

(iv) **Coal Blocks to be linked to super-critical thermal power generation** stations making such linkage as an explicit pre-condition for approval;

(v) Power generation plants of Chhattisgarh and Rajasthan being closely linked to the said coal blocks, the said **States have been persistently following up;**

(vi) **Imperative to sustain** the momentum generated in the XI plan in terms of **capacity addition** in keeping with broader developmental picture and balancing of different objectives and considerations.

4. As a sequel to the Minister's approval the respondent no. 2-MoEF issued stage-II approval dated 15th March 2012 to the said proposal for forest clearance which was followed by the impugned order dated 28th March, 2012 passed by the respondent no. 1-State of Chhattisgarh.

5. The appellant took exceptions to the reasons cited to over-rule FAC's recommendations and contended that the Hon'ble Minister's rejection of FAC's recommendations was both legally and factually not tenable. According to the appellant the Hon'ble Minister of State had over-ruled the FAC's recommendations purely on his subjective assessment without there being any basis for it; and the Minister had no power to take a contrary view from the one taken by the expert body- the FAC. In support of this contention the appellant placed reliance on *TWP's case [T. N. Godavarman Thirumulpad versus Union of India; (2010)13 SCC 740]*. The appellant further submitted that the Hon'ble Minister has

completely ignored the fact of identification of PEKB Blocks as “No Go area” on the basis of the joint studies carried out by Ministry of Coal and MoEF, and the outcome of such studies is material in addressing environmental issues. The appellant further submitted that the joint study for identification of the areas as “Go” and “No Go areas” is not merely an administrative exercise but a requirement in pursuance to the Forest (Conservation) Rules 2003- Rule 7(2)(c) read with entry 8 of Form-A under Appendix to the Rules. The appellant contended that the material information with regard to flora and fauna was concealed by the project proponent while submitting forest clearance proposal and the cost-benefit analysis of the project is flawed. Incidents of man-elephant conflict, the appellant submitted, reveal that the area in question falls in elephant reserve corridor area and the Wildlife Management Plan prepared by the state and looked into by WII in a very casual manner is wholly inadequate and fails to prescribe measures to contain man-elephant conflict. According to the appellant there is enough coal deposit available in the classified “Go areas” i.e. outside “No Go Area” to cater to the coal demand in next 60 years and the Ministry ought to have considered these facts, particularly, when there is no need to allow mining in dense forest and the afforestation would not regenerate natural forest. The appellant pointed out that the Minister had on three previous occasions rejected coal mining projects in Hasdeo-Arand forest area- an un-fragmented forest area and had surprisingly taken a different view contrary to the earlier view in the instant case, particularly in

violation of the order dated 4th August, 2006 in *TWP* case (supra).

The appellant further pointed out that the condition of supply of this coal to super thermal power plants is not being complied with.

6. Besides oral submissions learned advocate Mr. Panjwani for appellant placed on record written submissions accompanied by compilation of documents in support. The parties hereto have placed their responses on record in form of their replies and rejoinders with accompaniments as well as written submissions, which have been perused.

7. The MoEF took a stand that the FAC is merely an advisory body and the MoEF is the decision making body, and as such the MoEF is competent to override the FAC's advice/recommendations. Accordingly the MoEF contended that the Hon'ble Minister of State has granted permission for forest clearance in question on the basis of six well thought-out logical reasons on 23rd June 2011. The MoEF further submitted that the concerns in relation to the wildlife were suitably addressed by getting comments from WII Dehradun on the Wildlife Management Plan submitted by the State Government, and on issuing directions to the State Government to incorporate them in Wildlife Management Plan and to the project proponent to bear the increased cost of Wildlife Management Plan vide order dated 13th March, 2012. Thus, on satisfaction of all the conditions stipulated, the Stage-II approval in question was granted.

8. Learned Counsel for the respondent no. 3 argued at length and further placed written submissions along with the

accompaniments on record. With reference to the provisions of Forest (Conservation) Act, 1980 and rules made thereunder, he argued that the role of FAC remained advisory and the power to grant approval to the proposal overriding the recommendations of FAC vested in the Central Government. He pointed out that the Hon'ble Apex court vide order dated 02nd February, 2004 in *I.A. No. 11266 in I.A. 703/2011 in writ petition (c) No. 202/1995* has stayed the operation of the Forest (Conservation) amendments Rules 2004 repealing Rule 8 of Forest (Conservation) Rules, and as such the said Rule 8 expressly spelling out the power of the Central Government either to grant approval to the proposal or to reject the same within 60 days requires to be taken into consideration. As regards the directions in *TWP's Case* (supra), he submitted, the same were passed in order to meet the peculiar situation arising in the matter of grant of temporary work permits in the cases of renewal of mining licenses and cannot be applied generally. In his view the process of identifying "Go" and "No Go" areas was at the proposal stage and was never given effect to and as such has/had no binding force in Law. Adverting to *Lafarge Umium Pvt Ltd. Case* [Lafarge Umiam Minig Pvt. Ltd. Vs. Union of India & ors: (2011)7SCC338], he submitted that the Government remained vested with sufficient discretion in deciding competing interest demand like development versus Population/environment/forest.

9. Our attention was invited to Forest map and mapping done by GIS cell of Forest Management Information System, Division Raipur, Chhattisgarh as well as to the observations made by the

sub-Committee appointed to inspect PEKB Coal Blocks to point out that the vegetation in the PEKB Coal Blocks is poor and it is situated on the fringe of the Hasdeo-Arand Coal fields in different watershed. Our attention was also invited to the facts overlooked by FAC while tendering its advice. According to the respondent no. 3 translocation of the trees is being done with modern techniques and tools, and the sequential mining in two phases assures regeneration of forest cover.

10. The respondents further pointed out that the coal mined from PEKB Blocks was to be utilised by the public undertaking for power generation in the State of Rajasthan and the present need of power generation justified the exploitation of our coal reserves particularly when huge amounts were being spent needlessly on coal imports. The respondents submitted that the order passed by the Hon'ble Minister of State is, therefore, just and reasonable, and as such the appeal deserved to be dismissed.

11. Controversy thus raised begs the following questions, which if answered would help its resolution:

(I) whether the advice rendered by FAC is binding on the Minister dealing with the proposal for granting approval to the forest clearance under section 2 of the Forest (Conservation) Act, 1980 and what weight it needs to be given?

(II) Whether the reasons adduced by the Minister of State, Environment and Forest in the order dated 23rd June, 2011 have sufficient basis to outweigh the advice rendered by the FAC?

(III) What order?

12. For answering the first question, it would be worthwhile to examine the relevant provisions of FC Act. Section 2 of the FC Act, 1980 spells out the role of the Central Government in the matter of granting prior approval to the State Governments proposals for dereservation of forest or use of forest land for non-forest purpose. This provision assigns a pivotal role to the Central Government and not to the Forest Advisory Committee constituted under Section 3 of the FC Act in the matter of granting the prior approval to the State Government's proposal for forest clearance in the following words:

2. Restriction on the dereservation of forests or use of forest land for non- forest purpose-

Notwithstanding anything contained in any other law for the time being in force in a state, no state Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

[(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.]

[Explanation.- For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-.....

A look at the Section 3 of the FC Act would clearly reveal that the Forest Advisory Committee is the creation of the Central Government made for seeking advice in the matters connected with the grant of approval under Section 2 of the FC Act and with the

Conservation of forest, which may be referred to it by the Central Government. Section 3 of the FC Acts reads as under:

3. Constitution of Advisory Committee.-

The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to-

- (i) The grant of approval under section 2; and
- (ii) any other matter connected with the conservation of forest which may be referred to it by the Central Government.

Incorporation of this provision in the FC Act implies how important is the need of an advise in the matter of grant of approval under Section 2 to the Central Government, and it empowers the Central Government to constitute a mechanism for advice. Further reading of the FC Act takes us to the power of the central Government to devise its own tools for carrying out the provisions of the Act. This power to make rules for carrying out the provisions of the Act is conferred on Central Government under section 4 of the FC Act. Reading of some of the relevant provision of the Forest (Conservation) rules 2003 framed in exercise of the powers conferred by sub-section 1 of Section 4 of the FC Act namely, Rule 3, 5, 6, 7, and now deleted Rule 8 would reveal the manner in which the provisions of FC Act are given effect to, and the character and roles of the FAC, State Government, Central Government and their respective organs/authorities.

Rule 3 Reads as under:

3. Composition of the Forest Advisory Committee.-

(1) The Forest Advisory Committee shall be composed of the following members, namely:-

- (i) the Director General of Forest, Ministry of Environment and Forests - Chairperson

- (ii) the Additional Director General of Forests, Ministry of Environment and Forests - Member
- (iii) the Additional Commissioner(soil Conservation), Ministry of Agriculture - Member
- (iv) three non-official members who shall be Experts one each in Mining, civil Engineering and Development Economics - Members
- (v) the Inspector General of Forests (Forest Conservation), Ministry of Environment and Forests -Member Secretary

(2) Additional Director General of Forests shall act as the Chairperson in the absence of Director General of Forests.

Composition of the forest advisory Committee clearly reveals that it comprises of the experts or men of standing in the fields of environment and forest, soil conservation, mining, civil engineering, development, economics and forest conservation.

Rule 5 (iii) reads as under:

5. Conduct of the business of the Committee.-

.....

(iii) In a case where the Chairperson is satisfied that inspection of site or sites of forest land proposed to be used for non-forest purposes shall be necessary or expedient in connection with the consideration of the proposal or proposals received under sub-rule (3) of rule 6, he may direct that the meetings of the Committee to be held at a place other than New Delhi from where such inspection of site or sites is necessary.

This provision gives us an idea about the importance of inspection of site or sites of forest land proposed to be used for non-forest purposes and the discretion vested in the Chairperson of the FAC to hold meeting at the very site of forest land in question in order

to get acquainted with the first-hand knowledge about the forest land in question.

Rule 6 of the FC Act reads as under:

Submission of proposals seeking approval of the Central Government under section 2 of the Act-

Every user agency, who wants to use any forest land for non-forestry purposes, shall make its proposal in the relevant Form appended to the rules, i.e., Form A for proposals seeking first time approval under the Act, and Form B for proposals seeking renewal of leases, where approval of the Central Government under the Act had already been obtained, to the Nodal Officer of the concerned State Government or the Union Territory Administration, as the case may be, along with requisite information and documents, complete in all respects.

The user agency shall endorse a copy of the proposal, along with a copy of the receipt obtained from the office of the Nodal Officer, to the concerned Divisional Forest Officer or the Conservator of Forests, Regional Office, as well as the Monitoring Cell of the Forest Conservation Division of the Ministry of Environment and Forest, Paryavaran bhawan, CGO Complex, New Delhi-110003.

(a) After having received the proposal, the State Government or the Union Territory Administration, as the case may be, shall process and forward it to the Central Government within a period of two hundred and ten days of the receipt of the proposal including the transit period.

(b) The Nodal Officer of State Government or as the case may be, the Union Territory Administration, after having received the proposal under sub-rule (1) and on being satisfied that the proposal is complete in all respects, and requires prior approval under section 2 of the Act, shall send the proposal to the concerned Divisional Forest Officer within a period of ten days of the receipt of the proposal:

(c) if the Nodal Officer of the State Government or the Union Territory Administration, as the case may be, finds that the proposal is incomplete, he shall return it within the period of ten days as specified under clause (b), to the user agency and this time period shall not be counted for any future reference.

(d) The Divisional Forest Officer or the Conservator of Forest shall examine the factual details and feasibility of the proposal, certify the maps, carry out site-inspection and enumeration of the trees and forward his findings in the format specified in this regard to the Nodal Officer within a

period of ninety days of the receipt of such proposal from him.

(e) (i) The Nodal Officer, through the Principal Chief Conservator of Forests shall forward the proposal to State Government or the Union Territory Administration, as the case may be, along with his recommendations, within a period of thirty days of the receipt of such proposal from the Divisional Forest Officer or the Conservator of Forests.

(f) If the proposal, alongwith the recommendations, is not received from the concerned State Government or the Union Territory Administration, as the case may be, till fifteen days of the expiry of the time limit as specified under clause (a), it shall be construed that the concerned State Government or, as the case may be, the Union Territory Administration, has rejected the proposal and the concerned State Government or the Union Territory Administration shall inform the user agency accordingly:

Provided that in case the State Government or the Union Territory Administration, as the case may be, subsequently forward the proposal, alongwith its recommendations, to the Regional Office or the Ministry of Environment and Forests, as the case may be, the proposal shall not be considered by the Central Government unless an explanation for the delay to the satisfaction of the Central Government is furnished, together with action taken against any individual held to be responsible for the delay.

(4) The proposal referred to in clause (ii) of sub-rule(3), involving forest land upto forty hectares shall be forwarded by the concerned State Government or as the case may be, the Union Territory Administration, along with its recommendations, to the Chief Conservator of Forests or the Conservator of Forests of the concerned Regional Officer of the Ministry of Environment and Forests, Government of India who shall, within a period of forty-five days of the receipt of the proposal from the concerned State Government or the Union Territory Administration, as the case may be (a) decide the diversion proposal upto five hectares other than the proposal relating to mining and encroachments, and (b) process, scrutinise and forward diversion proposal of more than five hectares and upto forty hectares including all proposals relating to mining and encroachments upto forty hectares, alongwith the recommendations, if any, to the Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, New Delhi – 110003, for obtaining the decision of the Central Government and inform the State Government or the Union Territory Administration, as the case may and the User Agency concerned.

(5) The Regional Empowered Committee shall decide the proposal involving diversion of forest, land upto forty hectares other than the proposal relating to mining and

encroachments, within forty-five days of the receipt of such proposal from the State Government or the Union Territory Administration, as the case may be:

Provided that the Central Government may, if consider it necessary, enhance or reduce the limit of the area of the forest land.

(6) The proposal referred to in clause (ii) of sub-rule(3), involving forest land of more than forty hectares, shall be forwarded by the concerned State Government or as the case may be, the Union Territory Administration, along with its recommendations, to the Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, New Delhi – 110003.

(ii) The State Government or the Union territory Administration, as the case may be, shall forward the complete proposal, along with its recommendations, to the Regional Office or the Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, New Dlehi-110003, as the case may be, in the specified Forms within a period of sixty days of the receipt of the proposal form he Nodal Officer:

Provided that on the determination regarding completeness of the proposal or the expiry of ten days, whichever is earlier, the question of completeness or other wise of the proposal shall not be raised.

This rule read with Form A prescribed thereunder for proposals seeking first time approval under the Act reveals the importance of the requisite information, particularly concerning geographical situation of the required forest land, economic impact, vegetation, rare/endangered/unique species of flora and fauna, details of alternatives, details of compensatory afforestation schemes, site inspection report giving observations and recommendations of Conservator of Forest, recommendation of State Government departments in the matter of grant of approval of the Central Government to the proposal for forest clearance under Section 2 of the FC Act, and gives the entire dynamics of the proposal passing through various authorities for their recommendations before it reached the Central Government.

13. Amendments to the FC Rules due to Forest Conservation (Amendments) Rules 2004 Vide G.S.R. 94(E), dated 3rd February, 2004 have caused incorporation of Rule 7(1A) and deletion of Rule 8.

Rule 7(1A) reads as under:

[(1A) These proposals shall be processed and put up before the Committee and the recommendations of the Committee shall be placed within a period of ninety days of the receipt of such proposals from the State Government or the Union Territory Administration, as the case may be, before the Central Government for its decision.]

However, it is brought to our notice that the implementation of the said amendments to the rules has been stayed by the Hon'ble Apex Court vide order dated Feb 02, 2004 in I.A No. 1126 in I.A No. 703/2000 in Writ petition(c) 202/1995. In effect, therefore, we have to read rule 7 sans the amended rule IA and with rule 8, which read as under:

7. Committee to advise on proposals received by the Central Government –

(1) The Central Government shall refer every proposal, complete in all respects, received by it under [sub-rule (6) of rule 6] including site inspection report, wherever required, to the Committee for its advice thereon.

(2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under sub-rule (1) namely: -

(a) whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wildlife sanctuary, biosphere reserve or forms part of the habitat or any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

(b) whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

(c) whether the State Government [or the Union Territory Administration, as the case may be,] has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) Whether the State Government [or the Union Territory Administration, as the case may be,] undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

3. While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose, which in its opinion, would minimise adverse environmental impact.

Rule 8. Action of the Central Government on the advice of the Committee.-

The Central Government shall, after considering the advice of the Committee tendered under rule 7 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same within sixty days of its receipt.

14. Use of word “Advice” in Rule 7 and Rule 8 makes a great sense and must be read in its ordinary and grammatical sense for understanding the correct import of the word “Advice” Learned Counsel of respondent no. 3 referred to its dictionary meanings vide- Webster’s comprehensive dictionary 2003 and The Law lexicon 3rd edition 2012 and quoted extracts from the judgments delivered by the Hon’ble Supreme Court: **Tourist Hotel Vs. State of Andhra Pradesh and Anr. (1975) ILLJ 211 AP** , **A.N. D’silva Vs. Union of India AIR 1962 SC 130** , **In Buddhadev Maity and Ors. Vs. Union of India (UOI) and Ors., (2010) IVLLJ 451 Del and Union of India Vs. TRAI 74 (1998) DLT2 82.**

15. To meet the submissions of the respondents, learned counsel for the appellant has placed reliance on the order dated 4th

August 2006 passed by the Hon'ble Supreme Court in *I.A No. 1598-1600 in WP(C) no. 202/1995: T.N Godawaramn Thirumulkapad Versus Union of India and others*:(2010)13SCC 740. He particularly invited our attention to the following directions at Para 20(x) to (xii) in the Said order:

Para20(x) All proposals for grant of the FC Act clearances and TWPs in respect of mining leases shall be placed before FAC. Where FAC by order recommends the grant of a clearance or a TWP, MoEF shall, within a period of four weeks from the date of such order, issue orders for the grant of clearance on the usual terms, including those relating to the payment of NPV;

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

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

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

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

16. It is pointed out to us by the respondents that the Hon'ble Supreme Court was considering a peculiar situation arising out of issuance of temporary working permissions (TWP) in cases of renewal of mining leases without following the procedure under the FC Act and had laid down the pre-conditions and procedure for grant of TWP's vide para 20 in said judgment. It is correct that the Hon'ble Supreme Court was not dealing with the case of grant of approval for fresh mining licenses and was dealing with the peculiar situation before it. This is apparent from a bare perusal of the order:

“18. On considerations thereof, the conditions precedent for the grant of TWP’s as well as the procedure for their grant shall be as provided hereinafter. At the outset, it is clarified that TWPs shall be granted only where the following conditions are satisfied.

Preconditions:

19.(i) TWPs can only be granted for the renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency:

(ii) The mine is not located inside any national park/sanctuary notified under sections 18, 26-A or 35 of the Wild Life (Protection) Act, 1972”.

.....

17. As observed herein above the FAC is constituted by the Central Government under Section 3 of the FC Act for the purposes of seeking advice and is composed of experts or men of standing in the fields of forest, forest conservation, soil conservation, mining, civil engineering and development economics, who are specialised in their approaches and as such have ability to look at the problem with a view based on their technical knowledge and experience in their respective fields which a generalist or bureaucrat may seldom possess; and therefore, the FAC on getting conversant with the ground realities can render valuable and objective advice to the Central Government. Pertinently, the proposal for forest clearance accompanied with the feedbacks/recommendations collated during the processing of the said proposal moves on to the Central Government which is under obligation as per Rule 7 of the FC rules to refer it to the FAC for its advice. There is also provision made in the FC Rules to enable the FAC to gain first-hand knowledge by conducting a site inspection. All this signifies the worth of the study of the problem from all angles to formulate holistic

authoritative view point for its meaningful resolution and consequent rendering of advice.

18. On this backdrop learned counsel for the appellant submitted that the advice of the FAC is therefore binding on the Minister. At this juncture it is worthwhile to refer to **Tourist Hotel Vs. State of Andhra Pradesh and Anr. (1975) ILLJ 211 AP** wherein it was thus observed:

“The word Advise” appearing in Section 5 like the word “Consultation” is quite often used and is well understood. These words, in circumstances such as here, are interchangeable words. Although no purpose will be served in attempting to define the word “advise”, it is useful to keep in mind its popular meaning. 20th Century Chamber’s Dictionary gives amongst others, the meaning as “to counsel” or “to consult”. Likewise, the Shorter Oxford Dictionary gives as one definition of the verb to consult “to ask advice of”, “seek counsel from”. The term “advise” however, like “consult”, is not synonymous with “direct” or “instruct”. When Section 5 authorises the committee to advise, it has no power to direct or instruct the Government. The Committee can only counsel and the Government is not bound by the advice.

19. In the entire scheme of FC Act and the rules made therein there is no provision which give the meaning of the word ‘advice’ or makes the acceptance of the advice tendered by the FAC obligatory. The formation of the FAC is for the purposes of ensuring the fair and fully informed decision by the Minister without any arbitrariness in the matter of grant of approval under Section 2 of the FC Act. Judgments cited by the respondent no. 3 do point out creation of similar mechanism of rendering advice under the Constitution as well as statute. In ***A.N D’silva Case (supra)*** the Apex Court held that the *President is by Art. 320 of the Constitution required to consult the Public Service Commission (except in certain*

cases, which are not material) but the President is not bound by the advice of the Commission. Likewise in *Jatinder Kumar Case* [(1985) I SCC 122: *Jatinder Kumar and ors. Vs. State of Punjab and Ors.*] the Hon'ble Apex Court observed that the fact that there is no provision in the Constitution which makes the acceptance of the advice tendered by the Commission, when consulted, obligatory rendered the provisions of Article 320(3) only directory and not mandatory. The selection by the Commission however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same.

20. Given a proper meaning to the word "Advise" used in section 3 of the FC Act and the rules framed there under, it is not difficult to see that the function of FAC is to give advice or to make recommendations to the Central Government (MoEF) which the Central Government is under obligation to consider but is free to take such decision granting approval to the proposal with or without conditions or rejecting the same after such further enquiry as it may consider necessary. In other words, considering the scheme of the FC Act and the Rules made thereunder, in our considered view, such an advice is not binding *stricto sensu* on the Central Government (Minister of State Environment and Forest) but the Central Government remains under obligation to duly consider the advice of the FAC and pass a reasoned order either accepting with or without condition or rejecting the same based on

facts, studies and such other authoritative material, if necessary gathered from further enquiry.

21. In our considered view the advice of the FAC springs from its opinion- an opinion of an expert body and to overturn the same there should be appropriate reasoning backed by data the expert's opinion carries its value, not only persuasive but weighty enough to tilt the scales either in favour or against the proposal examined and as such cannot be brushed aside on conjectures or imaginative grounds having no basis anywhere. Mere expression of the fanciful reasons relating to environmental concerns without any basis in fact situation, scientific study or past experience would not render the advice of the FAC- a body of experts inconsequential. The Minister rejecting the recommendation of such expert body must bear in mind that he is countering an expert opinion/viewpoint and in doing so he must meet it with such opinion or viewpoint which it would outweigh both by content and quality as aforesaid. The first question in relation to the nature and weight of the advice of the FAC is answered accordingly.

22. The answer to the first question obliges us to assess weight of the reasons adduced for rejecting the advice of the FAC and the validity of the consequent approval dated 23rd June, 2011 granted by the Minister to the proposal for forest clearance in relation. It is revealed that the FAC had appointed a sub-committee comprising of: (i) Additional Director General of Forest (Forest Conservation). (ii) Non- Official Member of the FAC. (iii) Assistant Inspector General of Forest along with Nodal Officer

Forest (Conservation) Act, 1980 of Government of Chhattisgarh for the inspection of the Coal Blocks (including PEKB) located in Hasdeo-Arand Coalfields in the meeting held on 10th March, 2011. The sub-committee inspected some locations in the said Coal Blocks and interacted with the field officials and project affected persons on 15th May, 2011 vide annexure-I to the report of site inspections on annexure-A2 to the appeal.

Observations/findings of the sub-committee are as below:

(A). General Observations.

(i). These blocks are located near northern boundary of the Hasdeo-Arand landscape/coal field which comes in “Category A” according to the Joint study undertaken by MoEF and MoC.

(ii). The area generally supports good forest cover comprising of SAL (Shoera robusta) and its associates of varying density. The visit was during the season in which many species shed their leaves, crop condition on the spots visited, suggests that the crop density closer to (more or less matches with) the forest cover maps prepared by the Forest Survey of India (FSI). The team wanted to do an analysis of stand density by using tele-relascope or wedge prism. But this could not be done since no such equipment was available in the department. The team, advised the Nodal Officer to get an analysis done at some of the spots visited and furnish a complete and more accurate report. The Working Plan maps were found to be seriously deficient and incomplete in crucial respects. In particular, at several places, the crop density was shown much lower than actual. Further, at some places even the boundary and boundary pillars were not matching what was shown on the map. Personnel were unable to adequately explain the inaccurate reportage on the density or on salient points on the maps.

This is a very serious matter as the information purports to contradict the FSI maps. The latter, is the nodal agency for generating data and interpreting it as information on forest density. The team found the FSI data base to be sound in terms of the ground realities.

(iii) During the short visit of the sub-committee, it was not possible to ascertain the extent of presence of wildlife (fauna and avifauna) in these Blocks. However, the area appears to be suitable and existing habitat for wild vertebrates including large mammals reported to be present there.

DFO, the South Surguja Division while forwarding the proposal for diversion of forest land in the Tara Coal Block in his site inspection note dated 2nd May, 2007 indicated that the area is rich in bio-diversity. These lists included Schedule-I Species (under the Wildlife Protection Act, 1972) such as the sloth bear and leopard. Their presence in turn indicates a population of wild prey species.

(iv) Previous reports of endangered species include a November 2005 sighting of a small herd of wild elephants that moved from Maheshpur to Salhi via Kantaroli, Abhaipur and Janardanpur. The elephants stayed in this area for nearly four days. The team headed by DGF and SS during their visit to the area on 27th and 28th August 2009 also confirmed the presence of elephants in the area. It appears that part of the area possibly serves as elephant corridor from Surguja to Korba districts. The Nodal officer was asked to submit the map showing the proposed Elephant Reserves or main populations of elephants in and around the proposed area. It might be apt to note that the 2007 Report of the MoEF on elephant- human conflict in the state had given special emphasis to maintaining the larger landscape outside the two proposed Elephant Reserves intact to enable movement and minimize conflict. The landscape is general and the forest corridors in particular will be fragmented and will be severely and irreparable degraded in quality unless there is protection of the tree cover.

(v) Interaction with villagers, who are likely to be affected if the projects become operational, revealed inadequate knowledge about the R&R policy/measures. There is a serious need for an independent assessment of the efficacy of the schemes. The team also noted the presence of the project proponents during the interaction. The latter left the site only after polite but firm request to the team. This enabled more frank and free exchange of views with the citizens resident in the forest area. Such presence during interaction with PAP's is not advisable and this point is of significance for the local administration.

(vi) As per the information provided by the Nodal Officer, Forest(Conservation) Act, 1980, Government of Chhattisgarh the process for settlement of community rights, in accordance with the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, on the forest land proposed for diversion have not been completed, so far. There is a lack of basic awareness of such provisions in this very important Union legislation on the matter of forest and community rights. Any such settlement is to include not only those residents in the Reserved Forests but others who may be dependent on the said forests. This means the process of the settlement of rights prior to application for clearance is

incomplete and not in full conformity with the law and regulations thereof.

As regards PEKB Coal Block the sub-committee observed;

(c) Parsa East and Kante Basan Coal Block

(v) The quality of the forest cover available in the PEKB coal block is poorer compared to area in the Tara coal block. However, as per the study jointly undertaken by the MoEF and MoC Gross Forest Cover is 52.95% and Weighted Forest Cover comes to 27.55%.

The sub-committee concluded on the basis of the said observations that it was not advisable to recommend diversion of the proposed forest areas. It noted that improvement in the quality of reportage on forest quality and conditions from the State Government was the need of the hour to enable sound judgement in such cases.

23. Meeting of the FAC was convened on June, 20th/21st, 2011, when the proposal for diversion of the forest land PEKB Coal Block in question was considered. The minutes of this meeting provide some access to the mind of the FAC and therefore the relevant portion of the minutes is reproduced herein below:

11. Diversion of 1898.328 ha of forest land for Parsa East and Kante Basan captive coal block open cast mining project in favour of M/s Rajasthan Rajya Vidyut Utpadan Nigam Limited in South Surguja Division in Surguja district of Chaattisgarh.

(F. No. 8-31/2010-FC)

The Committee reconsidered the proposal and noted that the Committee in its meeting dated 10-03-2011 decided to visit the site to have better appreciation of the proposal. The coal produced shall be used in two thermal power projects in Jhalawad district of Rajasthan. The Committee listened to the presentation made by the Nodal Officer (FAC) of the State & the project proponent and noted the following:

- (i). The coal block is on the northern fringe of Hasdeo-Arand
- (ii). The mining is planned in two phases with the aim of? Sequential mining, scientific void management, planned

felling of tress and afforestation, top soil management, and reclamation, etc.

(iii) In phase-I (15 years), total requirement of forest area is 762 ha (40% of total), where 1,25,547 trees will be affected.

(iv) In phase-II (16th year onwards), total requirement of forest area will be 1136.328ha, where 2,42,670 trees will be affected.

(v). The reclamation of mined out area will start from 3rd year onwards.

(vi). The project belongs to the State Government and is directed to meet the energy requirements of the State.

The FAC also taken into consideration the observations of the sub-committee of the FAC, which visited the area recently. The Sub-committee consisted of Shri A.K. Bansal, Dr. Mahesh Rangarajan and Shri Harish Chaudhary and its report is part of the minutes as Annexure. It concluded that:

(i). The Quality of the forest cover available in the Parsa East and Kante Basan coal block is poorer compared to area in the Tara coal block. However, as per the study jointly undertaken by the MoEF and MoC Gross Forest Cover is 52.95% and Weighted Forest Cover comes to 27.55%.

(ii). During the short visit of the sub-committee, it was not possible to ascertain the extent of presence of wildlife (fauna and avifauna). However, the area appears to be suitable and existing habitat for wild vertebrates including large mammals that are in schedule I of the Wildlife (Protection) Act. DFO, South Surguja Division, while forwarding the proposal for diversion of forest land in the Tara coal Block, in his site inspection note dated 2nd may 2007 indicated that the area is rich in bio-diversity. These lists included Schedule-I Species (under the Wildlife Protection Act, 1972) such as the sloth bear and leopard. Their presence in turn indicates a population of wild prey species.

(iii). Previous reports of endangered species include a Novemembr 2005 sighting of a small herd of wild elephants that moved from Maheshpur to Salhi via Kantaroli, Abhaipur and Janardanpur. The elephants stayed in this area for nearly four days. The team headed by DGF&SS during their visit to the area on 27th & 28th August 2009 also confirmed the presence of elephants in the area.

(iv). Interaction with villagers, who are likely to be affected if the projects become operational, revealed inadequate knowledge about the R&R policy/measures. The process of the FRA, especially of settlement of community rights is not complete.

Based on the above findings/observations the sub-committee, the FAC does not recommend the diversion of the proposed forest area.

24. On this backdrop, the order dated 23rd June, 2011 of the Minister expressing his disagreement with the final recommendations of the FAC makes an interesting reading. It is evident that the final recommendations of the FAC were received by the Minister on June 22nd, 2011 and the next day the Minister rejected the recommendations/advice of FAC giving six reasons for his disagreement with the FAC. It appears that the Minister did not think it necessary either to ask the FAC to examine worth of his views, particularly those in respect of which the FAC was not candid, in light of their knowledge and experience, or embark upon such enquiry single handedly or with the aid of such other experts to find basis for his view, understanding and belief in any fact situation, past experience or scientific study.

25. Before we examine the reasons adduced by the Minister, it is worthwhile to take hint from the words of the Hon'ble Apex Court in Para 19, 20 and 30 of the judgment delivered in Lafarge Umium Pvt Ltd case (supra) which reads as under:

19. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well-settled by the decision of this court in the case of Narmada Bachao Andolan v. Union of India and Ors. MANU/SC/0640/2000: (2000) 10SCC 644 that environment has different facets and care of the environment is an on-going process. These concepts rule out the formulation of across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "No Go"

areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the Margin of Appreciation Doctrine would apply.

20. Making these choices necessitates decisions, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties require **proper decision making based on informed reasons** about the ends which may ultimately be pursued, as much as but the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.....

30. Time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislature policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play. Our above view is further strengthened by the decision of the Court of Appeal in the case of R.V Chester City Council reported in (201) 1 All ER 476.

The precious words of the Hon’ble Apex Court do hint at two things:

1. there are no across the board principles to state what is

sustainable development as it would depend on the facts of each case. 2. Proper decision making needs to be based on informed reasons about the ends pursued.

26. The Minister while passing the order dated 23rd June, 2011 exercised statutory discretion and to judge its validity, normally, the test based on Wednesbury Principle needs to be applied. Whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation on such functionary, like the Minister in the present case, to apply his mind to pertinent and proximate matters only, issuing the irrelevant and the remote . A decision is said to be unreasonable in Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration,(ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached to it. Controversies relating to arbitrariness thus can be determine on application of Wednesbury Principle, and for that purpose it is necessary to examine whether relevant matters had not been taken into account. In other words it needs to be understood whether the Minister's decision was fair and fully informed and consistent with the principle of sustainable development.

27. First three reasons relate to the environment and the rest relate to the developmental issues. According to the Minister the said coal block in question is linked to super critical thermal power generation station and such linkage is made an explicit pre-

condition for approval. The Minister further reasoned that keeping in view the persistent follow up by the State Governments of Chhattisgarh and Rajasthan as their power generation plans are closely linked to the coal block in question and the broader developmental picture for sustaining momentum generation in XIth plan in terms of capacity additions, there is need to open the said Coal Blocks as proposed by the Chhattisgarh Government. With the increasing demand for the power, one can legitimately feel the need for development of the power resources. The Minister added that the super critical technology is essential for the country in order to deal with global warming issues and concerns; and with the 660/800 MW super critical technology, anywhere between 5-8 per cent lower emission of carbon dioxide will accrue over a conventional sub-critical 500MW power units, which have been put up so far; and super-critical and ultra-supercritical thermal power plants have to proliferate rapidly as our energy demand is to be met in environmental acceptable manner. In this regard the appellant contended that though the mining activity has started the super-critical plants have not been constructed as yet.

28. Understandably, there is a reason for the State Governments to persistently follow up the opening of the coalfields as there power generation plants are linked to the coal blocks. However, these are anthropocentric reasons the merit of which needs to be evaluated in context with ecocentric reasons in order to understand whether the development proposed is sustainable. In our considered view

such reasons adduced by the Minister order dated 23rd June, 2011 *per se* therefore, cannot be the basis for rejecting the FACs advice.

29. Learned Counsel for the appellant further questioned the allotment of the Coal Block in question particularly when it fell in “No Go Area” as identified in the joint study undertaken by the MoC and the MoEF. According to him Suhagpur Coalfield, which was 200 kms distance from the power plant and which fell in “Go Area” could have been considered for allotment instead of the coal Block in question. This submission, though tempting, is preposterous. We are considering the merit of the Minister decision rejecting the FACs advice and not the issue of allocation of a Coal Reserve, the decision of which is taken by the Central Government in accordance with The Mines and Minerals (Development and Regulation) Act, 1957. Rule 7(2)(c) of FC rules if r.w Para 8 of Form-A under FC rules would reveal that it deals with what the State Government has to comment regarding the proposal for diversion of the forest land in hand i.e. column 2 of Part I of the Form-A filled by the user agency/project proponent as to the barest minimum requirement for the said project and if the project is unavoidable recommended area for each of the items in the project with details of the alternatives therefor. The submission made therefore, cannot form the basis of evaluating the merit of the action of the Minister in dealing with proposal of forest Clearance under FC Act.

30. Adverting to the Lafarge Umiam Pvt. Ltd case (supra), Learned Counsel for the applicant submitted that the Minister had

completely misread the fact of identification of the PEKB Blocks by the joint study undertaken by the MoC and MoEF as Category- A “No Go Area” as “actually not....(a No Go Area)”, and consequently ignored the National Forest Policy 1988 which the Hon’ble Apex Court had declared it to be a governing factor in the matter of grant of forest clearance under Section 2 of FC Act 1980 in the following words:

Care for environment is an ongoing process. Time has come for this Court to declare that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (protection) Act, 1986. The principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980.

Our attention was also invited to the worth of the forest land, manner of its assessment and importance of its conservation as highlighted in National Forest Policy, 1988 at Para No. 4.4.1 therein which is quoted herein below:

4.4.1 Forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should at least provide in their

investment budget, funds for regeneration/compensatory afforestation.

Our attention was also invited to the draft note for Cabinet annexure A-31 on building of infrastructure for enhancing coal production on diversion of forest land with least possible adverse impact on environment in general and forest and wildlife in particular.

31. From these submissions it is crystal-clear that the Minister while taking decision under Section 2 of the FC Act, 1980 ought to have been mindful of the exhortations of the National Forest Policy, 1988. Forest land is a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. As observed by the Hon'ble Apex Court diversion of forest land for any non-forest purpose is required to be made on the basis of most careful examination of any such proposal by specialist to evaluate social and environmental cost and benefits. What matters therefore, in the instant case are the first three reasons which deal with environment from the point of view of cost incurred in terms of loss of forest and damage to the wildlife interest therein as well as regeneration/ compensatory afforestation.

32. Order dated 23rd June, 2011 reveals that the Minister considered the PEKB Block as falling in the **fringe** and **actually not** in bio-diversity rich Hasdeo-Arand forest region ("No Go Area") separated by a well-defined high hilly ridge with drainage into Aten river which flows towards Hariarpur in the opposite direction- a totally different watershed.

33. If one looks to comments of the MoEF on a draft note for Cabinet referred to herein in above vide Annexure A-31 it can be

seen that the MoEF on suggestions from Ministry of Coal (MoC) had jointly undertaken a study in nine major coalfields to classify coal blocks into two categories-

Category A (“No Go Area”) and Category B (“Go Area”) in order to facilitate objective, informed and transparent decision on diversion of forest land for coal mining projects. Accordingly fragmented forest landscape having crown density more than 0.50 were named as Category A (“No Go Area”) and fragmented forest landscapes having crown density less than 0.50 were named as Category B (“No Area”). It further reveals that with the objective to achieve coal production target by causing least possible adverse impact on environment in general and forest and wildlife in particular, the MoEF and MoC had initially agreed and that the proposal seeking diversion of forest land for coal mining shall be considered only in Category B area.

34. In this context, what weighed in the mind of the FAC is the outcome of the joint study undertaken by the MoEF and MoC vis-a-vis forest cover in the coal blocks in South Sarguja division, which is reproduced hereunder.

	Tara Central	Parsa	Parsa East	Kente	Parsa East plus Kente
VDF	1529	120	0	205	205
MDF	363	514	380	460	840
OF	36	49	141	201	342
Total Forest Cover	1928	683	521	866	1387
Scrub	0	0	0	0	0
Water	0	0	0	0	0
NF	475	555	746	486	1232
Grant Total	2403	1238	1267	1352	2619

Weighted Forest Cover(EFC)	1508.30	396.95	244.25	477.50	721.25
% Weighted Forest Cover	62.77%	32.06%	19.028%	35.32%	27.55%
% Gross Forest Cover(GFC)	80.23%	55.17%	41.12%	64.05%	52.95%
Status as per % WFC and GFC with the threshold limit of 10% & 30% resp.	A	A	A	A	A

These facts and figures on which the FAC based its opinion/advise are drawn from the working plan of the South Sarguja forest division. It can also be seen that the applicant has pegged his entire case on the said working plan in order to contend that the Ministry had not taken the relevant consideration in mind while issuing an order under Section 2 of the land in question. This approach has been assailed by the respondents particularly the respondent no. 3 the project proponent with an argument that the facts and figures forming the basis of FAC opinion have been culled out from the data for the entire area of South Sarguja Division which spreads over 2,51,539.180 hectares of which the PEKB Block ad measuring 2,388.525 hectares is a part; and the computation of the trees density for 1898.328 hectares of the land culled out from PEKB Block on the basis of 4.6% sampling would differ.

35. According to the respondent no. 3 the computation of the tree density in the entire South Sarguja Forest Division was based on 435 sample plots of the size of 0.1 hectares. This sample plot data so computed was extra polated to work out tree density for whole of the South Sarguja Division. Out of these 435 sample plots 93 sample plots were laid out in the Udaipur range area wherein falls PEKB Coal Blocks. Thus 9.3 hectares (93 sample plots into 0.1 hectares) i.e. 0.003% of the entire Udaipur range was sampled for the purpose of working out tree density.

36. In this context it was urged on behalf of the appellant that the total number of trees mentioned in the recommendations forwarded by the respondent no. 1 State Government to the respondent no. 2 MOEF is incorrect and misleading in as much as the total number of trees initially enumerated were 4,24,701 trees which were subsequently reduced to 3,68,217 without any physical counting. Answering this contention, the respondent no. 3 pointed out that this reduction in enumeration of trees is due to reduction in the forest area in the diversion proposal and change in the method of sampling and the intensity thereof. It is revealed that the initial figure of 2,10,701 trees was calculated on the basis of sampling carried out in September, 2008 on 78 sample plots ad measuring 0.1 hectares on forest area of 1,954.236 hectares. Thus the total area sampled was 7.8 hectares i.e. 0.40% of the then forest area. On 12th January, 2009 the respondent no. 3 amended its proposal and reduced the forest land for which the diversion was sought from 1,954.236 hectares to 1898.32 hectares. In the

second sampling, 88 sample plots of one hectare each were laid on the forest area and measuring 1898.32 hectares using the geographical positioning system along with grid map of Forest Management Information System. Thus, the total area on which sampling was carried out was 88 hectares with 4.6% of the total forest area and the total number of trees enumerated worked out to 3,68,217.

37. Our attention was invited to the letter dated 5th September, 2008 issued by Chief Conservator of Forest (land management) giving instruction to all the Conservator of forest to carry out sampling in accordance with National Working Plan Code which provides that inspection by conventional tools should not be less than 5% and with the use of modern tools sampling intensity can be reduced to one percent. By these standards 4.6% sampling of the land in question and measuring 1,898.328 hectares of forest appears to be more scientific logical and invasive in nature and for that reason the contentions of the applicant regarding furnishing of incorrect / misleading data deserves to be rejected. Pertinently, the proposal made for dereservation forest land in question referred to the density in revenue forest at 0.1 to 0.4 and density in protected forest at 0.3 to 0.6- the facts confirmed by Divisional Conservator of Forest, Central Regional Office of MoEF upon a site visit on 17-06-2010. However, this by itself fails to answer whether PEKB Coal Block can be regarded as a "Go Area" in terms of the joint study undertaken by MoC and MoEF and could be regarded

as “actually not falling in Bio-diversity rich No Go Area” as referred to by the Minister in his order dated 23rd June, 2011.

38. As regards of fringe area the only material observation made by the FAC is the Coal Block on the Northern Fringe of Hasdeo-Arand. Perusal of the detailed map prepared by the GIS cell of Forest Management Information System, Division Raipur, Chhattisgarh on a scale of 1:375,000 depicting the forest cover based on digitally interpreted on ARSP6 LISS-III data of October, 2008-09 from FSI report of 2011 reveals physical features of the Hasdeo-Arand forest including PEKB Coal Block. Apparently, the entire South Sarguja Forest Division is made of two forest ranges well separated by an arc of 50 km or so wherein there are human settlements with concomitant agricultural fields and industrial areas along with occasional open forest- the first and the major one is found lying on the border of Jharkhand, Orissa and Madhya Pradesh and the second one in Udaipur range and surrounding wherein lie the coalfields on the South. It also reveals that PEKB Coal Blocks in question lies on the Northern boundary of Hasdeo-Arand coalfields comprising of Tara, Parsa, Parsa East, Kante and Parsa East and kante together refer to as PEKB Coal Block and the forest cover in the PEKB Blocks is less as compared to the remaining area of Hasdeo-Arand Coalfields (not forest). Thus, it can be seen that with the change in density of vegetation there is change in habitat or eco-system i.e. from open forest to mid-density forest and to very dense forest. To this extent it can be said to be in the fringe area of the Coal Blocks, but we find no basis for the

Ministers opinion or understanding that it was “actually not in Hasdeo-Arand forest region (a No Go Area)” i.e. in other words in “Go Area” of Hasdeo-Arand forest region. It can also be seen from the map produced before us that this coal block lies on northern side of hilly ridge with drainage into Aten river flow into Hariyarpur area falling in totally different watershed. Does it mean that it is not in Bio-diversity rich Hasdeo-Arand forest region?

39. Geographical situation of an area need not *per se* define its wealth of bio-diversity. Bio-diversity can exist or can share more than one watershed. Section 2(b) of the Biological Diversity Act 2002 defines “biological diversity” as *the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco systems*. Going by this definition and the revelations made from the map produced before us the area in question, being fringe area as described by the Ministry, can be regarded as **Ecotonal area** i.e. area on the edge of the forest. The term “Ecotonal” was used by famous Ecologist Mr. E.P. Odum in his treatise “Fundamentals of Ecology”. According to him **“Ecotonal” community** contains many of the organism of each overlapping community and, in addition organism which are characteristic of and often restricted to ecotone; and often both the number of species and population density of some of the species are greater in the ecotone than in the community flanking it. Such tendency of increased variety and density at community junction is known as the *Edge Effect*. Odum further stated that these

ecotones support a community additional to those of the community which adjoin the ecotone and, therefore, unless the ecotone is very narrow, some organism which are not present in the main forest are likely to be found in the region of ecotone. If it is so protection of ecotone species is also equally important as they contribute to higher bio-diversity.

40. Working plan of South Sarguja forest lists 29 species of fish, 14 species of reptiles, 111 species of birds, 34 species of mammals [some of them from schedule I of Wildlife (Protection) Act, 1972] , 51 species of medical plants, 86 species of trees, 38 species of scrubs, 19 species of herbs, 17 species of climbers, 12 species of grasses found in the entire area of South Sarguja forest. As understood universally, to define any area as a “bio-diversity rich area” it is not necessary to only have a good forest cover, rather what is more important is the species (floral and faunal) composition in the area in question and whether these species are endemic and unique and as such deserving priority for conservation. It may not be out of place to mention that to arrive at “priority” for conservation efforts one is required to understand what is the extent of distribution of similar eco-systems in the country and whether similar eco-systems are already under protection or not.

41. Interestingly, the very Minister previously entertained an opinion in response to the FACs view as regards the proposal for diversion of forest lying in neighbouring Tara Coal Block as large compact coal Block very rich in species diversity that such

important un-fragmented areas need to be protected and further enriched for posterity- vide letter dated 2nd August, 2010. From the record it is not very well understood as to what made his mind change overnight, particularly when the FAC had also not applied its mind to the material issue/questions in respect of PEKB Coal Blocks as arising before us nor any further enquiry was ordered by the Minister for making up his mind to say that the area in question was actually not in bio-diversity rich Hasedo Arand forest region.

42. Further reason adduced by the Minister for rejection of FACs recommendation is that the revised proposal envisaged two phased sequential mining in PEKB Blocks having forest quality poorer than Tara. The Minister merely quoted sequence of mining in two phases of 15 years each, firstly on 762 hectares and subsequently on 1136 hectares, with reclamation to commence from 3rd year onwards and renewal of second phase depending on the performance of reforestation and bio-diversity Management in phase-I. As a matter of precaution the Minister ought to have looked for the opinion of the specialist in the field as regards the efficacy of the effort of reforestation and bio-diversity Management including use of tools and the manner therefor as envisaged. The record reveals that neither FAC, commented on this aspect nor was there any material on which the Minister could have based his second reason for overriding the advice of the FAC.

43. The working plan of South Sarguja Forest Division reveals that there are species falling in Schedule- I of Wildlife (Protection) Act, 1972 and there have been several instances of men-elephant

conflict in Udaipur range wherein falls PEKB Coal Blocks. Though, it is revealed, the State of Chhattisgarh- the respondent no. 1 entertained an idea of declaring elephant reserve in Badalkhol Manora, North Sarguja Forest Division's Tamor Pingla and Lemru area of Korba Forest Division with effective forest corridors linking them- vide letter dated 07-11-2007 from the Principal Chief Conservator of Forest Chhattisgarh to the Conservator of Forest Bilashpur in reference to letter dated 5th October, 2007 of MoEF- the respondent no.2, it changed its mind and as of today decided to continue the work to create elephant reserve in Badalkhol Samarsot and Tamor Pingla sanctuaries only and no other place- vide order dated 20th July, 2009 from the Secretary Chhattisgarh government to the Chief Conservator of Forest Chhattisgarh. It can also be appreciated that the Task Force of MoEF had identified 88% elephant corridors throughout India without identifying any area in South Sarguja Forest Division vide report dated 31st August, 2010 titled as "Gajah- securing the future for elephant in India". Apparently the maps produced before us depict creation of Elephants Reserves and National Park in South Sarguja Forest Division i.e. the forest bordering Jharkhand, Orissa and Madhya Pradesh, and also a 50 km arc of agricultural fields with human settlements including industrial development between such reserves and forest area. Nonetheless, the fact remains that there have been sightings and instances of men-elephant conflict in the area in question. The FAC it appears did not consider this material fact in order to conclude as to whether such conflicts could be stray

incidents or were the occurrences en-route the Elephant Corridor and what could be the mode of resolution of such conflicts. The Minister while addressing the concerns in relation to the wildlife in his order dated 23rd June, 2011 merely stated that these concerns should be taken care of through well prepared and well executed Wildlife Management Plan and programme under the aegis of an institution like Wildlife Institute of India. Thus, the Minister was aware of such important concern regarding wildlife but chose not to examine Wildlife Management Plan prepared/endorsed by the Wildlife Institute of India before the Minister. Unfortunately, there was no comment or a specialist view of the Wildlife Management Plan forthcoming from the FAC.

44. Instances of human wildlife conflict just cannot be ignored as those spring not from the encroachment of human territories by animals but *vice versa* and, therefore, have to be regarded as alarm bells in respect of the encroachments human invasion on the environment. Human wildlife conflict is critical threat to the survival of endangered species like elephants, tiger, wild buffalos, lion etc. They not only affect its pollution but have environmental impacts on eco-system equilibrium and bio-diversity. Conservation of bio-diversity is directly linked with conservation of eco-system and thus with water and food security in as much as natural process, forest and wild habitats recharge aquifers, maintain water regimes and moderates the impact of floods, droughts and cyclones to ensure regulation of climate and the consequent food security. National planning and development has

not taken into account the adverse ecological consequences of shrinkage and degradation of wilderness from the pressures of population, industrialisation mining and commercialisation. Increased man animal conflict is the outcome of shrinkage, fragmentation and deterioration of habitat. In fact wildlife management is a crucial management issue which needs to be addressed through innovative approaches. Wildlife conservation cannot be restricted to natural parks and sanctuaries as areas outside the protected area network including fringe areas are vital in its role to provide sufficient habitat for spatial movement of the species outside protected areas and provide biological resources needed by the local communities to prevent their dependency on protected areas. Such areas are also critical to the linking of protected areas with effective wildlife corridors for providing genetic community and prevent insular wild animal's populations.

45. Keeping this in view Rule 7 sub-clause 2 of the FC rules required the FAC to have due regards to the matters namely area in question forming part of a natural reserve, national park, wildlife sanctuary, biosphere reserve or habitat of any endangered or threatened species of flora and fauna, its use for agricultural purposes or for rehabilitation of persons, compensatory afforestation while tendering its advice on the proposals for forest clearance referred to sub-rule 1 of the said rule. Reading of sub-clause 3 of rule 7 also reveals the role of FAC in suggesting conditions or regulations on the use of any forest land which would minimise adverse environmental impact thus the role of the FAC is

both diagnostic and curative in the matter of tendering its advice on the proposal for forest clearance.

46. In this context the Hon'ble Apex Court in the judgement delivered in T. N. Godavarman Thirumulpad Case [*T. N. Godavarman Thirumulpad versus Union of India*; (2012) 3 SCC 277] made pertinent observations as follows:

“17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.”

47. In the instant case the area in question of PEKB Coal Blocks is going to be virtually shaved off its forest cover for the purposes of mining in two phases of 15 year duration each and the reclamation i.e. hopefully effort towards regeneration of forest cover and restoration of bio-diversity is to start from 3rd year of its commencement. Undoubtedly, the nature has a potential to regenerate so long as this potential is not destroyed or irreversibly damaged. This vital aspect of reclamation vis-a-vis the existing flora and fauna in view of the provisions of law discussed above ought to have been relevant both for the advice tendering and

decision making apparatus. FAC was expected to examine whether the efforts towards reclamation of mined area by translocation of trees and such other means envisaged had potential to regenerate the nature lost in mining, what was the gestation period for such regeneration, if it was to be so and whether there could be keen monitoring of such regeneration by increasing the frequency of sequential mining over more than two phases. A perusal of the Wildlife Management Plan reveals that apart from various types of surveys regarding bio-diversity elements, provisions have been made for fire protection, grazing, soil moisture conservation works, public awareness, compensation, habitat improvement and conservation measures. However, components like providing safe corridors for wildlife especially near human settlements/coal mines through modern fencing etc. as well as its needs have been over looked.

48. However, it can be seen that the FAC at the first instance failed to give due regard to these material issue/questions while tendering its advice to the Ministry and the Ministry largely over taken by the anthropocentric reasons ignored these material and relevant ecocentric issues and proceeded to reject the FACs advice on his “understanding and belief” having no basis either in any authoritative study or experience in the relevant fields. Surprisingly, the impugned order dated 23rd June, 2011 acknowledges the existence of “fragile eco-system of the region” and yet proceeds to make exception thereto as regards the PEKB Coal

Blocks lying in the same region without any basis therefor in any study.

49. In view of the aforesaid discussion it is evident that the FAC did not examine all the relevant facts and circumstances while rendering its advice and to cap it the Minister acted arbitrarily and rejected the FACs advice for the reasons having no basis either in any authoritative study or experience in the relevant fields. In short the reasons adduced by the Minister fail to outweigh the advice rendered by the FAC. This calls for quashing of the Minister's order dated 23rd June, 2011 rejecting the FACs advice and consequential order dated 28th March, 2012 passed by the respondent no. 1- State of Chhattisgarh in order to have holistic reappraisal of the entire issue. It is therefore, just and necessary to remand back the entire case to the Minister with appropriate directions to get a fresh advice from the FAC on the material issues in the present case and to reconsider the entire matter afresh in accordance with law. The point numbers 2 and 3 are answered accordingly.

Hence, the order:

1. Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;
2. The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the

proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora? (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.

3. The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.

4. All work commenced by the respondent no. 3 project proponent and respondent no. 4 pursuant to the order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.

5. No order as to costs.

....., CP
(Swatanter Kumar)

....., JM
(U.D. Salvi)

....., EM
(Dr. D.K. Agrawal)

....., EM
(Prof. A.R. Yousuf)

....., EM
(Dr. R. C. Trivedi)

NGT