

CHAPTER 3

SUPREME COURT ON REGULATION OF TIMBER TRADE WITH SPECIAL REFERENCE TO GODAVARMAN CASE

The Frame

The frame of this chapter is the effort made by the judiciary specifically to control and regulate timber trade. Never before in the history of judicial activism has the Supreme Court taken such a path breaking step wherein it virtually took over the forest administration. The frame also pans on those cases which have had an impact upon timber trade and issues of protecting the same from various illegal activities.

The Focus

This chapter focuses only on those decisions of the Supreme Court that have had a direct impact on timber trade of this country. The Godavarman case is at the focal point since till

date this is the most important and perhaps the only case of its kind not only in India but also in any developing country. This chapter also deals with the impact of the orders and judgments of the case upon the Northeastern States in India which had largely earned revenue through timber trade. Other cases which have had an impact upon forest and issue relating to timber trade is looked into very briefly.

The Objective

The objective of this chapter is not only the study of those cases which have the direct or indirect impact upon forest or timber trade but also to critically assess the impact of those cases on timber trade in India and the consequences both conceptual and actual.

THE GODAVARMAN CASE

The decade of the 80s and 90s witnessed acute concern of the country regarding environment. The first significant legislation was the water (Prevention and Control of Pollution) 1974 was focused on the issue of pollution in context of water. The early 1980s saw the air (Prevention and Control of Pollution), 1981 which focused on the issue of pollution in respect of air. This was followed by the Environment (Protection) Act 1986. It is significant to note that the attention was clearly focused on the issue of prevention and control and pollution. However the laws were not very effective in controlling pollution. During this period a series of Public Interest Litigation were filed in view of the weak implementation of the anti-pollution laws for example, the Ganga Pollution case¹⁹⁸ or the Taj Trapezium case¹⁹⁹ or the Bicchri case²⁰⁰. Eventually a gradual paradigm shift can be observed where the Supreme Court began to focus on sustainability of the environment and recommended the constitution of “Green Bench”²⁰¹.

Concern with the forest took shape with the Forest (Conservation) Act 1927. Until 1927 forest was a national asset and property of the state. The Britishers in 1894 realized the tremendous commercial potentiality of the forest. They formulated a Forest Policy in 1894 where in trade in timber and forest produce was encouraged as a means of earning revenue for the state. This approach was rejected in 1955 Forest Policy. The shift from commercialization to conservation occurred in 1988 Forest Policy. The period from 1894 to 1988, almost a century, is the story of abuse and vandalism of forest. As a result by 1988

¹⁹⁸ M.C. Mehta v. Union of India, AIR 1988 SC 1037

¹⁹⁹ M.C. Mehta v. Union of India, AIR 1997 SC 734

²⁰⁰ Indian Council for Enviro Legal Action v Union of India, AIR 1997 SC 2298

²⁰¹ Vellore Citizens Welfare Forum v Union of India, AIR 1996 SC 2715

the nation was acutely conscious of forest depletion and the resultant climate change, biodiversity change, desertification fall in ground water level so on and so forth. Urgent and immediate intervention on war footing was required to protect forest. It was only 1995-1996 the Supreme Court systematically dealt with the issue of deforestation and from 1995 - 2004 has laid down guidelines, looked at a large number of Interlocutory Application and addressed the concerns of each constituent states of the Union of India.

The Godavarman Thirumulpad v. Union of India²⁰² and the Environment Awareness Forum v. State of Jammu and Kashmir²⁰³ ushered in the second phase of judicial activism in the field of Environment in India. This time the focus of the judges was forest, saw mills, encroachment, mines, dams, infrastructure project and other innumerable demands for development at one hand and preservation of the jungle on the other²⁰⁴. In this process varying social, economic, political, and constitutional issues came up for consideration. The challenge was that, problem related to population cases were loud, visible, calling for immediate intervention so people could be made to realize the eminent crises, but in case of forest the consequence of exploitation and abuse lay in future and hence remote invisible and gradual, almost impossible to make people understand. Besides the 1927 Act²⁰⁵ and the large number of rules that are framed under it and the 1980 Act²⁰⁶ and the rules framed under it was required to be harmonized. Moreover, almost all States in India had framed their own laws. All these huge legal material was required to be balanced and streamlined. Moreover the North Eastern States in India called for special attention in view of the special constitutional Scheduled VI position available to them.

Genesis of Godavarman Case:

The Nelliampathy area in the central circle of the forest in Kerala is a dense forest hosting a store house of biodiverse flora and fauna and comprises of two hills and surrounding valley²⁰⁷. Nalliampathy has a total of 150 acres of cardamom plantation in the land area that is under reclamation by the forest department. Under Kerala Private Forest (Vesting and Assignment) Act, 1971, the government nationalised all private forest in Kerala within its purview. On 10 May, 1971, all private forests in Kerala vested in the Kerala State

²⁰² (1996) 9 S.C.R 982

²⁰³ AIR 1999 SC 1495.

²⁰⁴ A "Jungle" is unplanned, uncontrolled and unregulated growth of trees, shrubs, creepers, undergrowth etc hosting a vast biodiversity. A "Forest" is a planned, organized, controlled growth of trees, plants etc.

²⁰⁵ Indian Forest Act, 1927

²⁰⁶ The Forest (Conservation) Act, 1980

²⁰⁷ The researcher had personally visited this place during his empirical fieldwork in Kerala.

Government except those forests that were within the ceiling area allowable/applicable to the owners.

There is a temple of Goddess Bhagawati called the Nilamboor Kovilagam in the area. During the British Period this entire land was leased to the temple as devutter property²⁰⁸. The lessee, during the subsistence of the lease, could use the property in any manner; they could cut trees, drag them, sell them as owners and appropriate the forest and forest produce as they pleased. When the lease expired sometime in the 1990s, the Government of Kerala moved to rake over the forest land and decided to declare it an eco-sensitive zone.

The Nilamboor Kovilagam people resisted the move of the forest department of Kerala and eventually the department filed the suit for encroachment of forest land against the Nilamboor Kovilagam represented by T.N. Godavarman Thirumulpad²⁰⁹.

Almost simultaneously another case Environment Awareness Forum v. State of Jammu & Kashmir²¹⁰ was filed on the issue of encroachment of forest land for illegal mining.

The two cases together raised the issue of forest conservation, encroachment of forest land before the Supreme Court. The Supreme Court extended the matter to cover all States within the Union of India on 2nd September 1996 and accordingly notice was issued to all chief secretaries of States. Unfortunately most of the States did not respond and failed to appear before the Supreme Court even after sending repeated notice. The court made special efforts to secure representation from North Eastern States. Finally the court directed that the secretaries dealing with forest and environment in each of the seven North Eastern States and the States of Sikkim, Kerala, Maharashtra should personally appear before it.

Interpretation of “Forest”: The Supreme Court held that the Forest “Conservation” Act was enacted that to contain deforestation and the consequent ecological imbalance. The definition of “Forest” must at first be understood according to its dictionary meaning. The court further went on to state that Section 2 was the core of Forest “Conservation” Act 1980 as amended in 1988²¹¹. Under section 2 no State Government or any authority can de-reserve any forest or

²⁰⁸ Property exclusively dedicated to the service of God and for maintenance of His abode.

²⁰⁹ The PCCF of the Central Circle Forest in Kerala First narrated the facts to the researcher. Thereafter the researcher visited Nalliampathy. The researcher also met the Advocate A.P. Chandrasekharan an expert on forest laws and counsel in Godavarman Tirumulpad Case in Kerala who narrated and corroborated the above facts to the researcher.

²¹⁰ WP 171 of 1995, AIR 1999 SC 1495

²¹¹ Section 2, Forest (Conservation) Act, 1980 reads as follows:

No State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

use forest land for non-forest purposes or lease or assign forest land to any private person or authority or corporation or organization owned and managed or controlled by the government or clear any forest land or any portion thereof for re-afforestation. In the explanation attached to section 2 “non-forest purpose” means breaking up or clearing of any forest land or any portion thereof for plantation, horticulture or herbiculture but does not include any action for conservation, development and management of the forest.

In its order²¹² the Supreme Court observed that there is misconception in certain quarters about the word “forest” used in the 1980 Act. While extending the scope of the word “forest” the court held that the word covers all statutorily recognized forest in whichever manner designated. The forest land shall include not only forest as understood in its dictionary meaning but also any area recorded as forest in the government records irrespective of its ownership and the provision of conservation in the 1980 Act applies to all forest as understood irrespective of ownership. In this order each State was required to constitute an expert committee within one month of passing of the order to:

1. Identify areas which are “forests” whether or not those areas are recognized or notified or classified as forests under any law irrespective of ownership of the land.
2. Identify areas where there were forest earlier but now stand degraded, and
3. To identify areas covered by plantation trees belonging to the government and those belonging to private persons.

The court further decided that all ongoing activity within any forest in any State throughout the country without prior approval of Central Government must stop immediately. Consequently the felling of trees in all forests was to remain suspended except those that were being felled in accordance with the working plan of the State Governments as approved

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;

That any forest land or any portion thereof may be used for any non-forest purposes;

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 organization not owned, managed or controlled by the government;

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 re-afforestation.

Explanation.- For the purpose of this section, “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for –

The cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants;

Any purpose other than re-afforestation

But does not include any work relating or ancillary to conservation, development and management of forest and wild life, namely, the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

²¹² Order dated 12.12.1996

by the Central Government. The court passed specific orders for the North Eastern States especially for Tirap and Changlang in Arunachal Pradesh, Jammu & Kashmir, Himachal Pradesh, hilly regions of Uttar Pradesh and Tamilnadu. This order of the Supreme Court²¹³ superseded all other existing orders passed by any State Government, any authority or any High Court.

Another significant development occurred almost simultaneously with these cases. The case Centre for Environmental Law WWF-India v. Union of India²¹⁴, was also filed at this time. In an order passed in this case²¹⁵ the Supreme Court prohibited de-reservation of forests, National Parks and sanctuaries. By adding “forest” in the order of this case which is essentially related to Wildlife Protection Act, 1972, the Supreme Court adopted a completely new and holistic approach towards protection, preservation and conservation of forest in India.

Saw Mills and Wood Based Industries: In the order under Godavarman case the Supreme Court while stalling the activities that did not have prior approval of the Central Government had also concerned itself with saw mill's and wood based industries and banned the running of saw mills of any kind including veneer and plywood mills without prior permission / approval of the Central Government. The Supreme Court was acutely concerned about the danger to the Tropical Wet Evergreen Forest of Tirap and Changlang in Arunachal Pradesh and ordered immediate closure of saw mills within 100 Kms from Assam border. In order to stop trade in timber the court completely banned the movement of cut trees and timber from any of the seven North Eastern States to any other state within the Union of India.

Regulation of number of saw mills:

Each Government was directed to file a report regarding;

1. Number of saw mills, veneer and plywood mills operating within each State.
2. The real owners of those saw mills,
3. The license and actual capacity of those saw mills,
4. Their proximity to the forest and

²¹³ Order dated 12.12.1996

²¹⁴ WP 337 of 1995- This case concerns the settlement of rights in National Parks and Sanctuaries.

²¹⁵ Order dated 13.11.2000.

5. Their source of timber.

Within one month of the passing of the order the States were required to constitute an expert committee to:

- a. Assess sustainable capacity of the forest of the State vis-à-vis saw mills and timber based industries.
- b. Number of saw mills that can be safely sustained by the State, and
- c. The optimum distance from the forest at which the saw mill should be located.

A High Power Committee (HPC) was constituted by the Supreme Court in order to oversee strict and faithful implementation of the court orders. Significantly the Supreme Court dealt at length with the running of wood based industries in North Eastern States and observed that even though proliferation of wood based industries has been the main reason for degradation of forest in the North Eastern States and the dependence of local people on the forest in those region, the court felt that it would be neither feasible nor desirable to completely ban timber trade and running of wood based industries in that region. However, the court strongly felt that their number and capacity are to be regulated and they must be required to relocate in specified industrial zones. Industrial requirements have to be subordinated to maintenance of ecology and environment as well as bonafide local needs. The court further directed the State Governments to notify industrial estates for locating wood based industries in consultation with Ministry of Environment and Forest. Some of the important directions issued by the Supreme Court in this regard are as follows:

- a) License given to all wood based industries shall stand suspended.
- b) Wood based industries cleared by the HPC will have the option to shift to the identified industrial area.
- c) Units that do not want to shift shall have to windup as per law.
- d) License issued shall be renewed annually subject to condition that no illegality is attributed to the same.
- e) Number of wood based industries shall be determined strictly within the quantity of timber that can be felled annually on a sustainable basis as determined and approved by the plan from time to time.

- f) There shall be a complete moratorium on the issue of new license for the next five years.

Location of Wood Based Industries: Number of States setup new industrial areas for locating wood based industries and saw mills. In case of Jammu & Kashmir the court had stipulated that the saw mills be located at least 8Kms beyond the demarcated forest and a committee was constituted to identify industrial zones for shifting saw mills.

The court took a serious view of the action taken by the Government of Nagaland with respect to identification of industrial area. In an Interlocutory Application²¹⁶ the Government of Nagaland the whole foot hill areas of Nagaland and all areas within 1Km of the National and State Highway and State Roads were declared industrial estate for locating wood based industries. The Ministry of Environment and Forest stated that the State Government had not consulted it before notifying the industrial estate for locating the wood based industries. In essence it was made out that the notification was not in strict compliance of the court's order. The idea behind the court's order was to keep the wood based industries in compact blocks for easy and effective monitoring. The action taken by the Nagaland Government was stayed and the Chief Secretary was show caused by the court. Subsequently the Nagaland Government reported compliance with the order of the court.

Movement of Timber: Another significant step was that the court restricted the movement of timber including sawn timber, veneer and plywood outside the North East and permitted the same only if sourced from or processed in HPC cleared wood based units situated within the approved industrial estates except in the State of Mizoram where no industrial estate exist. Round and hand sawn timber shall not be allow to be transported outside North East except with the prior approval of the HPC or the Ministry of Environment and Forest (MoEF). In order to control illicit timber trade and timber product the court directed that transit passes (TPs) printed only in water marked paper shall be used for the transportation of timber and timber products with effect t from a date to be fixed by the MoEF but not later than 1st December 2001. In order to regulate consumption of raw material by timber and veneer units and in order to keep record of the finished products and the disposal and movement of the same it was required by the court that the MoEF should issue detailed guidelines within three months from May 2001.

²¹⁶ Interlocutory Application No. 397, Dt. 15.6.1998

Various saw mills challenged the report of the expert committee for regulating the saw mills and implementation of its orders. About nine interventions were filed by more than 300 saw mills owners against the report of the expert committee in the State of Bihar alone. The committee concluded that more than 1 lakh cm³ wood is available on a sustainable basis from the forest and another 4 lakh cm³ wood was available from the private plantations and imports. Based on the above figures the expert committee recommended that 1110 saw mills may be allowed to operate in the State of Bihar on a sustainable basis as against the then existing 3991 saw mills in the State. The excess numbers of saw mills were recommended to be closed in phases within a period of three years. The Central Empowered Committee decided the application filed by the saw mill owners and upheld the decision of the State of Bihar in phasing out the saw mills and implements the orders of the court. The Supreme Court accepted the recommendations of the Central Empowered Committee.

Some State Governments also filed application for grant of license to unlicensed saw mills especially those which were in existence prior to 1981 in the State of Maharashtra²¹⁷. The Central Empowered Committee found that these unlicensed saw mills did not fulfill the rules framed by the Government of Maharashtra even in 1981 and they should have been closed down in that year itself. The government had in fact allowed the illegal saw mills to function in violation of its own rules. The Central Empowered Committee took a strong stand and recommended that all those saw mills should be closed.

The PCCF of the State of Jammu & and Kashmir had issued an order relating to closure of veneer mills situated within 8Kms of demarcated forest. The High Court of Jammu and Kashmir state the order of the PCCF Mr. Harish Salve in his capacity of Amicus Curiae filed a special leave petition to the Supreme Court against the order of the High Court. The Supreme Court stayed the order of the High Court and decided to hear bulk applications that had been filed against its 12.12.1996 order in Godavarman case and directed the Central Empowered Committee to examine the matters. The Central Empowered Committee in its recommendation examined the applications in the light of the 12.12.1996 order wherein it was stated the order was to be complied by all concerned in supercession of any order at variance that may have been made all is likely to be made by any authority including the Central or State Government or any court or tribunal. The Central Empowered Committee ordered the restoration of the order of the PCCF.

²¹⁷ Interlocutory Application No. 414, Dt. 1999

The matter was again examined in context of Andaman & Nicobar Islands. The applicants were NGOs namely Society for Andaman & Nicobar Ecology, the Bombay Natural History Society and Kalpvriksh. In their application they drew the attention of the court to the serious threat to the Rain Forest of Andaman & Nicobar islands as well as the local tribes inhabiting the islands due to the unrestricted activities of the large number of wood based units functioning in the island. Considering these impacts the court appointed a commission which made the following recommendations:

1. There should be a complete ban on establishment of any new wood based unit for the next 10 years.
2. The existing small scale wood based units should be relocated within industrial estate or where industrial estate are not feasible the locations contiguous to the forest officers or otherwise convenient for the forest department to monitor.
3. The relocation was to be completed within one year and the non-complying saw mills was to be closed down.
4. The existing medium and large scale wood based industries were to be allowed to function provided they import their entire requirement of wood and other forest based raw materials from abroad or the mainland. No subsidy was to be allowed to them.
5. No timber either as logs or as sawn timber or plywood or veneer or in any other form should be transported out of the island through any means whatsoever.

The Supreme Court accepted the recommendations of the commission and ordered that:

- a) The license of the wood based industries and saw mills was not to be renewed. The authorities were not debarred from cancelling licenses in accordance with the law if the conditions were not complied with.
- b) Since the ecology of the area does not permit any kind of industrial activity for which wood is likely to be consumed the license to wood based industries shall stand cancelled but they may clear their existing stock.
- c) The Union of India if it thinks appropriate may relocate the dislocated wood based industries anywhere in main land India but not within the vicinity of any forest area.

Only the government saw mills may be allowed to operate to meet the local demands for timber.

- d) No fresh wood or logs shall be given to any saw mill or wood based industries till fresh working plans were prepared and submitted before the court for approval.

The Central Empowered Committee is entrusted with monitoring the court order and prepares a status report for submission before the court. The Central Empowered Committee heard applications from the owners of the closed saw mills in Port Blair and upheld the order of the Supreme Court.

Operation of Unlicensed Saw Mill: The most significant order with respect to existing saw mills and wood based industries was the direction given that no State or Union Territory shall permit any unlicensed units to operate. They are directed to close such unlicensed units forth with and no State Government or Union Territory shall permit opening of any such units without prior permission of the Central Empowered Committee.

CONSTITUTION OF AUTHORITIES AND COMMITTEES

The Godavarman case and the Environment Awareness Forum case started an avalanche of legal activity, certainly not foreseen by Godavarman and perhaps not even the Supreme Court of India. The Supreme Court is already burdened with huge number of pending, indisposed cases and the huge legal activity initiated by the Godavarman case necessitated decentralization and delegation for which it became necessary to constitute Authorities and Committees.

The 1980 Act does not provide for setting up of a tribunal or adjudicatory authorities or committee. In order to deal with the huge number of applications and petitions pouring in from all over India, the Supreme Court put reliance on Section 3 (3) of the Environment (Protection) Act 1986²¹⁸.

²¹⁸ Section 3(3) of the Environment (Protection) Act, 1986 reads as follows:-

"The Central Government may, if it considers it necessary or expedient to do so for the purpose of this Act, by order, published in the official gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the powers to issue

High Power Committee: The Supreme Court constituted a High Power Committee (HPC)²¹⁹ to oversee the strict and faithful implementation of the orders passed by the Supreme Court from time to time specially with reference to the North Eastern region. The committee was entrusted the task of overseeing the preparation of inventory of all timber in all forms. The Arunachal Pradesh Forest Authority (APFA)²²⁰ was constituted under Section 3(3) of the Environment (Protection) Act, 1986. The mandate of the authority was to monitor and implement the directions of the Supreme Court, and empowered to issue necessary directions for disposing felled timber, determining the sustainable number of wood based industries, approving industrial estates, timber pricing, and scientific management of forest. In 2001 the State Empowered Committee was formed for the State of Madhya Pradesh and Chhattisgarh for expeditious disposal of pending Interlocutory Application of these States.

Central Empowered Committee: In Interlocutory Application Number 296 heard on 12 April 2000 the Supreme Court considered the feasibility of constituting a National Level Committee as well as State Level Committees on the line of Arunachal Pradesh Forest Authority (APFA) under Section 3(3) of the Environment (Protection) Act, 1986. The National Level Committee was to be Supervisory cum Appellate Authority over the State Authorities. Since the constitutions of the State Authorities were time consuming, the court directed that the Central Government constitute the National Level Authority having technical expertise to deal with problems currently being handled by the Supreme Court and the High Courts²²¹. Since there was delay in constituting this authority under the Section 3(3) of the Environment (Protection) Act, 1986, the Supreme Court constituted the Central Empowered Committee (CEC)²²². The task assigned to the CEC included the monitoring of the implementation of the orders of the court, removal of encroachment, implementations of working plan, compensatory aforestation plantation and other conservation issues.

The committee also emerged as an advisory body to the Supreme Court on all matters in the Godavarman case and the Environment Awareness Forum Case. All pending applications, the task of examining the reports and the affidavits filed by the States were to be done by the

directions under section(5) of the Central Government under this Act) and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures”.

²¹⁹ By order dated 4th March 1997

²²⁰ By order dated 17th September 1998

²²¹ Order dated 13 April 2000

²²² Order dated 9th May 2002

CEC. Any individual aggrieved by the steps taken by the government or any other authority in compliance with the order of the Supreme Court could directly approach the CEC. Only those applications that could not be appropriately disposed of by the CEC were to be referred to the court. Initially then CEC was a five member body of which three members were from the Central Government and two members represented the NGOs. The chairperson of the CEC is nominated by the Ministry of Environment and Forest.

Consequent upon the CEC starting to function reports of immense significance were submitted to the courts prominent among them being the serious problem of encroachment of forest land filed before the Supreme Court by Amicus Curiae²²³.

Subsequently, the MoEF brought about a draft notification under section 3 (3) of Environment (Protection) Act, 1986 constituting a CEC which was shown to the court. The CEC was constituted for period of five years and the members were appointed in their personal capacity so that they did not feel obliged to change with changing administration and political pressure. The CEC was not limited only to 1980 Act but was extended to the Forest Act 1927 and the Wild Life (Protection) Act, 1972 including the rules regulations and guidelines framed under these Acts. The CEC has been conferred wide powers. It can call for documents from any person, summon any person and received evidence from such person either on oath or on affidavit. The CECs activities included field visits, conducting public hearing, meeting with NGOs etc. The CEC was also empowered to pass interim orders in situations demanding immediate action. With the setting up of CEC²²⁴ a new chapter in Godavarman case began. Due to simplification of procedure for filing and hearing of cases the number of cases increased. Over the years the CEC has given at least a hundred significant recommendations, reports and orders on matters of vital importance to the conservation of forest and wild life. The reports of the CEC are significant documents and as per the order of the Supreme Court they are treated as Interlocutory Applications²²⁵. The Supreme Court conferred additional functions on the CEC²²⁶ and directed that no State or Union Territory shall permit opening of any saw mills, veneer and plywood industry without prior condition of the CEC and further directed that their shall be no relaxation of rules with respect to grant of license without prior concurrence of CEC.

²²³ Interlocutory Application No.703 of 2001, dated 5th August 2002.

²²⁴ Notification No. 1-1/CEC/2002-03 dated 14/6/2002

²²⁵ Supreme Court order dated 22nd October 2002

²²⁶ Supreme Court order dated 29th October 2002

Social Forestry and Compensatory Aforestation

Prior to the order of the Supreme Court compensatory aforestation was carried out in accordance with the guidelines issued by the MoEF under the Forest Conservation Act. According to the guidelines compensatory aforestation is to be done over an equivalent non-forest area at the cost of user agency. If non-forest area is not available then compensatory aforestation has to be done over double the degraded forest area by the user agency. After the fund for compensatory aforestation are deposited with the concerned State Governments the lands for this purpose is transferred and mutated in favor of the forest department. A formal approval for diversion of forest land for non-forest use under section 2 of the Forest (Conservation) Act, 1980 is given by the MoEF. Compensatory aforestation is generally done by the forest department of the respective States.

In hearing dated 12.4.2000 the Central Government through its counsel Kirit Raval placed a statement before the court showing the position of cases approved for diverting forest land, the compensatory aforestation done and the utilization of the fund. The court took suo moto action on the same and treated the statement as an Interlocutory Application²²⁷.

The court found the statement of the government to be dismal and issued notices to the States of Arunachal Pradesh, Assam, Bihar, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Mizoram, Orissa and Tamilnadu to explain why the money realized for compensatory aforestation have not been utilized for the same.

While dealing with an application of M/S. South Eastern Coal Ltd seeking permission to fell trees for mining operation the court dealt with the forest clearance procedure under the Forest (Conservation) Act, 1980 and the rules under it and raised a pertinent question regarding the present practice that is being followed of depositing money with the State Government for carrying out aforestation. The court felt in order to ensure regeneration of forest, the primary responsibility should be of the concerned applicant who desires to use the forest. The court issued a set of innovative order:

1. The government must specify the time frame within which aforestation must be commenced and completed.

²²⁷ IA no. 566

2. The State should require an ‘environmental audit’ to ensure that the survival rates of the saplings are high.
3. The government should require each applicant that is obliged to carry out aforestation to publish the result of the ‘environmental audit’. Every year in news paper and forward the same to the Central Government.
4. The applicant is not only responsible for planting trees but also to look after maintain and ensure its survival.

The court further directed that the MoEF should formulate a scheme whereby the responsibility for compensatory aforestation should be that of the user agency²²⁸.

The CEC considered all aspect of the compensatory aforestation and consulted both the MoEF and all the State Governments. Despite guidelines there was no uniformity in the matter. In many States the money for compensatory aforestation were deposited in the department of forest as “Forest Deposits” that do not form a part of the consolidated fund of the State²²⁹ and the department could easily utilize the fund for aforestation. In other States the money for compensatory aforestation is deposited as “Revenue Receipts” of the State Government and is made available to the forest department only as a budgetary allocation. This causes problem of timely release of the fund for compensatory aforestation. In view of this it was felt a separate fund “Compensatory Aforestation Fund” should be created for the deposit of the compensatory aforestation money and subsequently released directly to the implementory agencies whenever required. With regard to the fund received for diversion of forest land comprised of protected areas like National Parks and Sanctuaries, the CEC recommended that although such money should be recommended in the assigned fund it should be exclusively used for protection and conservation purposes by the States and Union Territories.

Assisted Natural Re-generation: The existing method of compensatory aforestation is heavily dependent on artificial means of regeneration²³⁰. However, most States felt that it does not compensate the laws of natural forest. The States felt that the fund should be used for assisted natural regeneration where natural forest are allowed to regenerate by undertaking

²²⁸ IA no. 566, order dated 23/11/2001

²²⁹ Chhattisgarh, Madhya Pradesh, Uttaranchal, Uttar Pradesh etc.

²³⁰ Plantation in identified areas

silvicultural and cultural operations such as fire tracing, signaling of seedlings, protection etc. that help to regenerate the wood stocks that already exists in the degraded forest.

Net Present Value of the Land (NPV): In whichever way the compensatory aforestation may be made it cannot adequately compensate for the loss of natural forest cover. The CEC noted that in some States²³¹ the NPV recovered ranged from Rs.5.80 lakhs-Rs.9.20 lakhs per hectare of forest land depending upon the quality and the density of the forest land diverted for non-forest purposes. The CEC recommended that the NPV for forest land diverted for non-forest purposes should also be recovered from the user agency while according approval under the 1980 Act. The fund so recovered should be utilized for undertaking specific activities of protection and conservation.

Special Purpose Vehicle (SPV): The CEC made a distinction between public sector user agencies and private sector user agencies and recommended that large public sector undertakings such as NTPC, Power Grid Corporation should set up special SPV for identifying the non-forest areas in advance for raising plantations. Since the private sector agencies do not possess the technical know-how, aforestation could continue to be done by the forest department. The private sector agency should be involved in monitoring and protection. The recommendation of CEC was accepted by the Supreme Court²³².

Felling of Trees: The court laid down guide lines for felling of trees from forest areas as well as non-forest areas including plantations. As per the order the felling of trees from forest areas could be allowed only as per the approved working plan/schemes and from non-forest area in accordance with the guidelines prepare by the State Governments in concurrence with the Central Government²³³ and laid down the following:

- a) The felling from forests, non-government forest, land which is require to be treated as forest under the order of the Supreme Court should be only in accordance with the working plans/schemes approved by the MoEF.
- b) During the execution of the working plan/schemes it shall be ensure that no felling is done unless and until sufficient budgetary provision exists for regeneration of trees in such areas.

²³¹ Chhattisgarh and Madhya Pradesh

²³² Order dated 22.10.2002.

²³³ SC order dated 15.01.1998 read with order dated 12.05.2001

- c) For felling of trees in non-forest areas and plantations on non-forest areas the State Governments shall frame rules and guidelines with the concurrence of MoEF within a period of three months and the MoEF must give concurrence within one month which shall include provisions of penalties, mode of disposal of timber felled in violation of rules and guidelines.
- d) Till such rules/guidelines become effective no felling shall be done from any of the areas specified.

WORKING PLAN

The issue of working plan was extensively dealt with in the order dated 15 January 1998 in which the States were directed to prepare working plans and obtain approval from the Central Government. The term State Government included the Union Territories and the District councils under Schedule VI of the Constitution of India. The plans would have to be prepared within two years of the passing of the order. The intervening period should be worked in accordance with an annual felling programme approved by the MoEF. In respect to private and community holding the felling shall be regulated under the respective State rules and regulations. For the purpose of preparing the working plans the States were directed to constitute a State level Expert Committee to be headed by the PCCF.

With respect to North Eastern States the court order directed identification of ecologically sensitive areas in consultation with institutions like the Indian Council of Forestry Research and Education, Wild Life Institute of India, North Eastern Hill university, North Eastern Regional Institute of Science and Technology and leading NGOs to ensure that such identified ecologically sensitive areas are totally excluded from any kind of exploitation. The court further stipulated that the minimum extent of such area shall be 10% of the total area of the State.

The order dated 12.5.2001 clarified that working plans shall be needed for felling of trees from any non-government forest area including the lands which are required to be treated as forest under the court order dated 12/12/1996. For felling of trees from non-forest area the State Government was required to frame detailed guidelines and rules and seek approval of the MoEF. The court emphasized that while implementing the working plans/schemes

sufficient financial provision for regeneration of the area shall be made. The issue of working plan was among the central focus of the recommendation of the commission appointed to report on the status of the forest and other allied matters in the Andaman and Nicobar Islands. The commission observed that one of the major threats to biodiversity of the forest of the Andaman and Nicobar Islands is the stress on commercial forestry. For over a hundred years the forests have been subjected to increased commercial exploitation. The forest department follows a conversion forestry system where the natural forest are worked, commercial species extracted and the worked forest regenerated and managed in a manner that there is a resultant preponderance of commercial species for future harvesting.

In order to protect the natural biodiversity of the Islands the commission recommended that no felling of tree should be allowed in the un-worked area.²³⁴ In other areas felling may be allowed as per the prescriptions of the working plans approved by MoEF subject to condition that such areas are not within Sanctuaries or National Parks or tribal reserves or located in the little Andaman's. In view of the stress laid on commercial forest tree, the commission recommended that the working plans should contain action plans for removing trees of commercial species that are in concentration in a given area (density) in phased manner. It was further recommended that endeavor should be made to bring back the forest to its natural profile by encouraging/reintroducing the species of flora and fauna that had naturally occurred in the area.

The court on 7th May, 2002 while considering the recommendation of the commission recognized the ecological importance of the Islands and the threat faced due to commercial felling and order that Andaman & Nicobar Islands is one of the hot spots and is in the eco-fragile area having the eco-diversity and thereby has to be preserved. For this it is essential that the natural forest be protected and regeneration be allowed to take place.

While accepting the recommendation of the commission the court issued the following directions:

1. Reworking of the working plan of the Andaman Nicobar Island and suggested that first there should be compulsory aforestation/regeneration, and the felling condition should be based upon the extent of regeneration of forest undertaken.

²³⁴ Area where felling of trees as per working plans/schemes or approved working plans have not taken place

2. In the new working plan there should be a committee consisting of a ecologist who is proficient with the ecology of Andaman.
3. The tree felled under working plan should be utilized for the requirement of local inhabitants.

FOREST DEPARTMENT

The forest department plays a key role in the protection, management and administration of the forest area and is in fact the custodian of the forest. Therefore, in order to have effective implementation of the Supreme Court's orders it was necessary to take suitable steps to boost the morale of the forest department. In a detailed order²³⁵ the Supreme Court concerned itself with the issue of reforming the forest administration in the North Eastern States. In view of the multidimensional issues impinging upon forest protection it made the following directions:

1. A full proof institutional arrangement is to be put in place and made functional under strict supervision of the North Eastern Council.
2. The MoEF was directed to provide technical support by opening a separate cell in the ministry under an officer of the rank of CCF.
3. To start a satellite office of the Forest Survey of India (FSI) situated at Shillong (Meghalaya).

The court further directed the PCCF or the CCF of the States and Union Territories to prepare detailed action plans for intensive patrolling and protective measures to be undertaken in the identified vulnerable areas. These officers were directed to send quarterly report for approval to the Central Government. Recognizing the discrepancies in the power and authority of the forest officers in the North Eastern States and the forest officer of other States the court directed that the forest officials of the North Eastern States be empowered on similar lines of the forest officers in other States.

In order to strengthen the forest department the court felt it was necessary to take action against those responsible for illegal felling of trees. It directed that those areas where illegal felling has taken place significantly should be identified within 45 days of passing of the

²³⁵ Order dated 15/1/1998

order and disciplinary or criminal proceeding be initiated against those responsible for the situation and a report be submitted to the court within three months and then followed up by quarterly reports. The Chief Secretaries of the North East States were entrusted with reviewing the action taken against the erring officers.

Godavarman case did not remain confined to Environmental Law only but also entered the domain of Administrative Law. The court concerned itself with who would be the competent person to write the Confidential Report (CR) of an officer belonging to the forest department. Such administrative control of officers belonging to the forest department was not within the department itself. For this purpose the court went on to interpret expressions like ‘Reporting Authority’ and ‘Reviewing Authority’. The other directions of the court were as follows:

1. The forest departments and the administration should publish at the beginning of each year the proposed uses of natural resources including forest and at the end of each year state the actual use, deviations from the proposal and then reasons for it.
2. The various working plans, Protected Area Management Plans should be accessible to the public as soon as they are approved.
3. All officers of the administration including the forest officers should undergo an orientation training of at least five days every three years to orient themselves with the ecological characteristics, options available for economic development in a economically and socially sustainable manner.
4. The forest departments should be strengthen immediately to prevent poaching and the officers should be given adequate powers under the Indian Forest Act, 1927 as is done in other States to meet the threat of poaching.
5. The mechanism for coordination should be set up comprising forest department, civil administration, the coast guards, and the combined defense commands.

ENCROACHMENT²³⁶

The Government of Madhya Pradesh made a request to the Central Government for regularization of encroachment during the period 1.1.1977 to 25.10.1980. In response to this the court felt that encroachment continue after each regularization. It also noted

²³⁶ I A no. 424, Order dated 22.9.2000

that the condition precedent prescribed for regularization is hardly ever fulfilled. In view of this the court was of the opinion that the Central Government should consider that regularization may be done only after fulfillment of the condition precedent laid for it.

The CEC drew the attention of the court on the serious problem of encroachment. This was pursuant to the application filed by the Amicus Curiae wherein it was pointed out that encroachments were taking place in almost all the eco sensitive areas and the national parks and sanctuaries. The reasons identified by the States for encroachment were inter alia lack of political will, victimization of officials, expectation of subsequent regularization, non-deterrant punishments, weak legal framework, poor boundary demarcation, poor land and revenue records, non-compensation for environmental losses so on and so forth. In view of this huge list of causes submitted by the States the CEC made the following recommendations:

1. Regularization of encroachment in any manner for encroachments prior to 1990 is strictly prohibited except those which are eligible for regularization in conformity with the 1990 guidelines of the MoEF.
2. The first offence report under the Forest Act shall be the basis to decide whether the encroachment took place prior to 1980. All encroachments other than those eligible for regularization shall be evicted immediately and the Chief Secretary of the State shall be personally responsible for ensuring effective and timely compliance.
3. In case of failure of the State Government to expeditiously remove encroachers it shall be liable to pay compensation for environmental loss for continuing encroachment at the rate of Rs.1000 per hectare per month to be deposited in a separate bank account.
4. The performance of the revenue, police and the forest officials shall be recorded in their annual confidential reports.
5. Compensation for environmental loss, destruction of habitat flora and fauna shall be recovered by the State from the encroachers.

6. The order is to operate and be implemented superseding any other order passed by any government, authority, tribunal, court and High Court.
7. In Centre for Environmental Law, *WWF India v Union of India*²³⁷, it was laid down that no de-reservation of any forest, National Park, or Sanctuaries is permitted without the approval of Supreme Court.

The issue of encroachment was the focal point in the case of Andaman and Nicobar Islands and the court made the following orders:

1. Any regularization of encroachment or use of forest land for any purpose shall be strictly prohibited.
2. All families who had encroached forest land prior to 1978 must shift to the allotted rehabilitation sites within one month, failing which their allotment shall be cancelled and they shall be forcefully evicted from their encroached occupation. They must also vacate any extra land occupied by them within one month, failing which the same consequence shall follow.
3. All post 1978 encroachers shall be completely evicted within three months.

The States were required to prepare necessary plan of action in this regard. This formula was also applicable to all the illegal encroachment in the Sundarban area. The CEC directed the MoEF to file an affidavit regarding the situation of compliance of its directives not only in the Andaman & Nicobar Islands but also in the Sundarban area.

POLICY CONCERNS

The Supreme Court in Godavarman case ventured into the area of the policy framing. The first land mark order was the order dated 12th December 1996 wherein the Supreme Court interpreted the word “Forest”. Prior to this order the Forest (Conservation) Act, 1980 was applicable to areas classified as ‘forest’ in government records. The court expanded the meaning of the word forest to include those areas that are statutorily recognized as ‘forest’ but also forests as understood in the dictionary sense and also all forest irrespective of ownership and classification. The court clarified that the orders made in Godavarman case

²³⁷ WP (C) No. 337 of 1995

will be applicable to autonomous hill councils also²³⁸. This was a major step as most forest areas in the North Eastern States, prior to this order were outside the purview of the provisions of Forest (Conservation) Act, 1980.

Constitution of Central Empowered Committee (CEC) was another significant policy decision. The Arunachal Pradesh Forest Protection Authority, The High Powered Committee (HPC) for North Eastern States, the Empowered Committee for Madhya Pradesh and Chhattisgarh are some of the policy making steps of the Supreme Court by creatively using section 3(3) of the Environment (Protection) Act, 1986. Prior to this there were very few instances of applying this provision of the Act for the purpose of protecting the forest. The CEC today has original and advisory jurisdiction in dealing with a range of policy issues.

Another important aspect dealt by the court was the issue of ‘forest compensation’²³⁹. The court emphasized that it is essential that in areas where natural forest exists should be preserved and there should be no further depletion of forest cover as located in Madhya Pradesh, the Western Ghats, North Eastern Region and the Himalayas. The court felt that the political boundaries are drawn for various considerations but as far as the environment is concerned a holistic view is to be taken. It noted with concern that majority of States fall short of the national average as far as the forest cover is concerned. It therefore felt it must be ensured that forest cover continues to exist in the areas mentioned above and the forest deficient States should be asked to contribute towards the preservation of forest by means of compensating the forest rich States, so that they maintain their existing forest cover. The court visualized a partnership between different States for maintenance preservation of the forest cover. The suggestion of the court was to be considered by a committee comprising of Finance Secretary, Secretary of MoEF and Chief Secretaries of all States. Following the directions of the court the above committee was constituted and it held discussions with various State Governments²⁴⁰. About 12 states²⁴¹ which were deficient in forest cover expressed their reservation in accepting the court’s suggestion. The Supreme Court, on hearing this, issued notices to the Chief Secretaries of all the above States and also to the Government of India to consider the suggestion that if in Government of India’s opinion the forest deficient States cannot be asked to compensate the forest rich States, in such a situation

²³⁸ Order dated 4.3.1997

²³⁹ Order dated 8 January, 2001

²⁴⁰ The matter was heard on 8 January, 2001

²⁴¹ Tamil Nadu, Bihar, Rajasthan, Karnataka, Maharashtra, Delhi, Haryana, U.P, Orissa, Gujarat, Punjab, West Bengal and Arunachal Pradesh.

the Union of India should be able to bear the expense of maintaining the natural forest cover in view of Article 48 A of the Constitution of India²⁴².

IMPACT OF GODAVARMAN CASE ON KERALA, WEST BENGAL, ASSAM, TRIPURA, MEZORAM AND OTHER NORTH EASTERN STATES

This research work is also an empirical study on five states in India with particular reference to the State of Tripura. Godavarman case made specific impact on all States but particularly upon North Eastern States. The impact upon the respondent States is analyzed below:

A. The State of Kerala²⁴³

i. Encroachment: The Chief Secretary of Kerala among many other States are directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc. Government order of no removal of pre October 2005 forest encroachers stayed. The SC stayed the order of the Government of Kerala based on newspaper report in ‘Hindu’ which stated that no removal of pre October 2005 forest encroachers will be allowed. The decision of the State Government was contrary to the policy guidelines issued by MoEF. Encroachment in Cardamom Hill Reserve, Kerala: The SC ordered the State of Kerala to respond to CEC report listing the extent of encroachment in Cardamom Hill Reserve, a notified reserve area home to rich biodiversity. The encroachments allegedly are on basis of forged pattas. The report further highlights that the list of encroachers included powerful and influential persons. The encroachments in the Cardamom Hill Reserve raise serious concerns on the state of ecological sensitive areas in the State of Kerala. Perhaps the Supreme Court has to distinguish the encroachments of the kind described above and the ‘encroachments’ by forest dwelling communities as they stand on different social, economic and cultural parameters.

ii. Forest land for religious tourism in Periyar Tiger Reserve: On an application made by Travancore Devaswom Board (TDB) for use of 12.675 hectares of forest land in Periyar

²⁴² In writing the commentary on the case T.N. Godavarman Thirumulpad v. Union of India the researcher solely relied on, Ritwick Dutta, Bhupendar Yadav, Supreme Court on Forest Conservation, Universal Law Publishing Co. Ed.2005, ISBN NO. 81-7534-461-X. The researcher acknowledges his indebtedness to the authors and the book.

²⁴³ In writing the commentary on the impact of the judgment of Godavarman case on the respondent States the researcher solely relied on: Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishal Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

Tiger Reserve for development of Sabrimala Temple in Pathanamthitta district of Kerala, the Standing Committee of National Board of Wildlife (NBWL) conveyed its approval for use of forest land as stated in the communication dated 20.05.2005 of MoEF to the Principal Secretary, Forest and Wildlife Department, Government of Kerala. The CEC too filed its comment to which the TDB sought time to respond and the application was ordered to be put up after the response of Board is filed in Court. In the meanwhile the Government of India was permitted to issue orders for diversion of the aforesaid land.

iii. Permission to Power Grid Corporation in Peechi Vazani Wildlife Sanctuary:

Supreme Court granted permission to Power Grid Corporation of India Ltd. (PGCIL) for use of 0.8694 ha. of forest land falling in the Peechi Vazani Wildlife Sanctuary, Kerala for relocation of one damaged tower of 400 KV double circuit of the Udumalpet-Trichur transmission line. The CEC has examined the proposal and has recommended the same subject to the following conditions which are acceptable to the project proponent:

1. For use of forest land approval under FCA to be obtained;
2. Felling of trees will be kept to the minimum possible;
3. The condition imposed by the Chief Wildlife Warden to be strictly complied; and
4. The NPV at the prescribed rate for the forest land falling within the Sanctuary as well as outside the Sanctuary will be deposited by the user agency²⁴⁴.

B. The State of West Bengal

i. Ban on felling of trees in any forest, public or private: The Supreme Court imposed a ban on felling of trees in any forest, public or private. The ban was not to affect felling in any private plantation comprising of trees planted in any area which is not a ‘forest’ and which has not been converted from an earlier ‘forest’. In a ‘forest’ the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under section 18 or section 35 of the Wildlife Protection Act, 1972 or any other Act banning such felling or removal of trees. The State Government was directed to constitute an expert Committee comprising a representative from MoEF, a representative of the State Government, two private experts of eminence and the MD of State Forest Corporation (as Member Secretary),

²⁴⁴ 503 I.A. No. 703, 502, order dated 08.02.2002 504 See order dated 28.04.2006 in I.A. No...of 2006 (Application filed by AC) 505 See order dated 07.10.2005 in I.A No. 1408 506 I.A. No. 1373 and order 25.08.2005 507 See order dated 09.05.2008 in I.A. No. 2257 in I.A. No. 1093 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

who will fix the qualitative and quantitative norms for the felling of fallen trees and deceased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

ii. Methodology for increasing forest cover: The Court had directed that the Central Government should evolve a method for making the States deficient in forest cover pay the States abundant in forest wealth as a means for preserving forest wealth. A report of the Committee of Secretaries received on this aspect stated that there was no consensus amongst the States on the point in issue, while some of the States have welcomed the idea. The Committee had discussions with representatives of various State Governments but about twelve States including West Bengal which are deficient in forest cover expressed their reservation in accepting the suggestion of the Court. The Court directed the Chief Secretary to be represented to present its view on this issue.

iii. Encroachment: The Chief Secretary West Bengal, among other States were directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc.

iv. Diversion of forest land permitted to “Darjeeling Water Supply Pumping Scheme”: The Department of Public Health Engineering, Government of West Bengal sought permission to implement a drinking water supply project namely “Darjeeling Water Supply Pumping Scheme” at an estimated cost of rupees forty nine crores seventeen lakhs which requires diversion of 0.99 ha of forest land falling in Senchal Wildlife Sanctuary²⁴⁵. The CEC has examined and imposed the condition that a sum of rupees two crores forty six lakhs i.e. five percent of the project cost be deposited in the Compensatory Aforestation Fund for undertaking conservation and protection of National Parks and Sanctuaries in the State of West Bengal by the State Government.

v. Permission to operate wood based industries and units on imported timber: In the State there are two thousand nine hundred twenty seven units seeking permission to start wood based industries. The total timber available from the forest area was assessed to be

²⁴⁵ 496 See order dated 12.12.1996,497 See order dated 20.09.2000 in I.A. No. 424,498 See order dated 08.01.2001,499 I.A. No. 703, 502, order dated 08.02.2002,500 See order dated 21.11.2008 in I.A. No. 2318 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishal Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

14.25 lakh cu.m. as against 25.52 lakh cu.m. assessed by the State Government. The available timber is adequate only to accommodate seven hundred fifty saw mills. It has been suggested by CEC that seven hundred fifty saw mills, can be given licenses as per the guidelines and suggestions issued by it. On the issue of units running on imported wood, CEC has suggested that these wood based industries should be located at such places which are away from the forest land and also to ensure that these wood based industries are not using non imported timber. On the acceptance of these conditions licenses can be given by the State Government.

vi. Regulating mechanized boats on Jambudwip islands: On a report of CEC dated 02-04.12.2002 placed before the Court perhaps regarding their role in transportation of timber and adverse environmental implications it was ordered that no trawler or mechanized boat shall enter the water adjoining Jambudwip Island until further orders²⁴⁶.

C. The State of Assam

i. Saw mills, veneer and plywood mills closed: Interstate coordination directed: After the closure of all saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of one hundred kilometer from its border, in Assam, the State of Assam was also directed for interstate coordination to implement the said order.

ii. Wood based industries: Regulation and relocation: On 03.03.1998, the learned Amicus Curiae had submitted that the Government of Assam has issued an order on 12.02.1998 whereby wood based units, which have been cleared by the HPC have been permitted to “procure further stocks” from any other units so cleared by the HPC and convert these procured stocks and dispose of finished stocks. He contended that under the cover of the implementation of the order of the Supreme Court dated 15.01.1998, fresh activity appears to have been permitted to the units, which runs counter to the spirit of the said order of 15.01.1998. The Court thus directed the Amicus Curiae to file an application in this regard.

iii. Relocation of wood based industries in Assam by declaration of

industrial estate: In December 1998, the State Government of Assam declared certain areas as industrial estate by issuing a notification in this regard to comply with the Supreme Court order of relocating the wood based industries to a specific area so that the monitoring becomes easier and large scale destruction of forest and pilferage of timber by the wood based industries are reduced.

²⁴⁶ See order dated 20.10.2008 in I.A. Nos. 1519-1520 502 I.A. No. 920, order dated 25.08.2003 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

iv. Setting up of private saw mill: One Mr. Komor Uddin Ahmed, wanted to set up a saw mill on his private property on the ground that he has 7 acres of land in Dhubri district and the trees forming his 7 acres of land would be sufficient to meet the requirements of the saw mill which he proposed to start in his property. This matter was examined by CEC. On the basis of their recommendation SC declined permission for setting up private saw mill on the ground that as there was a large scale felling of trees in these areas, the saw mills in these parts of Assam were allowed to be located in the industrial area so that there may not be any illegal transport of timber. Moreover the timber which may be produced in his 7 acres of land may not be sufficient to sustain the saw mill and it is likely that there would be some illegal supply of timber to this saw-mill²⁴⁷.

v. Encroachment: The Chief Secretary of Assam, among many other States are directed to reply in relation to the steps required to be taken by them to prevent further encroachment of forest land and in particular the land in the hilly terrains, National Parks and Sanctuaries, etc²⁴⁸.

D. The State of Tripura

i. Disposal of timber: The Court made some generic orders regarding disposal of timber from plantations and community holdings. It stated that existing inventorised stock of timber originating from plantations in private and community holdings in the States of Tripura among other States may be disposed of by their owners under the relevant State laws and rules. In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months. The State in Tripura needs to be ascertained in this regard. Note that externally aided projects such as the one being currently carried out with the help of the Japan Bank need to take into design such legal and policy measures as suggested by the SC. It would be a logical next step to ascertain whether such measures are being taken or not.

ii. Regulating wood based industries in approved industrial estates: As per the recommendations of CEC, the Court directed that within eight weeks the MoEF in consultation with the State of Tripura, will review number of HPC cleared wood based

²⁴⁷ 305 See order dated 03.03.1998,306 See order dated 10.12.1998,307 See order dated 15.01.1998,308 See order dated 11/01/2008 in I.A. Nos. 1358 in I.A. No. 992 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

²⁴⁸ I.A. No. 703, 502, order dated 18.02.2002 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

industries vis-à-vis total area available in the approved industrial estates to decide if additional industrial estates are needed at Agartala, Tripura²⁴⁹.

E. The State of Mizoram

i. Movement of sawn and un-sawn timber allowed as no industrial estate

exist The Supreme Court stipulated that movement of sawn and un-sawn timber shall be permitted only if processed in HPC cleared wood based units situated inside approved industrial estates except in respect of Mizoram where no industrial estates exist. Round and hand sawn timber save in cases where specific approval is accorded by the HPC/MoEF shall not be allowed to be transported outside North East except in the case of Mizoram. It was further stated that movement of timber and timber products for Mizoram shall be regulated as per guidelines prescribed by the Special Investigating Team. The status of these guidelines must be ascertained to get a clearer picture about movement of timber in Mizoram²⁵⁰.

NORTH EASTERN STATES

The North Eastern States of India were perhaps the biggest trigger for the ongoing activism of the Supreme Court. The 12.12.1996 order had far reaching consequences in the region. The seven North Eastern States were brought under the purview of the ban on movement of timber. The Court's future strategies on dealing with the forest case in a comprehensive manner started with the directions on the North East. Constitution of committees, information on wood based industries, reporting, compliance monitoring were all part of a thought out strategy.

The order stated that:

- a. All States were required to constitute an expert committee;
- b. All State Governments were required to file a report regarding saw mills, veneer mills and plywood mills;
- c. All States would constitute an expert committee; and
- d. Submit the report of the expert committee for ensuring compliance to the orders of the Apex Court.

Regulating Timber:

²⁴⁹ See order dated 13.1.1998, 315 I.A. No. 798, 947, 433, 515 and 594 order dated 01.08.2003 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

²⁵⁰ See order dated 12.05.2001 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

Regulating timber has been the biggest challenge for the Court around the country. The case of North East is perhaps the most complicated which the Court has tried to resolve. Movement of timber, felling, transportation, disposal, inventory and pricing are some of the issues that the Court has been grappling with.

a) Ban on movement of timber and cut trees: The seven North Eastern States were brought under the purview of the ban on movement of timber in 1996. The only exception was the passage for certified wood for defense and movement of timber from plantation as per law. The Court observed “a complete ban on the movement of cut trees and timber from any of the seven North Eastern States to any other State of the country either by rail, road or water ways”. However, passage to certified timber for defense and any other Government use would be allowed and the timber from private plantation as per the law applicable shall also be left out of the purview of the above mentioned ban. There was also a ban on movement of cut trees from North East to other parts of the Country. In fact, the ban on movement of cut trees, timber or veneer from any of the seven North Eastern States to any other State in the country in any manner applies to the grown and /or felled timber from any private plantation.

b) Felling and transportation of timber Banned: Another order stated “ban on felling and transportation of timber to continue”.

c) Fresh felling banned: Fresh felling of timber was completely banned in the North Eastern States till the disposal of legal and illegal timber. It was ordered that there shall be no fresh felling in the forests belonging to the Government, district and regional councils till the disposal of their existing stocks of legal and illegal timber.

d) Transportation of auctioned timber from the North East only through railways: The Court also ordered that the transportation of auctioned timber (as well as legal timber) including sawn timber outside the North Eastern Region shall only be done through railways under the strict supervision of the forest department. The Railway Board shall give priority for providing racks/wagons for such transportation. The modalities for transportation of timber/timber products and alternative modes in case of difficulties in transportation by Railways will be worked out by the State Government in concurrence of the Ministry of Environment and Forests.

In view of the report of the High Powered Committee, and taking into account the factors which require an order to be made by the Court for disposal of the felled timber and ancillary matters which are lying in the North Eastern States, the Court made several orders on different aspects of disposal of felled timber including inventory, forest depots, proprietary regime, disposal of timber from plantations and pricing of timber among others.

a) High Powered Committee directions to be followed in stacking the felled timber these also include micro management issues such as stacking of felled timber. As directed by the High Powered Committee, the Court said, the State Government shall take all measures necessary to bring the felled timber lying in the forest to the depots or storage points and have it stacked.

b) Usage of felled timber and transit passes: The Court also ordered that after the inventory of the felled timber gathered at the depots or storage points is complete, the HPC may permit sale of such rounded timber for utilisation within the State to the extent it is from a lawful source. Further, the movement of rounded timber within the State as well as the movement of finished products within and outside the State shall be under transit passes – the issuance and disposal of which will be under the overall supervision of the HPC. The Court further ordered “after the process of inventorisation is over, the HPC may permit saw mills and other wood based industries to utilize their own legitimate stocks of timber for conversion into finished produce. Such finished produce may then be disposed of by these mills under supervision of the HPC and the State Forest Department. The permission granted by the HPC to these mills shall be on suitable terms to ensure that no malpractice occurs in the future and the mills shall be required to file an undertaking to comply with such terms, any breach thereof having the same consequence as a breach of the order of this Court”.

c) Disposal of timber only after inventorisation of all felled timber:

The Court reiterated in another order that disposal of timber shall commence only after the concerned Principal Chief Conservator of Forests irrevocably certifies that inventorization of all felled timber in the State has been completed. As a first measure all inventorised timber including seized timber lying in the forest should be immediately transported to specified forest depots.

d) Timber as per inventory cleared by HPC may be allowed to be used in a prescribed manner: More detailed prescriptions were issued in another order where it was stated that timber as per inventory cleared by HPC may be allowed to be converted or utilized, if the unit is located within the notified industrial estate²⁵¹. As the relocation in proposed industrial estates may take some time, existing units with only legal stocks may convert this timber, as one time exception, till such stocks last subject to the maximum period as per the norms

²⁵¹ 264 See order dated 13.01.1998,265 The Constitution function and rationale of High Powered Committee has been explained later in Court strategies,266 See order dated 13.01.1998,267 See order dated 08.05.1997,268 See order dated 08.05.1997,269 See order dated 13.01.1998,270 See order dated 13.01.1998 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

prescribed by the HPC, or six months whichever is less. Any stock remaining thereafter shall vest in the State Government. However, fresh trees or timber will be allotted to these units only when they start functioning within the designated industrial estates. The territorial Deputy Conservator of Forests or Divisional Forest Officer shall be responsible for ensuring that such units process the legal stocks only and will closely monitor the various transit permits (inward and outward) and maintenance of the prescribed records. All such records shall be countersigned (with date) by an officer not less than the rank of an Assistant Conservator of Forests.

Such timber may also be allowed to be sold to other units, which are located in these industrial estates subject to the condition that such transactions are routed through an authority notified or constituted by

the Principal Chief Conservator of Forests. Further, the State Government shall ensure disposal of illegal timber before permitting the conversion or disposal of legal or authorized timber available with the wood based industries.

e) Illegal or illicit timber to be disposed of as Government timber: The Court ruled that all illegal or illicit timber found in possession of an offender or abandoned in the forest shall be confiscated to the State Government and shall be disposed of in accordance with the procedure to be adopted for disposal of Government timber.

f) Seized timber to be converted into finished product of veneer and plywood: Out of the seized timber, logs found suitable for manufacture of veneer and plywood shall be processed by the State Government within their own factories and by hiring such facilities. The finished product can be marketed freely.

g) Timber belonging to Government to be first offered for sale for bonafide official use: The Court also significantly ruled that the remaining timber belonging to Government and district councils shall be first offered for sale to Government Departments for their bonafide official use and the rest shall be sold in public action or through sealed tenders later fixing floor price by an expert committee with a representative from the MoEF.

h) Disposal of private timber stocks cleared by HPC: Private timber owners whose stocks have been cleared by HPC shall have the option of selling the timber in the auctions organized by the State Forest Department or Forest Development Corporation or direct as the case may be. In an important order, the Court also clarified that clearances given by the HPC to the inventory of the timber other than the timber owned by the Government or Government owned forest corporations, which has not so far been transported to the notified industrial estates, would stand confiscated to the State Government free from all liabilities.

I) Disposal of Timber from Plantation and Community holding:

The Court also made some generic orders regarding disposal of timber from plantations and community holdings. It stated that existing inventorised stock of timber originating from plantations in private and community holdings in the States of Meghalaya, Mizoram, Tripura, Manipur and Nagaland may be disposed of by their owners under the relevant State laws and rules²⁵². In States where such laws and rules do not exist, the necessary laws and rules may be framed within six months. It would be interesting to study the implications of this order in the plantations and community lands which sometimes forms the majority of lands in the north east in many States. Further, what are the new rules that have been made in this regard would be an interesting insight into the minds of the States regarding timber.

J) Pricing of timber:

To be decided by a committee The Court directed that the State Governments shall ensure that timber or forest produce is supplied to industries, including Government undertakings, at full market rate. The existing royalty shall be reviewed and revised upwardly by a committee constituted under the chairmanship of Principal Chief Conservator of Forests with representatives from the concerned Departments and shall also include the concerned Departments and a representative of Ministry of Environment and Forests. The price of timber for which royalty has not been realized in full shall also be reviewed by this committee and the concerned industry shall be required to pay the revised price or the royalty (including surcharge, fee etc.) whichever is higher after deducting the part royalty already paid.

K) Sawn and unsown veneer or timber:

The Court came down heavily on all concerned including railways, errant officials as well as saw mills when on 12.03.2001, the Special Investigation Team – Action Taken Report was filed which pertained to seizure of 200 wagons of timber in Delhi. According to the particulars given, the loading stations were in the North Eastern States including Assam. According to the report, a large quantity of timber did not have proper hammer marks and some of the transit passes were also invalid. The Railway Board was directed to file within ten days the details with regard to movement of wagons from this North East loading stations

²⁵² 271 Vide the HPC third Report, 272 See order dated 13.01.1998,273 See order dated 13.01.1998,274 See order dated 13.01.1998,275 See order dated 12.05.2001 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

indicated in the analysis attached to the affidavit of the Union of India to places outside the said States in the last three years. The Amicus Curiae also apprehended laxity on the part of the authorities. The Court observed that it has been their experience that illegal felling and transportation of timber is firstly caused by the existence of licensed and unlicensed saw mills and the transportation of the timber by road and rail. In a hard hitting move the Court directed “Till we receive information of the State of affairs from the respective Chief Secretaries, we hereby prohibit movement of all timber (sawn and unsawn) and veneer from any of the North Eastern States to any other part of the country either by road or by rail or by waterways or in any other manner whatsoever. We further direct the States to take immediate action to suspend immediately the working of all the errant saw mills which are shown as the consignors in column ten of the analysis of the detained wagons because it is from these saw mills that the illegal timber has found its way to Delhi”.

The Court also directed that cutting of trees with or without permit shall be banned in NE States till further orders.

L) Specific process stipulated for movement of sawn and un-sawn timber from the North Eastern States:

The SC modified its order dated 23.04.2001 regarding movement of sawn and un-sawn timber from the NE States to the rest of the country. It stated that the movement of sawn and un-sawn timber from the NE States shall be permitted on the intent of the District Forest Officer or any other authorized Forest Officer on an application made by the registered timber transporter²⁵³. In case any illegal timber is found to be transported, it will be open to take action against the concerned forest official under whose supervision and control the seal has been affixed on the railway wagon. In the event the seals are tampered with the railways can also be proceeded against. The responsibility of the above two is in addition to the primary responsibility of the registered timber transporter on whose application the indent was made.

The Supreme Court further stipulated that such movement of sawn and unsawn timber shall be permitted only if processed in HPC cleared wood based units situated inside approved industrial estates except in respect of Mizoram where no industrial estates exist. Round and hand sawn timber save in cases where specific approval is accorded by the HPC/MoEF shall not be allowed to be transported outside North East except in the case of Mizoram.

253. 276 See order dated 13.01.1998, 277 Ibid, 278 See order dated 23.04.2001, 279 See order dated 12.05.2001 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

Regulation of wood based industries:

Apart from timber, the Court specifically also laid down several parameters to regulate wood based industries which include licensing, supervision, institutional structures and location among others.

a) Wood based industry to be only regulated in terms of capacity and location: Bonafide local needs recognised The Court held that though the proliferation of wood based industries has been the main cause of degradation of forests in the North Eastern States, considering the extent of forests (sixty four percent of the geographical area) and the dependence of the local people on the forest resources in the region, it is

neither feasible, nor desirable, to ban completely either the timber trade or running of the wood based industries in the north east. However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated in the maintenance of environment and ecology as well as bonafide local needs.

b) Notification of industrial estate for wood based industries

The State Government shall formally notify industrial estates for locating the wood based industrial units in consultation with the Ministry of Environment and Forests. The Court also suggested that wood based industries should be localized with inputs from the MoEF. Further, wood based industries which have been cleared by the HPC without any penalty shall have the option to shift to industrial estates which shall be identified by the States within forty five days and developed within six months thereafter. This should also be examined in the north east context. The Court further made it clear that unit who do not want to shift to the designated industrial estates shall be allowed to wind up as per law.

c) Number of wood based industry to be regulated as per sustainability Number of wood based industries shall be determined strictly within the quantity of timber, which can be felled manually on sustainable basis as determined by the approved working plans from time to time. If it is found that units after relocation in industrial estate have excess capacity then their capacities shall be reduced pro-rata to remain within the sustainable levels²⁵⁴.

Licensing of wood based industries:

²⁵⁴ 280 See order dated 13.01.1998,²⁸¹ See order dated 13.01.1998,²⁸² See order dated 13.01.1998,²⁸³ See order dated 13.01.1998,²⁸⁴ See order dated 13.01.1998, See order dated 12.05.2001 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishal Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

Suspension, renewal and moratorium The Supreme Court also tightened the noose on the wood based industries by first suspending all licenses to wood based industries.

a) Renewal of license made dependent upon lack of irregularity The Court categorically stated that licenses of units shall be renewed annually only in those cases where no irregularity is detected.

b) Moratorium on issue of new licenses for next five years Further, there shall be a complete moratorium on the issue of new licenses by the State Governments or any other authority for the establishment of any new wood based industry for the next five years after which the situation shall be reviewed with the concurrence of Ministry of Environment and Forest. This needs to be freshly reviewed.

c) Renewal of license through High Powered Committee: Scrutiny and not against public interest The Court has often resorted to innovative measures for wood based units giving them enough opportunity to prove their credentials and bonafide. In the order dated 13.01.1998 it stated that the wood based units which have been penalized because they were found to exceed normal recovery norms, but were within fifteen percent of the said norms, will have a right to approach the HPC on or before 09.02.1998. The HPC shall examine all relevant material in particular the income tax and excise records for the preceding three years. The HPC shall dispose of all such applications within forty five days thereafter and such mills may be granted licence if the HPC finds that it is not against public interest so to do²⁸⁸. Ironically, what constitutes public interest in the case of wood based industries was not explained or elaborated further

by the Court.

d) Stocks of erring units to be confiscated: Conditions on relicensing

The Court came down heavily against units which have not furnished details or information to the HPC so far or which have not been cleared by the HPC. It directed that such units shall not be granted any license and the stocks in their custody if any, shall be confiscated to the State Governments. In case of leased mills belonging to corporations or trusts or cooperative societies owned or controlled or managed by the State Government and where the lessees have been penalized by the HPC, the leases shall stand revoked.

Such mills shall, however be eligible for re-licensing subject to the condition that these mills are not leased out in future except to a entity fully owned by the Government.

HPC to dispose of assets of defaulting wood based industries in the North Eastern States:

Another important observation made in the significant order dated 30.10.2002, the HPC was allowed to dispose of the assets on such defaulting units, including plants, machinery, land, shed, timber and timber products who have not paid the penalty imposed by the HPC of the wood based units of North Eastern States²⁵⁵. This was however made subject to such orders, which may be passed by the CEC. The role of CEC with regard to disposal of assets of defaulting wood based industries in the north east was further strengthened.

Forest protection, conservation and regulation in the North East:

There is enough evidence of the numerous initiatives of the Supreme Court to specifically deal with the issues of forest protection and conservation in the north east. Several specific measures including restrictions on entry, institutional structures, creation of ecologically vulnerable areas, patrolling and planning have been mandated by the Supreme Court.

- a) Regulation of entry in reserve forest: In an order as early as 08.05.1997, the Supreme Court directed that entry in to reserved forest should be regulated, and entry should not be without the written permission of the PCCF. It ordered “No person other than a local inhabitant, a Forest Officer or Police Officer or any other personal on official duty shall be permitted to enter the reserved forests except in accordance with permission in writing issued by the PCCF”.
- b) Foolproof institutions required for forest protection under the supervision of North East Council

The Court observed in a significant order²⁹² that in view of the multi dimensional issues impinging upon forest protection, foolproof institutional arrangements need to be put in place, and made functional

under the direct supervision of the North East Council (NEC). Technical backstopping in the forestry matter will be provided by MoEF by opening a separate cell in the Ministry under an officer of the rank of CCF and starting a satellite office of the Forest Survey of India at Shillong. It would be worthwhile to examine the nature of institutions created or whether any such technical backstopping cell has been created in the MoEF.

²⁵⁵ 285 See order dated 13.01.1998, 286, 287 The ban imposed on opening new saw mills/wood based industries and/or issuance of new licences in Nagaland State extended for another five year by order dated 30.10.2002, 288 See order dated 13.01.1998, 289 See order dated 13.01.1998, 290 See order dated 30.10.2002 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

c) Forest conservation initiatives by Court in the North East: Vulnerable areas, ecologically sensitive areas and maximum permissible yield In this very order the Supreme Court has given some specific directions regarding forest protection and scientific management of the forests.

On Forest Protection:

The Court devised several measures which include the following:-

i. Action plan for patrolling of vulnerable areas: An action plan shall be prepared by the Principal Chief Conservator of Forest/Chief Forest Officer for intensive patrolling and other necessary protective measures to be undertaken in identified vulnerable areas and quarterly report shall be submitted to the Central Government for approval. The approved plan together with the modifications if any shall be acted upon.

ii. Powers of forest officers to be enhanced to enable them to ensure protection of forest wealth: To ensure protection of the forest wealth, the forest officers in the North Eastern States may be empowered with authority to investigate, prosecute and confiscate on the lines of the powers conferred on the forest officers in many other States in the country²⁵⁶.

iii. Security and forest protection shall be the responsibility of the State Government: The State Governments shall be responsible for providing all facilities including security and police force to strictly ensure forest protection measures to stop illicit felling, removal and utilization of such

timber. The Chief Secretary shall review the various matters concerning forest protection and development in his State at least once every six months with senior forest officers up to the rank of Conservator of Forests. Regional Chief Conservator of Forests or MoEF shall be invited to all such meetings.

On Scientific Management of Forest:

i. Working plan for each forest division to be made: Working plans for all forest divisions shall be prepared by the State Governments and get approved by the Government of India. Forest working shall be carried out strictly in accordance with the approved prescriptions of the working plans. The working plans should be prepared within a period of two years. During the interregnum the forests shall be worked according to an annual felling program approved by the MoEF which shall be incorporated in the concerned working plan. In case of working plan is not prepared within this time frame, future felling will remain suspended till

²⁵⁶ 291 See order dated 08.05.1997 292 See order dated 13.01.1998, 293 See order 13.01.1998 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

the regular working plan is prepared and got approved. The status of these working plans needs to be ascertained as it is the logical next step.

ii. Working schemes for the district, regional and village forest: The forests under the district, regional and village counsel shall be worked in accordance with working schemes which shall specify both the program for regeneration and harvesting and whose period shall not be less than five years.

iii. Maximum permissible yield shall not exceed annual harvestable yield determined by MoEF: The maximum permissible annual yield in the interim measures suggested above, shall not exceed the annual harvestable yield determined by MoEF. The plantation schemes raised on private and community holdings shall be excluded from these requirements but shall be regulated under respective State rules and regulations.

States to identify ecologically sensitive areas:

Ten percent of total forest area It is perhaps for the first that a definitive percentage of setting aside areas as ecologically sensitive areas was mandated in the north east. The order stated that the States shall identify ecologically sensitive areas in consultation with leading institutions like the Indian Council of Forestry Research and Education, Wildlife Institute of India, North Eastern Hill University, North Eastern Regional Institute of Science and Technology, leading NGO, etc. and ensure that such areas are totally excluded from any kind of exploitation. The minimum extent of such areas shall be ten percent of the total forest area in the State.

Court Strategies:

Regulating bodies such as High Powered Committee formed A High Powered Committee (HPC) was constituted for overseeing the implementation of the orders of the SC in the north eastern States²⁹⁴. Constitution and functions of this HPC were also spelled out in the order²⁵⁷.

a) Constitution of High Powered Committee:

A Committee comprising of-

²⁵⁷ 294 See order dated 04.03.1997 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro - Legal Defence Firm, [ELDF and WWF India 2009]

- Shri T V Rajeshwar, Chairman;
- Shri R N Kaul, Retired. I G of Forests – member; and
- one representative nominated by the Ministry of Environment and Forest (MoEF) – Member Secretary was constituted.

b) Functions of the High Powered Committee

- i. Inventory: The HPC was directed to oversee preparation of inventory of all timber in all forms including timber products lying in the forest or in transit depots and lying in mill premises. The inventory should, wherever possible, indicate the origin and source of the timber. The Committee may for this purpose select suitable person who would be made available by the concerned State Government at its request. As far as possible, such inventory was to be prepared with in a period of eight weeks.
- ii. Regulating sale of timber or timber products: The Committee may, if it considers appropriate, permit the use or sale of any part of the timber or timber products. Any sale shall be effected through the Forest Corporation of the State under overall supervision of the Committee. The net sale proceeds after deduction of the transaction related costs and payment of wages to the labor and staff shall be deposited by the Forest Corporation or through forest department in a designated account. The modalities will be worked out by the Committee.

c) Enabling and Strengthening of High Powered Committee: The Court not only created but also enabled and strengthened the HPC through various measures. The HPC, for example, through the Amicus Curiae, ask for such directions from time to time from the Court as it considers appropriate. Further, the MoEF was required to make available as far as possible within a week, office space and provide secretarial and all other related facilities (including local transport and telecommunication) befitting the stature of the committee. The MoEF was also required to make arrangements for and meet expenses of travel of the Committee. All arrangements for stay etc. of the committee (outside Delhi) as may be necessary, would be the responsibility of the State Government concerned. The Assam Government will make similar office and other facilities available in Guwahati. It is for the sake of convenience at this stage that the Central Government and the State Governments are being directed to make certain payments and meet all the expenses. However, the question of liability for payment of these amounts would be considered at the final hearing and suitable directions for the purpose given at the stage indicating the principal for determining the liability for making the payment.

d) Other North Eastern States allowed responding to High Powered Committee and approaching the Court for any direction with regard to timber.

The other North Eastern States which want any order to be passed in respect of the timber in their State may respond to the comments of the HPC made in relation to it and also approach the HPC with their request to enable HPC to give its comments thereon. The request so made by concerned North Eastern States together with the comments of the HPC could then be considered for issuing the appropriate directions, if any. The State desirous of seeking any directions in this behalf should approach the HPC within a week. The HPC is requested to give its comments till 05.01.1998. The above demonstrates the short term measures that the Supreme Court employed to take into control the enormity of issues of the north east²⁵⁸.

e) Working of High Powered Committee sought to be clarified:

An Intervention Application was filed by the Amicus Curiae regarding the working of the HPC and it sought to strengthen the HPC further. Among others it sought to increase the penal powers of the HPC where it requested that the orders passed by the HPC imposing a penalty based on actual adjudication at the behest of the unit, even if it results in the imposition of penalty larger than the penalty originally imposed are valid and permissible. Further, it also sought to clarify that no unit in respect of whom an order had not been made by HPC on or before 15.01.1998 would be permitted to shift to the industrial estate or to revive and / or restore its licence. The Court held that the HPC was and would be entitled to impose penalty larger than the penalty originally imposed, as long as this penalty is based on the records so produced. The Court also clarified regarding the date of 15.01.1998. It said "A question has arisen with regard to cases where orders had not been made by the HPC on or before 15.01.1998. This Court's order dated December 1998 had contemplated documents being filed and orders being passed by 15.01.1998. It is possible that due to volume of work, the HPC may not have been able to pass orders by 15.01.1998 even though papers and other relevant material had been submitted to the HPC by that date. It is therefore made clear that the HPC would be entitled to look into the records and pass orders in every case where documents and material had been placed before the HPC by 15.01.1998". The Court further made it clear that wherever any penalty and/or additional penalty has been imposed by the HPC, the unit concerned will have a right to approach the HPC to examine the matter afresh.

²⁵⁸ 295 See order dated 16.12.1997 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro - Legal Defence Firm, [ELDF and WWF India 2009]

The Court also set up an appellate mechanism with the HPC where it permitted any unit in respect of which penalty and/or additional penalty has been levied by the HPC to approach the HPC for reconsideration on the basis of the material which it may choose to produce provided such a request is made by the unit within one month of the passing of the order by the HPC or, in those cases where orders have already been passed, within one month from today i.e. 01.05.2000. The Court also laid down that in as much as the HPC would in effect be discharging quasi-judicial functions, it will be appropriate that the HPC may briefly indicate the reasons in support of the order passed by it. The Court further clarified that wherever the HPC had given clearance to a unit after 09.02.1998, the unit will be entitled to relocation. It, however,

made it clear that no unit which had not furnished the record and particulars before 15.01.1998 will be entitled to the benefit of this order.

f) High Powered Committee reconstituted and given some additional responsibilities: The HPC was reconstituted by an order dated 17.04.2000 with Shri S C Sharma, Additional IG (Forests) as the Chairman of the Committee and with Shri G K Pillai, Joint Secretary, NE in the Ministry of Home Affairs as the other member. They were also ordered to look into several new issues that emerged in the north east including supervising the transportation of all the illegal timber since none of it has been sold despite orders made by the Supreme Court from time to time. Other responsibilities include overseeing investigation into specific cases of illegal felling and certain other matters referred to in the confidential report given by the HPC to the Supreme Court and reexamining the matter of licensing of the units in the light of events which had occurred in the interregnum, particularly the seizure of a very large quantity of timber originating from North Eastern States – Nangloi, Rajpura and Tinsukia²⁵⁹.

g) High Powered Committee and Special Investigation Team: Empowered including confiscation powers-

In a significant order³⁰⁰ the Court directed that “all concerned State Government and railways shall strictly follow the guidelines issued by the Special Investigation Team. The HPC, SIT or any other authority constituted under the directions of this Court are empowered to issue orders for confiscation of any vehicle including trucks used for movement of any timber or timber products which have been or were being used for transportation of

²⁵⁹ 296 See order dated 01.05.2000 ,297 Ref I.A. No. 565 and SC order dated 17.04.2000,298 In modification of paragraph 14 of the order of December, 1996,²⁹⁹ See order dated 17.04.2000 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

timber/timber products in violation of the order of this Court". It further asked the State Government and other concerned authorities to provide all necessary assistance sought for this purpose. The Court also observed that the HPC, SIT and / or any other authority constituted under its order shall be at liberty to issue directions for detention, verification, secure, confiscation, and disposal etc. of timber or timber products including that in transit. Such directions issued to the registered timber transporters, consignors, owner of the consignee, transporter of State Government, railways or any other authority shall be binding on them.

h) SIT to regulate railway wagons for transportation of timber: The Court also directed that the SIT shall from time to time prescribe the maximum number of railway wagons for and of the approved loading stations, which may be allowed for each quarter for transportation of timber including sawn timber. The railway shall ensure that in no way the limits are exceeded.

i) Demurrage, disposal and wharfage: SIT Empowered The Court made it clear that the question of demurrage or shortage claimed by railways in respect of goods detained shall be decided in such manner it may order. Pending such decision, the SIT will be at liberty to dispose of the confiscated goods and keep the proceeds in a separate bank account after payment of direct expenses and will abide by the orders of the Court for its utilisation. It further directed the railways not to object in the goods being lifted without payment of demurrage or wharfage in view of this arrangement.

j) HPC order can be appealed against only in the Supreme Court: Guwahati High Court restrained from entertaining any such appeal When the Amicus brought to the notice of the Supreme Court that there are cases which have been or are pending in the Guwahati High Court in variance with the order of the Supreme Court, the Court ordered:

"we restrain the Guwahati High Court, including any of its Benches, from entertaining any writ petition in connection with any order passed by the HPC if any person has a grievance against the order passed by the HPC, the only course open is to approach this Court. The Registrar of the Guwahati High Court is directed not to register any writ petition so filed".

k) Action against officials: Another effective strategy adopted by the Court was the threat of punishment to erring officials. The Court ordered that the State Government shall identify within 45 days all those forest divisions where significant illegal felling have taken place and initiate disciplinary criminal proceedings against those found responsible. The first action

taken report (ATR) in this regard would be submitted to the Central Government within three months, which shall be followed by quarterly reports till the culmination of the matter²⁶⁰.

I) Onus on highest officials such as Chief Secretaries to act within a given time line: The Court employed effective strategies by putting the onus of implementing its orders to the highest ranking officials in the State Governments namely the Chief Secretaries. These include responsibilities for reviewing the action taken against officials and others found responsible for significant illegal felling; those involved in movement of illegal timber seized/confiscated by the SIT ; departmental proceeding or criminal proceedings as may be necessary and the like to assure this Court that the States are serious in creating an environment of deterrence against illegal felling of trees. The Court also directed for an action taken report by the concerned Chief Secretaries within sixty days, which inter alia should include their concern about adequacy of the action taken against the concerned officials. Further it required that the proceedings for confiscation of trucks and other vehicles used for movement of illegal timber especially where such movement has taken place using fake/tampered/expired transit passes may also be reviewed. Such review shall also be done by the Chief Secretaries while taking half yearly review measures as per order dated 15.01.1998³⁰⁴. The railways were also asked to review the action taken and take corrective measures²⁶¹.

I. The State of Nagaland

1. Industrial Estates

Every State including Nagaland earmarked areas as industrial estate for the operation of the wood based industries. Thus when the State of Nagaland issued a notification dated 15.06.1998, without consulting the MoEF, the Court observed that it ran in the teeth of the directions issued by the Supreme Court. Thereafter the State Government issued a draft notification complying with the Supreme Court order indicating the location of the industrial estates and minor industrial estate and the same was approved was MoEF. The said notification regarding the industrial estates in Nagaland was allowed³¹¹ and the SC directed the State to publish this notification and act strictly as per this notification in future.

2. No new saw mills in Nagaland for another period of five years:

²⁶⁰ 300 See order dated 12.05.2001,301 See order dated 12.05.2001

302 See order dated 12.05.2001,303 I.A. No. 685, order dated 18.02.2002 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

²⁶¹ 304 Especially para 28 of the order dated 15.01.1998 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

As per the first Monitoring Report of the CEC, one of the three suggestions put forward and accepted by the Union of India and consequently directed by the Court was that the ban imposed with regard to the opening of the new saw mills and other wood based industries by the Court's order dated 15.01.1998 in the State of Nagaland would be extended by a further period of five years i.e. from 30.10.2002 to 29.10.2007. This order needs a fresh look due to the fact that it expired technically on 29.10.2007²⁶².

II. The State of Meghalaya

The State of Meghalaya was directed to file an affidavit containing detailed particulars of wood requirement of the tribal population, wood based industries and minerals being mined from the forest³¹⁶. This was in response to the State of Meghalaya' asserting that a significant quantity of timber is required for use in the State itself by the rural tribal population. The State had also asserted that there is a loss of revenue to the State Government on account of restrictions placed by the order of 12.12.1996 and a large number of people of the State have been deprived of the employment. It is in this light that the State Government was asked to furnish full and complete particulars of:

- a.** The quantity of timber which comes from its forest for use by the rural tribal population, the extent to which it is made available to the rural tribal population including the terms on which it is so made available.
- b.** The revenue derived by the State by way of royalty from the minerals, mines and forest area, purchase tax on export of timber, sale value of timber drawn from the Government forests and the extent and quantity of such sale and the manner of sales;
- c.** The number of wood based industries within the State and the number of persons employed in such industry. The Court has almost uniformly applied the above set of parameters to all the States and Meghalaya is no exception.

1. Permission for natural forests and artificial forests on private holdings sought: State of Meghalaya wanted that the natural forests including artificially generated pine plantations on private holdings in Meghalaya may be allowed to be harvested in accordance with the time honoured customary and traditional rights subject to the rules and regulations framed by the concerned autonomous district councils under the provisions of their management and Indian Forest Act, thus read with the provisions of the Meghalaya Forest (Removal of

²⁶² 311 Reference I.A. No. 397,312 See order dated 16.04.1999,313 See order dated 30.10.2002 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

Timber) Regulation Act, 1981 and preserved norms as per duly approved working schemes. MoEF will give its response to this request at the next date of hearing.

2. Mining by a huge corporate without forest clearance: The applicant has a lime stone quarry in the State of Meghalaya. It is covering an extent of 100 ha. and is on the border of India and Bangladesh. AC has brought to the notice of the Court that the lime stone quarry is in the forest area and the mining operation has been commenced without obtaining prior permission of the Court. It has been submitted that the mining area is not in a forest and the mining operation itself is as a result of agreement between India and Bangladesh. A report has been called for in this matter²⁶³.

III. The State of Arunachal Pradesh

The 12.12.1996 order of the Supreme Court also came down heavily on Arunachal Pradesh.

1. Ban on felling of evergreen forests in Tirap and Changlang:

Firstly, there was a complete ban on felling of any kind of trees in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh on the pretext of maintaining ecological balance and that such forests are needed to preserve biodiversity. Apart from the site specific order there were several other implications of the above order.

2. Saw mills, veneer and plywood mills closed:

Interstate coordination directed All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of one hundred kilometer from its border, in Assam, was asked to be closed immediately. The State of Assam was also directed for interstate coordination.

3. Permit system in Arunachal Pradesh abolished:

In States like Arunachal Pradesh where permit system was prevalent felling is permitted only as per the terms and conditions of the permit. However, the permit system in Arunachal Pradesh was abolished. It was ordered that the State Government may provide financial assistance in cash or kind in the form of timber only for the bonafide use of the local tribals alone. Such concessional timber shall not be bartered or sold. Felling of trees for such purpose shall be carried out only by a Government agency.

²⁶³ 316 See order dated 04.03.1997,317 See orders dated 28.09.2007 in I.A. No. 1868 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishal Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

4. Utilization and disposal of illegally felled timber:

a) Ownership of illegally felled timber to be of the State Government The Court observed that the ownership of all illegally felled timber within the forest area including that in the depots is of the State of Arunachal Pradesh and, therefore, the proceeds thereof must go to the State.

b) Supervision of auction of all illegally felled timber by High Powered Committee- In order to fetch a proper price for the same, it is necessary to make suitable directions for the disposal/ utilisation of all such timber in a manner so that the proceeds thereof are available to the State Government.

Therefore, it was directed that all the illegally felled timber within the forest area including the depots would be sold by public auction at Delhi under the supervision of the HPC after permitting inspection of the same at the site to the intending bidders. The modalities for the performance of this exercise would be laid down by the HPC and the entire exercise of permitting inspection of the timber and its auction after due advertising, would be under the supervision of the HPC²⁶⁴. It was also directed that the State of Arunachal Pradesh and Union of India would render full assistance to the HPC in the performance of this exercise including the facilities for the removal of the purchased timber by the buyers thereof. The Court also observed that the prohibition on movement of timber outside of NE States shall not apply to the movement of such auctioned timber. The prohibition against movement of timber outside the North East region, enforced by the earlier orders, would thus stand modified to this extent.

c) Sale proceeds to go to the State Government: The total sale proceeds of the said timber would go to the State of Arunachal Pradesh which will utilize one half of that amount for raising plantation by local tribal population within the State so that this part of the amount would be utilized only for the purpose of forestry and assistance to the local tribal population. The remaining one half of the total sale proceeds, after deduction of the expenses there from, would go to the State coffers for other developmental activities in the State.

5. Court strategies:

²⁶⁴ 318 See order dated 12.12.1996,319 See order dated 13.01.1998 320 See order dated 16.12.1997 related to I.A. No. 260/97, as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro -Legal Defence Firm, [ELDF and WWF India 2009]

The Arunachal Pradesh Forest Protection Authority was created by the Central Government under EPA, and the Supreme Court seized the opportunity to transfers all related matters to this authority which has to decide them as per the mandate of the SC orders. The Court also ordered that it shall also be open to any party, whose application is not pending before it and who wishes to seek some directions in the matter, to approach the authority directly. It further laid out the procedure by directing that the Authority shall consider the applications, both, referred by this Court and filed directly before it, and give appropriate directions, subject, however, to the condition that no direction, which is inconsistent with any of the orders or directions made by this Court. Should the authority, however, find it necessary to seek any modification or variation of any of the orders or directions issued by the Supreme Court, so as to be able to give effective relief to the concerned parties, the Authority shall be at liberty to approach it for such modification/variation. A time line was also mandated and the Court observed that “we expect that the Authority shall dispose of the applications concerning Arunachal Pradesh within a period of eight weeks from the date of applications are received by it from this Court and also within the same time from of eight weeks, from the date when an application is filed directly before the Authority by any of the parties”. A mechanism for reporting was also set up and the Authority was required to submit a report regarding disposal of the applications, together with the orders made thereon to this Court every three months. A three months review suggested that the Arunachal Pradesh Forest Protection Authority was doing well and the SC directed that the Central Government should explore the possibility of replicating this example in other States as well.

6. Permission to army for construction of road through an alternative route:

The Army wanted to construct a road in the forest area. As per existing process the proposal was examined by the CEC and CEC was of the view that initially the proposal was not feasible as it would cause more damage to the forest and ecological balance. Then MoEF suggested an alternative proposal and it was accepted by the Army. SC accepted the proposal and the permission were granted to Army for construction of this road²⁶⁵.

A CRITICAL APPRAISAL OF GODAVARMAN CASE

²⁶⁵ 321 Environment Protection Act 1986, section 3; The notification has been issued on 17.09.1998 detailing the powers and jurisdiction of the Authority 322 See order dated 17.09.1998 323 SC order dated 10.12.1998 324 See order dated 11.01.2008 in I.A. No. 1354 in 1154 as cited in Sanjay Upadhyay, Shilpa Chohan and Archana Vaidya, INDIA'S FORESTS AND THE JUDICIARY: THE GODAVARMAN STORY, Sejal Worah, Vishaish Uppal and Priya Gupta [Edited], WWF-India, Enviro - Legal Defence Firm, [ELDF and WWF India 2009]

The Supreme Court expanded the Godavarman case from a matter of ceasing illegal operations in one forest into a reformation of the country's forest policy. In its order on the Godavarman case, the court suspended tree felling across the entire country, paralyzing the wood-based industries. This had far-reaching implications. The court has heard around 800 Interlocutory Applications since 1996. The court has assumed the role of policy maker, administrator of policy, and interpreter of law²⁶⁶. This is an unprecedented assumption of power by the Supreme Court. The Godavarman case opened a Pandora's Box that affected the wood-based industries and the forest dwellers across India in a far-reaching manner. The order of the Supreme Court that stopped all non-forestry activities such as saw mills and mining operations which had not been expressly approved by the Central Government and suspended all tree felling in all forests except those under State Governments' Plans effectively froze India's timber industries and trade. In 1998, all license of wood-based industries were suspended and the saw mills were relocated in industrial estates for better monitoring²⁶⁷. The Supreme Court assumed the role of executor and administrator of law concerning the management of already felled timber in a manner laid down by the court itself²⁶⁸. To maintain its control over the case, the Supreme Court excluded the jurisdiction of lower courts in matters concerning ceased illegal timber and chose to micromanage the proceeding²⁶⁹.

After suspending all activities like tree felling, illegal saw mill operations and disposal of already felled trees, the Supreme Court ordered investigations into various complaints of illegal mining operations²⁷⁰. The court found blatant irregularities in the mining operations and demanded a response from the State Government. In doing so, the Supreme Court assumed the role of policing and constituted its own committee to investigate and report on illegal mining so that proper action could be taken.

With the Godavarman case, the court made itself a director and an overseer of forest issues, involving itself in national and local forest protection, timber pricing, timber transport, licensing of timber industries, management of forest revenue, and enforcement of its own orders concerning forest law, all independent of the Central and the State Governments. The

²⁶⁶ Armin Rozen Cranz, Edward Boenig, and Brinda Dutta, *The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests*, 37 ELR 10032, <http://www.eli.org>

²⁶⁷ T.N. Godavarman Thirumulpad v. Union of India AIR 1998 SC 769

²⁶⁸ T.N. Godavarman Thirumulpad v. Union of India (1997) 7 SCC 440

²⁶⁹ T.N. Godavarman Thirumulpad v. Union of India (2001) 10 SCC 645

²⁷⁰ T.N. Godavarman Thirumulpad v. Union of India (IA- NOS. 71, 79, 104, 105, 107, 113, 121, 166, 260, 261, 262 in Writ Petition(c) No. 202 of 1995) with Environment Awareness Forum v. State of Jammu & Kashmir (IA -No. 13 in Writ Petition (c) No. 171 of 1996), AIR 1999 SC 97 (1998)

Supreme Court's far reaching measures to control deforestation resulted in confusion among State and National Organizations, mismanagement of forestry issues and attempts at forest protection at the expense of human rights. The problem became un-manageable with eventual involvement of State Governments, the MoEF and the CEC which the Supreme Court created into 2002²⁷¹.

As the problem of managing the complexity of its own orders grew, the Supreme Court increasingly micromanaged problems that would normally have been dealt with by Government Agencies. In November 24,2001 the Supreme Court asked the MoEF to put together guidelines for compensatory aforestation so that States could grant diversion of forest land while simultaneously ensuring a stable percentage of forest cover in the country. The court asked that these guidelines be provided by February 18, 2002 but on that date no such guidelines were submitted and in the absence of such guidelines the MoEF could adequately implement any policy allowing diversions of forests for commercial use while increasing forest land in other areas²⁷².

To compensate for the failure of MoEF to cooperate the Supreme Court began making its own guidelines for management of aforestation in October 2002. It require the States pay the Net Present Value (NPV) of the forest land that they divert for public sector projects, mining companies and private companies. This NPV could be Rs.5.8 lakhs and Rs. 9.2 lakhs depending on the density and the quality of the forest land diverted²⁷³.

The Supreme Court also curbed the diversion of funds to non-aforestation activities by ordering the creation of a Central Fund for all money collected by NPV payments. The North Eastern states and a few other States were not spending all the funds collected for aforestation and diverted some funds for other purposes²⁷⁴. In accordance with the Supreme Court order the MoEF constituted the Compensatory Aforestation Management and Planning Agency (CAMPA) to manage the collected funds CAMPA can redistribute funds directly to organizations engaging in aforestation effectively bypassing the State Governments²⁷⁵. The member Secretary of the CEC which recommended Central Fund to the Supreme Court suggested that the CAMPA could be handling up to Rs.2000 crores per year.

²⁷¹ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

²⁷² Ibid

²⁷³ Ibid

²⁷⁴ Prabhjot Singh, SC Orders Body on Aforestation Fund, The Tribune (Chandigarh, India), November 24, 2002

²⁷⁵ Ibid

In 2005, the Supreme Court issued another order concerning NVP, detailing the legal motivation and justification for NPV, the specific means by which the value of forest can be calculated and management of the collected funds. The legislature has responsibility for implementing the equivalent of a tax on foreign land use and for managing that policy, but through the Godavarman case, the Supreme Court assumed a legislative role and has not only created fees for the wood based industries using NVP but has also defined the details of monitoring management. In addition to interpreting the law, Supreme Court has actually designed it and has enquired the other government organizations, which have had no role in developing the law, to implement it²⁷⁶.

Effect of the Judgment on North Eastern States: The North East States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura contain one fourth of India's forest and account for one half of the domestic timber trade²⁷⁷. A total of 31700 hectares of forest on which many of the States poor forest dwellers depended were being cut down every year by the timber industries. When the Supreme Court implemented ban on tree felling, it dealt a powerful economic blow on these States. More than 90% of the product ion units closed and India's import of timber rose from 10% to 90%. In Arunachal Pradesh the States revenue dropped drastically from Rs.49 crores in 1995-1996 to Rs.7.9 crores in 2000-2001 showing a drop of about 84%, in Manipur the revenue earned from forest products dropped from Rs. 2.9 crores in 1996-1997 to Rs. 0.6 crores in 1999-2000²⁷⁸, in Meghalaya more than 200 thousand people (11% of States population) are directly or indirectly affected. More than the economic loss it is the loss of employment and consequent poverty that is alarming²⁷⁹.

The Supreme Court did not consider the potential economic loss to the States while passing its order in 1996²⁸⁰. In fact the Supreme Court did not even provide any projection on the expected increase of the forest cover as a result of the orders passed by it. This lack of foresightedness has caused economic setback in North Eastern States. This stand taken by the Supreme Court was challenged in *Sabia Khan v. State of Uttar Pradesh*²⁸¹. Since the orders

²⁷⁶ Armin Rozencranz, Edward Boenig, and Brinda Dutta, *The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests*, 37 ELR 10032, <http://www.eli.org>

²⁷⁷ Down to earth, Logjam, March 15, 2002 online edition

²⁷⁸ Ibid

²⁷⁹ Down to earth, Logjam, March 15, 2002 , Available at <http://www.downtoearth.org.in/> content/logjam

²⁸⁰ Shyam Divan and Armin Rozencranz, *Environmental Law and Policy in India* 304 (2001), <http://elr.info/sites/default/files/articles/37.10032.pdf>

²⁸¹ (Writ Petition (c) No. D2117 of 1998), AIR 1999 SC 228 (1998)

passed by the Supreme Court cannot be questioned on their merit, this petition was held not maintainable even though it raised important issues.

Failure of Working Plans: In 1996 the Supreme Court permitted commencement of tree felling on condition that the States develop a working plan to be approved by the Central Government presumably by the MoEF. The States were extremely slow in preparing the working plan and implementing them. Between 1997 and 2002 only 14% of the working plans were completed and in 2001 the States of Manipur and Mizoram had not yet developed any working plan. Instead of surveying all of the forest including the private forest, the Government of Meghalaya asked the MoEF to recognize its forests “plantation forest” in order to exclude them from working plan requirements. Rather than using the system to benefit its constituency the Government of Meghalaya complained about the system and try to exempt itself from a policy framework which would benefit the State. The Supreme Court provision for monitoring timber operations through working plans proved in effective but instead of changing its orders to adapt to the political and economic climate of the nation that deters development and execution of the working plans, the court find the MoEF Rs.5000 for not devising a comprehensive and effective working plan²⁸². The State Governments did not comply with the orders of the Supreme Court and the Supreme Court while passing the orders did not solicit the opinion of the States; this reveals a gross failure of cooperation. The Supreme Court had required representation of all the States within the Union of India to participate in the process by issuing notices to the respective Chief Secretaries but no response was received, thereafter the court directed the Chief Secretaries of the seven North Eastern States to personally appear before it . Without direct representation in the Supreme Court’s decision making process the State Governments had little motivation to change the local policies that reflect the local political situation. The disincentive is especially potent when enforcement of the courts orders would be detrimental to official’s political carrier in future elections. The Supreme Court failed to account for the States interest and the competing interest at the local level²⁸³ . The result of the Supreme Courts lack of consideration has been an increase in corruption and has undermined the courts effort at extending the forest canopy of the nation. In Assam 60% of the timber in the city is illegal. There are reports of large illegal timber transport operations among the districts and the forest

²⁸² Down to earth, Logjam, March 15, 2002 , Available at <http://www.downtoearth.org.in/content/logjam>

²⁸³ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarm Case: The Indian Supreme Court’s Breach of Constitutional Boundaries in Managing India’s Forests, 37 ELR 10032, <http://www.eli.org>

officials and the police personal are suspected of being involved in these operations²⁸⁴. Officials turn a blind eye to illegal timber operations or even grant approval without authorization to gain favor in upcoming elections. Government officials or wealthy land owner's who operate or are involved in logging operations attempt to earn illegal profit rather than preserves the limited resource for long term gains. The economic incentive for preserving forest disappeared with the ban imposed on felling²⁸⁵.

The States could have partially counteracted the decline in revenue by instituting working plan. The States failure to do so left many to peruse illegal forest activities and cultivation that degraded the forest further. In some places the situation did not improve because felling was reduced, though in some places improvement was noticed. Since people no longer have control of the forests they were logging, they have less or no incentive to protect those forests with sustainable practices. State and local agencies also lack funding, the personnel and the expertise necessary to enforce Supreme Court's order and develop viable working plans compatible with environmental concerns. By not having the representation of State and local bodies, by not addressing the local ground realities, by oversight of the State level needs and inefficiency, the Supreme Court created policies that are extremely difficult to implement successfully²⁸⁶.

Impact on MoEF: The Supreme Court's creation of national and local level policies interfere with the work of MoEF which has the primary responsibility of managing India's forest and wild life. During Godavarman case the MoEF had to work closely with the Supreme Court and enforce its regulations. By imposing policies in the MoEF and expecting it to execute them the MoEF found itself in a position where its organizational structure was not suited for it. As a consequence the MoEF has become less scientific and more bureaucratic. Insufficient funding has made the management of India's forest more difficult²⁸⁷. Moreover, the MoEF has to also consider the relationship between the environment and people who are dependent on the forest land for their sustenance. The Supreme Court's have forced the MoEF to enforce policies without enough resources and

²⁸⁴ Northeast Vigil, 40000 Hectares Added to State Forest Cover, Issue No. 5.22, June 16, 2004

²⁸⁵ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.elri.org>

²⁸⁶ Ibid

²⁸⁷ Especially given the countries size of 3, 287, 590 Km²

research. The issue of encroachment on forest land by people whose lively depends on forest is the perverse impact of the Supreme Court's decision²⁸⁸.

In 1999 three Non Governmental Organizations (NGOs) filed an Interlocutory Application on behalf of Onge Tribe²⁸⁹ living in little Andaman Island in Bay of Bengal²⁹⁰. The encroachments on forest lands were destroying the environment on which the Onge tribe dependent. The Calcutta High Court in its order²⁹¹ prohibited the felling of naturally grown trees on the Island²⁹². On November 23rd 2001 Harish Salve submitted an amicus intervention petition to Supreme Court in the Andaman's application²⁹³. Salve cited forest encroachments as one of the biggest threats to deforestation. He pointed out various cases of forest degradation as a result of encroachments and accused states of allowing encroachment despite the Supreme Court's order²⁹⁴. Salve suggested that the court require all States to remove encroachers who had not regularized their encroachments before 1980 deadline for doing so²⁹⁵. The Supreme Court asked the States to respond to Salve's assessment²⁹⁶. The States responded and the Supreme Court replied that it would review the States' reports and issue a response in six weeks²⁹⁷. Motivated by the Supreme Court's attention to the matter, the MoEF issued directives to all States requiring that they summarily evict all illegal encroachers on forest land and regularize only eligible encroachments before 1980²⁹⁸. This meant that if a group had legitimately used certain forests lands before 1980, then they could still be allowed to use those lands now. If any group did not meet this criterion then the State would evict them as illegal encroachers. This task had to be completed by 30 September 2002²⁹⁹. This directive of the MoEF adversely affected many tribal communities in India.

²⁸⁸ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.elr.org>

²⁸⁹ Interlocutory Application No. 502

²⁹⁰ Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>

²⁹¹ October 2001.

²⁹² Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>

²⁹³ Ibid

²⁹⁴ December 12, 1996, Ibid

²⁹⁵ Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>

²⁹⁶ Armin Rosencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, elr.info/sites/default/files/articles/37.10032.pdf

²⁹⁷ Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>

²⁹⁸ Circular dated 3rd May 2002; Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>, see also Samudra, Traditional Fisheries: Jammed in Jambudwip (2003), available at <http://www.icsf.net/jsp/publication/samudra/pdf/english/issue34/art10.pdf>

²⁹⁹ Down to Earth, Deep in the Woods, January 15, 2003, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/.../11683.pdf>

Like Supreme Court the MoEF also failed to take into account the inefficiencies and inadequacies of the forest departments in the States. Consequent upon the MoEF's directive the State of Assam used elephants to destroy huts and homes in the encroached forest area³⁰⁰. The inhabitants of the encroached land were not provided any time for evacuation. They were not given an opportunity of fair hearing. In Maharashtra eviction notices were issued to families which had standing crops³⁰¹. The government destroyed homes and left hundreds homeless³⁰².

Many tribal people are illiterate and / or do not have documentation for their land, as a result many tribal families who had been living on forest land even prior to 1980 were evicted since they could not produce any proof of their occupation. Some protested that they were being evicted from land that was never a forest land. Inaccurate and intentionally altered service and maps led the forest departments to evict people who were not encroachers at all. It may be noted that the Supreme Court had already expressed its concern over the problem of inaccurate forest service. It had required the states to form a committee to survey forest lands and determine which the actual forest areas are³⁰³ and a committee to survey forest land had been constituted. This committee would also calculate the sustainability of different forest in order to ascertain how much use the forest could with stand without becoming degraded³⁰⁴. Had this information been available, the MoEF, the State Forest Departments could have regulated the forest resource effectively. It would have been better if the States had done proper assessment, categorized claims and submitted them to a committee comprising of a DFO and a SDO (revenue) and a representative from Tribal Department. The MoEF neglect to do so caused wide spread oppression and injustice against the tribal people³⁰⁵.

The 1988 Forest Policy states that having regard to the symbiotic relationship between the tribal people and the forests a primary task for all agencies responsible for forest management should be to closely associate the tribal people in the protection, regeneration and development of forest so as to provide gainful employment to people living in and around

³⁰⁰ Down to earth, Logjam, March 15, 2002, Available at <http://www.downtoearth.org.in/content/logjam>

³⁰¹ Ibid

³⁰² Ibid

³⁰³ Order dated 12/12/1996; Forest (Conservation) Act, 1980, Section 2(ii)

³⁰⁴ Ibid

³⁰⁵ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

forest³⁰⁶. In addition to promoting a cooperative existence between people and forest the government is responsible for using the tribal people to protect the forest that they use and for ensuring that tribal people find employment. In many Public Private Partnership (PPP) Programmes and Joint Forest Management (JFM) programmes the tribal people have successfully contributed in patrolling the forest for prevention of illegal and non-forestry operations. In exchange for their service they receive permission to use the forest for their subsistence. They are instructed on the modalities of sustainable use of the forest resources, they get employment and in effect they contribute towards sustainable management of the forest but the consequence of Godavarman case is that these contributions made by the tribal's were completely overlooked³⁰⁷.

In the judgment of Samatha v State of Andhra Pradesh³⁰⁸, a five judge bench of the Supreme Court recognized that for tribal's forests are their traditional source of sustenance. They have a historical right to minor forest produce and to communal residence on forest land. The Godavarman case failed to address this aspect of tribal life. The restriction placed on forest use and access had a debilitating effect on the tribal community of the North Eastern States as it is there is a continuing immigration from Bangladesh which is causing demographic and social shift in this region and the displacement caused by the Godavarman judgment resulted in creating more pressure on the already scares resources, jobs and land³⁰⁹. Since the tribal's have no training or skills other than forest industries it is unfair and inequitable to expect the tribal to be able to engage himself/herself to any other vocation or calling. The State Governments did not represent this matter effectively before the Supreme Court and the Supreme Court did not pay much pay attention to the issue³¹⁰. This led to 50 civilian deaths by October 2004³¹¹. The causal link between terrorism and the tribal people can be traced to steady deterioration of the way of life of the tribal's which was compounded by the orders of the Godavarman case³¹².

³⁰⁶ National Forest Policy, 1988

³⁰⁷ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

³⁰⁸ (1977) 8 SCC 191

³⁰⁹ Malobika Das Gupta, "Land Alienation Among Tripura Tribal's" XXVI Econ & Pol. Wkly, p-2112 (1991)

³¹⁰ T.N. Godavarman Thirumulpad v. Union of India, Writ Petition (C) No. 202 of 1995 under Article 32 of the Constitution of India

³¹¹ Arijit Mazumdar, Back to Roots of Violence, Retrieved from <http://www.northeastvigil.com/>.

³¹² Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

After receiving complains that the tribal's are being treated unjustly, the MoEF issued a circular³¹³ modifying its earlier stand on dealing with encroachment and taking a just, fair and equitable step forward³¹⁴. This circular distinguishes between disputed claims and proposals for the regularization of encroachments. Hearing on the regularization of encroachments had only considered the 1980 deadlines and were decided summarily whether the encroachment was an eviction or not. The Governments of the North East also try to create schemes of Participatory Resource Management involving tribal people. A number of States began active JFM³¹⁵. These resolutions had two fold objectives in view, firstly involving the tribal population on money generating basis and secondly to regenerate the degraded and unclassified forest. However these schemes were not very successful because of the frequent interventions by the Supreme Court. In 2005 the eviction of the tribal's has been stopped and the Schedule Tribes (Recognition of Forest Rights) Act, 2005 was passed. The bill recognizes the vest forest rights and occupation of forest land by forest dwelling Schedule Tribes whose rights were not recorded prior to 1980³¹⁶.

Role of Committees and Authorities Constituted by the Supreme Court: The Supreme Court constituted the Central Empowered Committee (CEC) to enable any individual having any grievance against the steps taken by the Government or any other authority purportedly in compliance with Supreme Court orders may approach the CEC for seeking appropriate relief³¹⁷. The CEC also filled the gap created due to the MoEFs failure to create a mechanism for addressing grievances and it's premature and insufficiently plans actions. Now the action taken by the State Government may be challenged before the CEC³¹⁸. Because the CEC is not an 'authority' it can pass orders only in confirmation of orders passed by the Supreme Court outside that the CEC can only make recommendations. After it's constitution the CEC reported that an estimated area of at least 725861 hectares had been encroached³¹⁹. Calculating the monitory cost of environmental damage to the area for over 50 years the CEC arrived at a figure of Rs.4,59,978 Crores approximately³²⁰. The CEC compiled a list of reasons provided by the State Government officials as reasons for not evicting encroachers as

³¹³ February 5, 2004.

³¹⁴ MoEF Circular No. 2-1/ 2003-FC (Pt), Feb 5, 2004.

³¹⁵ Government of Nagaland JFM Resolution, March 1997, Government of Tripura JFM Resolution, December 1991, Government of Mizoram JFM Resolution, September 1998, Government of Arunachal Pradesh JFM Resolution, October 1997. The Tripura resolution was taken before the institution of Godavarman case.

³¹⁶ See generally also Meena Menon, Campaign for Forest Rights to Tribal's, The Hindu, 24 August 2005

³¹⁷ CEC notification no. 1-1/CEC/2002, dated June 20, 2002

³¹⁸ Ibid

³¹⁹ 2002 recommendations of the CEC in IA no. 703 of 2001 in IA no. 502 of 2000 in WP (c) 202 of 1995

³²⁰ Ibid.

per MoEF order and identify that the most common reason for non-eviction was lack of political will. It not only tolerated encroachment but actually encouraged it in order to gain support before elections or to generate profit by allowing illegal commercial use of forest land. Here too, the CEC like the MoEF and the Supreme Court failed to address the smaller ground level issues³²¹. Where the claim for the land was not supported by any documentary evidence the CEC could embark upon its own enquiry into the matter³²². The 1996 Supreme Court order accepted an interim report that explained the necessity of a thorough investigation, including a study of current forest practices, testimonies of inhabitants, and related documents filed by the local government³²³. By not providing guidelines for investigation of disputes and settlements, the CEC did not allow tribal groups the opportunity to legally remain on their homeland. The Supreme Court passed off responsibility for grievances and for all the problems that arise from its orders to the CEC, and once again failed to respect the responsibilities of the MoEF. It created a committee to perform functions that would normally be performed by the MoEF. The MoEF has not adequately dealt with the problem. By attempting to deal with the problem on its own, and by creating new organizations to effectively replace the MoEF's functions, the Supreme Court has complicated the system of managing India's forests while failing to effectively address local people's relationships to the forests³²⁴.

Overreaching the Boundaries of Judicial Activism: The *Godavarman* case marks hitherto unseen assumption of powers by the Supreme Court. It has profound implications for the further rise of judicial activism in India. This case marks a culmination of a process by which the Court has gradually usurped the role of every arm of the government³²⁵. In the *Godavarman* case, the Court impinged upon the power of the legislature by banning the transport and felling of timber and by creating the CEC. It assumed the role of the executive in administering its own interpretation of the law in addition to its specific orders. Rather than directing, guiding, and motivating the existing national and state bureaucracies to realign their infrastructures and goals toward more stringent and effective forest management, the Supreme Court bypassed their authority and attempted to selectively micromanage the entire country's forests. The Court, rather than the legislature, became responsible for creating

³²¹ Ibid

³²² Videh Upadhayay, Understanding "Encroachment", India Together, June 2003 (citing WP no. 1778/1986, Supreme Court of India) , elr.info/sites/default/files/articles/37.10032.pdf

³²³Ibid

³²⁴ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.elri.org>

³²⁵ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 S.C.C. 441, 688; the Constitutional Obligation of the Judiciary Hon'ble Mr. J.S. Verma, Chief Justice of India, (1997) 7 S.C.C. (Jour) 1.

environmental regulations, and the Court, rather than the executive branch of the government, assumed responsibility for enforcing its own interpretations and regulations³²⁶. Consequently, when national, state, or local organizations do act, it is often in competition with the Court's orders, as seen in the MoEF's premature order against encroachments. By assuming the powers of other government actors through judicial activism, the Supreme Court has restricted the growth of a responsible and independent bureaucracy³²⁷. The Court has also extended its assumption of powers beyond a reasonable time frame. Under the Constitution, the writ of mandamus is restricted to compelling action with reference to previously existing and clearly defined duties³²⁸. The Court has also extended its assumption of powers beyond a reasonable time frame. Under the Constitution, the writ of mandamus is restricted to compelling action with reference to previously existing and clearly defined duties. Mandamus is not a creative writ under the cloak of which the court can usurp the role of lawmaking and policy formulation. In the *Godavarman* case the Court micro-managed the implementation of its orders by keeping the case open. This practice of "continuing mandamus" is not envisaged by the Constitution³²⁹.

Lack of Viable Alternatives: Part of the problem of the Supreme Court's intervention in forest policy management is the fact that the judicial system is currently unable to handle even ordinary litigation; it faces a huge backlog of undecided cases and now has to contend with a large array of public interest litigation (PIL). The writ jurisdiction of the higher judiciary has been used to entertain PIL. The principle of *locus standi* is abandoned in the name of social justice and lifting up the downtrodden sections of society. Ordinary writs, PIL, and appellate matters have ensured that the higher courts find it difficult to control the flood of litigation. The problem is compounded by the continuing vacancy in posts of judges, especially in the High Courts³³⁰. This increases the pressure on the Supreme Court to deliver justice expeditiously in multiple cases. Furthermore, spending on the judiciary by the government is abysmally low³³¹. Judges do not have the human or financial resources to ensure compliance with their orders. The MoEF could and should bear the responsibility for doing what the Supreme Court is doing, but it too does not have the monetary resources to

³²⁶ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

³²⁷ Divan, as cited in Armin Rosencranz & Michael Jackson, The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power, 28 Colum. J. Envtl. L. 121 (2003).

³²⁸ Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 S.C.C. 622.

³²⁹ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

³³⁰ N.L. Rajah, India's Courts: The Long Wait for Justice, **The Hindu Friday**, Sept. 30, 2005.

³³¹ 127th Report of the Law Commission of India (1988).

monitor the country's forests, to research forest problems, or to develop new methods of dealing with forest issues that would protect the environment while providing local people with sustainable livelihoods. The MoEF also lacks sufficient professional and trained personnel necessary for dealing with local circumstances and creating policies that will have ecological and economic benefits. The legislature has proven itself inadequate in managing forest issues because it reacts primarily to crises or interest groups. Deforestation is difficult to recognize as a crisis, and interest groups are not powerful enough to effect new national forest policy. The MoEF and the legislature seem content to defer to the Supreme Court's forest management rather than building their own capacity, professionalism, and frameworks for dealing with forest issues. This deference absolves them of responsibility. Environmental and natural resource protection NGOs seem to prefer judicial direction of forest policy to management by corrupt and incompetent bureaucrats³³².

Impact of the Judgment: The Supreme Court was attempting to address the very important problem of forest management, or mismanagement, in India in Godavarman case. The Supreme Court used the case as justification for implementing and administering national forest policy to a degree far beyond the original scope of the case. The Supreme Court recognized the importance of forest preservation and observed the increasing destruction and degradation of forest land. The Supreme Court noticed that those national and state organizations responsible for forest management were failing in their duties. In light of national and state governments' inaction, the Supreme Court's unusual assumption of powers seems justified, especially given India's alarming statistics on forest cover. The Forest Survey of India (FSI) last reported India's forest cover as 20.64% of the country's geographic area³³³. With the goal of increasing the national forest cover to 33% by 2012, India still seems under forested³³⁴. Moreover, the methodology behind this statistic suggests that the figure of 20.64% is meretricious. The measurement of forest area breaks down as follows:

- a. Very dense forest (more than 70% forest cover) geographic area.
- b. Moderately dense forest 10.32% of the (40-70% forest cover) geographic area.
- c. Open forest 8.76% of the (10-40% forest cover) geographic area.

³³² Armin Rozencranz, Edward Boenig, and Brinda Dutta, *The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests*, 37 ELR 10032, <http://www.eli.org>

³³³ State of Forest Report, 2003, Forest Survey of India, Ministry of Environment and Forests, Dehradun, June 2005. Until 2001, when the scale for mapping from satellite data was 1:50,000, the scale for satellite mapping was 1:250,000. So while recorded data since 1987 (when the forest cover was recorded 19.49%) suggests that forest cover has increased by 1% to the current 20.64%, the increasing accuracy of measuring forest cover suggests the possibility that no significant change has occurred. J.K. Rawat, et al., *Application of Satellite-Based Remote Sensing for Monitoring and Mapping of India's Forest and Tree Cover*, available at <http://www.gisdevelopment.net/application/environment/ffm/ma04067pf.htm>.

³³⁴ National Forest Policy of India (1988).

d. Total forest cover: 20.64% (includes mangroves, 0.14% of the geographic area)³³⁵.

FSI reports that 8.76% of India's forest cover is open forest, but what is "open forest?" With a minimum area of 1 hectare (or 2.471 acres) for measurement, land with a canopy density of only 10% hardly seems to qualify as "forest." Furthermore, FSI does not distinguish between private and public land, i.e., it does not distinguish between forests and fruit orchards or tea and coffee plantations. The survey counts all perennial woody vegetation with a canopy density above 10%, regardless of its ownership or makeup. Open forest could be too thinly covered to be considered forest in measurement of India's ecological health. Because FSI's idea of open forest includes sparsely vegetated land in its total count and because it fails to distinguish among different types of vegetation and ownership, the real forest cover of India could be as low as 12%, a far greater distance from the national goal of 33%. Given the problems with the current statistics and the alarmingly low percentage of real forest cover, the Supreme Court's intervention in forest policy was, at least in this respect, justified. National and timely action was necessary to curb deforestation. In many ways, the Supreme Court's aggressive stance toward forest management has had some positive effects. India already had environmental laws to manage forests and encroachments, but sub-competence, insufficient staffing, and corruption prevented the executive branch and its underlying agencies like the MoEF from enforcing policies and adapting them to India's changing environmental needs. Hence, the Supreme Court's radical orders and its wide assumption of powers slowed and possibly reversed two ecologically dangerous trends: that of an ineffective government and that of decreasing forest cover. By so aggressively and controversially addressing forest issues, the Supreme Court has also raised awareness concerning India's forest cover. Although its hastiness caused many predictable and perhaps avoidable effects, these efforts have in many ways benefited India's environment and given advocacy groups a renewed opportunity to protect India's forests. The Supreme Court's actions have also addressed negligent forest management. India recognizes that the constitutional right to life depends on the right to a clean and healthy environment. To enforce the right to life, the government has the legal responsibility to effectively conserve forests and biodiversity. The governments past inaction and inadequate response to environmental issues can be viewed not as exercises of executive discretion, but as violations of law that would warrant the Supreme Court's intervention. From this perspective, the Supreme Court's policies have attempted to uphold the right to life when it was being

³³⁵ Supra note 96

seriously neglected. Although decisive action may have been necessary, the Supreme Court's orders made demands far beyond its control. The Supreme Court assumed too much power too quickly to effectively manage it. Its orders may have been logically sound, though incomplete, from a policy perspective, but from a practical perspective, they demanded too much from India's weak state and local governments. The Supreme Court did not exercise sufficient caution in extending its role to directly oversee forestry issues. Despite the Supreme Court's defense of the right to a clean and healthy environment as part of the right to life, the Court's aggressive policymaking violated people's right to life by severely disrupting the timber industry, i.e., people's right to a livelihood, and sparking violent action against tribal peoples and alleged forest encroachers. The Supreme Court could have limited its decisions to the scope of the original *Godavarman* case or even delegated responsibility for handling certain issues to government agencies. Slowing down its intervention in forest management or limiting its geographical scope might have prevented states from hastily and unjustly evicting tribals from their homelands in response to an order by the MoEF. So while the Supreme Court has in some ways improved India's approach to forest issues, its aggressive role in the process has disrupted the balance of powers among government organizations and caused severe economic and social turmoil. By assuming so much power, the Supreme Court has perpetuated an incompetent government bureaucracy that defers to the Supreme Court for policymaking.

The MoEF's recent efforts to correct its past mistakes concerning tribal encroachments suggest that the government is making the necessary adjustments to ease the economically and socially harmful effects of the Supreme Court's orders. But the process of building the bureaucratic infrastructure, which hung loosely behind the Supreme Court for so many years, will require more time. Even though the MoEF is improving its policy toward tribals, the *Godavarman* case has provided it with ample opportunity to expand its powers, and it has vigorously done so. Similarly, the CEC has immense influence with its authority to issue orders consistent with the Supreme Court. The CEC is comprised of the former Secretary of the MoEF as its chairman, the Additional Director General of Forests of the MoEF as its MoEF representative, and the Inspector General of Forests as its member secretary³³⁶. As the MoEF has representation in every national forest-related committee, it continues to grow in power as new committees are constituted to manage forest issues that states have been unable to handle. The centralization of forest management bypasses much state inefficiency. It also

³³⁶ Central Empowered Committee, notification No. 1-1/CEC/2002, June 20, 2002.

increases the distance between the administrators of forest policy and the tribal people who are affected by it and who are inextricably involved with forest protection. The Supreme Court's "continuing mandamus" in the case also leaves open the possibility for further judicial activism that might interfere with the progress of other agencies toward fair and productive forest and human rights policies³³⁷.

Possible Alternatives: To protect India's forests, particularly in the North East, the state governments need to prevent illegal tree felling and deforestation. This can be achieved not through more rigorous attempts at control, but rather by addressing the simple fact that people need work to earn a living. The states need to develop, gain approval for, and execute working plans to provide jobs for those people who now resort to illegal tree felling. For those people who are not satisfied with the available working plans and who do not participate in them, the government must impose strict regulation on their activities to prevent deforestation. People cannot be completely blamed for illegally felling trees when they need to do so to feed themselves and their families. Before states can effectively reduce illegal tree felling, they need to ensure that sufficient working plans are in place so that most, if not all, the people who have lost their jobs can be provided with new ones. At the same time, the MoEF, instead of the Supreme Court, needs to develop afforestation guidelines by which states can revive their timber industries at little or no expense to the forests. With the proper afforestation efforts, timber industries can improve the forests while using them as commercial resources. If states do not file working plans, then individual logging companies must be given permission from the central government for tree felling and afforestation. In the current system, states must develop a plan and get approval from the central government through the MoEF. The individual timber companies, in turn, must provide plans and get approval from the state government. But companies are limited by the states' inefficiencies. Instead of delegating responsibility to the states, the MoEF could setup the same approval program for companies on a national level and work directly with companies, completely bypassing the states. While this results in the centralization of powers, the facts of the situation indicate that direct central regulation of timber companies might be necessary and beneficial, at least temporarily. While micro-managing all the forests of all the states is too much responsibility for the central government, reviewing applications of companies seeking to bypass state inefficiencies through local MoEF branches would not be an impossible task. In terms of dealing with the relationship between tribals and forests, the Center-Left parties in

³³⁷ Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests, 37 ELR 10032, <http://www.eli.org>

India now insist on a bill that would grant rights to certain scheduled tribes but not to all local communities in the forests. Because of such political self-interest and favoritism, it is clear that another round of conflict will arise around the issue of encroachments.

Instead of entertaining this partisan legislation, the Supreme Court could, under the mandate of Article 48A of the Directive Principles of State Policy of the Indian Constitution, invoke the duty of the state to prepare comprehensive legislation, which would:

1. Amend the Forest Conservation Act, incorporating the beneficial points of the *Godavarman* judgments;
2. Institutionalize the CEC and CAMPA and formulate layered redress mechanisms which would involve the Supreme Court only at the appellate stage;
3. Involve industry-based federations in the process of economic evaluation and control of commercial felling of timber;
4. Formulate concrete principles for the participation of the local communities in forest management through the panchayat system (This is instead of adopting the path taken in cases of joint forest management, which tried to implement the principle of community participation in forestry management. This principle emanated from the older Forest Policy of 1988 and instead of being laid out clearly, was enforced through ad hoc orders.);
5. Clearly lay down the role of the executive branch of the government and distinguish the role of the MoEF from the role of state forest departments; and
6. Set up an ombudsman mechanism such that the Supreme Court can be relieved from its role of continual review.

Legislation along these lines would more evenly distribute responsibilities for managing India's forests among the various parts of the government. Instead of playing the role of the legislature and the MoEF, the Supreme Court would spend its time interpreting constitutional rights. It would motivate national organizations to clearly delegate responsibilities to organizations whose infrastructures and personnel exist to manage India's forests. With these changes, the Supreme Court would stay in the background to check that national and state organizations fulfill their duties. By not trying to replace government organizations, the Supreme Court would help build a stronger and more effective bureaucracy³³⁸.

When the Supreme Court received the *Godavarman* case in 1995, India's environmental policy was in dire need of reform. The Supreme Court's actions, although extreme, addressed

³³⁸ Ibid

an issue vital to the human and natural health of the country and gave heart to advocates of forest protection. However, in raising awareness of environmental issues and bringing them to the forefront of national and judicial concern, the Supreme Court began the disquieting practice of “continuing mandamus.” In hearing over 800 interlocutory applications since 1996, the Supreme Court has extended its involvement in forest issues and thereby increased the country’s dependence on the Supreme Court for forest management.

This dependence on a judicial institution that has already exceeded the boundaries of its responsibilities has been further complicated by the lack of monitoring of the Supreme Court’s orders and the vagueness of the legislative and executive roles regarding forest issues. With its micro-management of forest issues and the increasing number of Supreme Court-instituted organizations, the potential for conflict is hardly over. How long will the Supreme Court maintain an active continuing mandamus and monitoring the Court’s hundreds of decisions, interpretations, and policy judgments to ensure it does not roam dangerously far beyond the boundaries of its constitutional role is a task not yet entrusted to any institution. As the centralization of power to government organizations like the MoEF increases, the executive, legislature, and judiciary need to cooperatively managing India’s forests, or else the Supreme Court’s far-reaching assumption of powers will clash with the central government’s policies. Amidst the delegation, redistribution, and reorganization of responsibilities and powers, India’s forests and the tribal people will suffer irreversible harm. The Supreme Court’s aggressive forest management has incurred large economic and social costs. It remains to be seen whether the Court can successfully transfer control to the appropriate governmental organizations, whether it can effectively manage the organizations it has formed, and whether it will avoid further economic and social disruption while attempting to restore India’s forest cover³³⁹.

OTHER INITIATIVE BY THE JUDICIARY

Forest & Forest Produce:

The word ‘forest’ is derived from the Latin word “Foris” which means outside by natural extension. This has reference to boundary, fence, or limit of locality. Beyond this limits any collection of trees, shrubs, herbs, grass including wild life is termed as ‘forest’. As early as

³³⁹ Ibid. For writing this part of the chapter the researcher solely depended on the article Armin Rozencranz, Edward Boenig, and Brinda Dutta, The Godavarman Case: The Indian Supreme Court’s Breach of Constitutional Boundaries in Managing India’s Forests, 37 ELR 10032, <http://www.elr.org>. The research acknowledges his indebtedness to the authors of the article.

1953 in *Laxaman Iccaram v. District Forest Officer*³⁴⁰ the Nagpur bench defines forest as an extensive tract of land covered with trees and undergrowth intermingled with pasture. The importance of forest was discussed by the Supreme Court in *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*³⁴¹ stating that the trees in the forest draw water from the bowls of the earth and release the same into atmosphere by the process of transpiration and the same is received back by the way of rain as a result of condensation of clouds formed out of the atmospheric moisture. Forest thus helps the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance between earth, air, water, soil and plant. Forests hold up the mountains, cushion the rains, discipline the rivers and control the floods. They sustain the springs; they break the winds; they foster the bulks; they keep the air cool and clean forests also and prevent erosion.

This judgment of the court appears to be in tune with the Supreme Court's definition of forest in *Godavarman case*³⁴². It is to be noted that unlike popular belief that the Supreme Court acted innovatively while defining forest, in reality the Supreme Court drew upon its immense wisdom and wealth of experience and innumerable precedence to define 'forest'.

In *Indian wood-products Co. Ltd., v. State of Uttar Pradesh*³⁴³, the Supreme Court has stated that "forest produce" includes as follows:

- (a) The following whether found in, or brought from, a forest or not, that is to say, timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrobalans, and
- (b) The following when found, or brought from a forest, that is to say:-
 - i. Trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned, of trees.
 - ii. Plants not being trees including (grass creepers, reeds and moss) and all parts or produce of such plants.
 - iii. Wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals and
 - iv. Peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils and all products of mines or quarries)

³⁴⁰ AIR 1953 Nag 51

³⁴¹ AIR 1988 SC 2187

³⁴² T.N. Godavarman Thirumulpad v. Union of India, (1996) 9 S.C.R 982

³⁴³ AIR 1999 All 222

Even factory-made ‘Kattha’ or ‘Catechu’ is a forest produce within the meaning of Section 2(4) of the Indian Forest Act, 1927.

In *Woodman Industries Araria v. State of Bihar*³⁴⁴, it was held that veneer being a finished product on certain type of timber it must be called ‘fashioned timber’ within the meaning of Section 2 (6) and therefore, a ‘forest produce’ under Section 2(4) of the 1980 Act. Veneer is not a part of the tree in its natural form but it is the result of a mechanical process and human labour. It is a distinct commodity in commercial world. But it is not correct to say that it was the end product or final product. It is in fact a raw material for making plywood but this is not the true test. The true test is whether there it is a forest produce. In terms of Section 2(6) of the 1980 Act all wood whether fashioned or hollowed out for any purpose or not is timber and therefore, forest produce under Section 2(4). Merely because layers extracted by mechanical process or as a result of human labour it did not mean that it loses its identity as timber. Therefore transit permit was required for the movement within and outside the State of Bihar.

*M/s. Mahavir Timber Merchant v. Government of Andhra Pradesh & Another*³⁴⁵ it was held by the Supreme Court that timber is a forest produce even after it is cut or sawn in a sawmill-cut and sawn timber if found in a cart track or any other vehicle, it is a forest produce and transit rules are applicable to it.

In *Ashoke Kumar Anandani v. State of Uttar Pradesh*³⁴⁶, Court held that goods which are brought from forest and which cross forest during transportation would be covered under definition of “Forest Produce” under Section 2(4)(b)(iv). Thus transit fee was payable on stone ballast, khanda and boulder if they cross forest during transportation. As petitioner was using National Highway for transporting goods and there were several forest block on that highway, hence, levy and demand of transit fee would be perfectly within four corners of Transit Rules.

Under the 1927 Act an area can be declared as reserved forest. In *Ajit D. Padiwal v. Union of India and Others*³⁴⁷, it was held that the boundaries of the reserved forest are most important element and not the survey number or its extent. On the same line In *State of Uttar Pradesh and Others v. Deputy Director of Consolidation and others*³⁴⁸, it was held that once a notification under Section 20 of the Indian Forest Act, 1927 declaring a land as reserved

³⁴⁴ 2000 Cri. LJ 1075 (Pat)

³⁴⁵ AIR 2002 AP 58 FB

³⁴⁶ AIR 2006 All 246

³⁴⁷ AIR 1998 Guj 147

³⁴⁸ AIR 1996 SC 2432

forest is published then all rights in the said land claimed by a person comes to an end and are no longer available. The notification is binding on the consolidation authorities in the same manner as a decree of the civil court.

FOREST CONSERVATION

In *Anupama Minerals v. Union of India and Others*³⁴⁹, the court made it clear that conservation means preservation and protection of the existing forests and also re-afforestation.

The 42nd amendment to the constitution in 1976 transferred forest from State List to Concurrent List. Such transfer authorizes the Central Government to act directly in managing the India's forest. The year 1980 is the watershed in the history of forest management as the Forest (Conservation) Act, 1980 came into force and was subsequently amended in 1988.

In *K. V. Shanmugam v. State of Tamil Nadu*³⁵⁰, it has been held that if the State Government desires to grant lease for mining operation then prior approval of the Central Government is mandatory as because mining operation was a non-forest activity. In *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*³⁵¹, it has been held that the 1980 Act does not permit mining in forest area if there was provision of renewal lease agreement the provisions of the Act must be complied with. In *Golden Granites v. K. V. Shanmugam*³⁵², it was held that the 1980 Act imposes a blanket bar on any non-mining activities in the forest notwithstanding anything contained in any other law for the time being in force in the State. No State Government or any authority shall make accept with the prior approval of the Central Government any order directing de-reservation of any reserved forest or use of any forest or forest land for the purpose of non forest activities. Noncompliance of Section 2 of the 1980 Act shall result in cancelling the grant in favour of the grantee.

With respect to protection of forest in *Tripura v. Sudhir Ranjan Nath*³⁵³, the Supreme Court considered the 1980 Act as one to preserve, protect and promote forest wealth in the interest of the nation.

The *Supreme Court Monitoring Committee v Mussoorie Dehradun Development Authority and Others*³⁵⁴, the Supreme Court has held that a non forest activity could not be carried on in the forest area without the prior approval of Central Government. It further held that a non-

³⁴⁹ AIR 1986 AP 225

³⁵⁰ AIR 1997 Mad 338

³⁵¹ AIR 1988 SC 2187

³⁵² AIR 1988 Mad 150

³⁵³ AIR 1997 SC 1968

³⁵⁴ (1997) 11 SCC 605

forest activity destroys ecology. The forest land should be need for forest purposes only. In *Pradeep Krishna v Union of India*³⁵⁵, the court held that one of the reasons for shrinkage of the forest is the entry of villagers and tribal's living in and around the forest, sanctuaries, and National Parks. There can be no doubt that urgent steps must be taken to prevent any destruction or damage of the environment, the flora and fauna and wild-life in these areas. Besides felling trees certain other acts are also prohibited in the reserved forests such as hunting, shooting, fishing, trespass or pasture cattle's. The same line of thought has been emphasised in *Animal and Environment Legal Defence Fund v. Union of India*³⁵⁶, wherein the court held that "while every attempt must be made to preserve the fragile ecology of the forest area and protect the Tiger Reserve, the right of tribals formally living in the area to keep body and soul together must be receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled are in a position to earn their livelihood". Tribals or forest dwellers, obviously, do not have unrestrained right to access to all forest produce. If they are given rights over standing trees, the rights will definitely be subject to condition imposed by regulations. In *Salehbhai Mulla Mohmadali v. State of Gujarat*³⁵⁷ the Supreme Court has held that the forest dwellers and tribal people could have no greater rights than those they had before the formal legal system became applicable.

In *Nagarahole Budakattu Hakku Stapana Samity v. State of Karnataka*³⁵⁸, the court has held that no one has any right on or over the land in the area of National Park unless it is specifically granted. Under Section 2(iii) of the Forest (Conservation) Act, 1980 no forest land or portion could be assigned by way of a lease or otherwise to anybody. The court has noted that the expression 'otherwise' made a lease or even a easement incapable of being assigned. The lease being contrary to laws relating to both, wild-life and forest conservation, the court ordered to handover the possession of the building to the State Government.

In *M.C. Mehta v. Kamalnath*³⁵⁹, the court has quashed the prior approval for the lease as the bank of the river which was part of protected forest and it had been leased out for commercial purpose and held that the State Government committed a patent breach of public trust by leasing out the ecologically fragile land for a hotel to facilitate eco-tourism. It further held that the State has a trustee of all natural resources is under a legal duty to protect the natural

³⁵⁵ AIR 1996 SC 2040

³⁵⁶ AIR 1997 SC 1071

³⁵⁷ AIR 1993 SC 335

³⁵⁸ AIR 1997 Kant. 288

³⁵⁹ (1997) ISCC 388

resources and these resources meant for public use cannot be converted into private ownership.

Mining operations are a significant non-forest activity which has a negative impact upon conservation of forest it has been an earnest endeavour of the Supreme Court to control and regulate mining activities in order to conserve forest. In *Selur Mines v. Government of Tamilnadu*³⁶⁰, the High Court held that when application is made for the lease to the State Government the State Government must ascertain whether it is feasible to grant the lease or not. If ultimately the State Government decides in favour of granting the permission then the question of prior permission of the Central Government comes up otherwise each and every application for mining or quarrying lease would have to be sent to the Central Government for prior approval whether such application deserves to be considered or not. Grant of lease for the purpose of mining or quarrying is an exclusive domain of the State Government. The Central Government would come in the picture only if such mining or quarrying lease happens to be within forest area and the prior approval of the Central Government in such an eventuality becomes mandatory. In *Ambika Quarry Works v. State of Gujarat*³⁶¹, the appellants sought the renewal of quarry leases. It was found that further deforestation would occur and the deforested area could not be claimed back. The Supreme Court stated that the lease cannot be renewed. And further observed that the primary purpose of the 1980 Act is to prevent deforestation and any action that subverts this objective of the Act notwithstanding the approval of the Central Government is not tenable.

The right to assign land for private forest can be done only after the land vests in the State Government³⁶² and it has to be with the prior approval of the Central Government³⁶³. Once the land has legally vested in the State Government, the power of assignment of such land for the purpose of private forest is still subject to the provisions of the Forest (Conservation) Act, 1980 and if any State law is in inconsistent with the provisions of the 1980 Act than the provisions of the 1980 Act shall prevail and notwithstanding any order or provision made by any law or authority. Prior approval of the Central Government is mandatory before assigning any forest land for private forestry.

A major problem that is faced with regard to the forest is the problem of encroachment. The encroachment in forest land cannot be sustained and the State Government must see the approval of the Central Government mandatorily before clearing any forest or regularising or

³⁶⁰ AIR 2003 Mad. 188

³⁶¹ AIR 1987 SC 1073

³⁶² Section 2, Forest (Conservation)Act, 1980 read with Article 254 of the Constitution of India

³⁶³ *Nature Lovers Movement v. State of Kerala and Others*, AIR 2003 Ker. 18

allowing any encroachment to the forest. In *Sunil Kumar v. Divisional Forest Officer*³⁶⁴, the question was regarding subsisting encroachment. The State of Kerala had accorded sanction for leasing out an area of 146.42 acres including 108 acres of cardamom cultivated area under the possession of the petitioner and 38.42 acres cultivated area which was resumed by the forest department at Nelliampathy to Sri.Thirumalai Swami Gounder managing partners of the Miraflores Estates on the terms and conditions mentioned therein. The court felt that the impugned order was passed without reference to the revised and comprehensive rules and guidelines framed under the Forest (Conservation) Act, 1980. The court opined that even though a specific reference has been made by the petitioner, the State Government was under an obligation to seek approval of the Central Government before according sanction for lease of the above mentioned land. The court held that the land was reserved forest at the time it was encroached by the said Miraflores Estates. Therefore leasing out the land without prior approval of the Central Government cannot be sustained³⁶⁵.

In *State of Bihar v. M/s. RMC Dill Co. 9 (p) Ltd.*³⁶⁶, it has been held that the provision of Section 2 of the Forest (Conservation) Act would prevail over the provisions of the Mining Act and Rules; that for grant or renewal of mining lease for non-forest activity, the provisions of Section 2 have to be complied with and any non-forest activity in a forest area without prior approval of the Central Government is banned.

In *V.R. Thirumalai Swami Gounder v. Chief Conservator of Forest Trivandrum*³⁶⁷, it was held that the absence of any pleading regarding clearing of land for the purpose of planting cardamom and on evidence that the forest was cleared prior to planting of cardamom and before the coming into operation of the 1980 Act, it is not possible to hold that the Forest Conservation Act, 1980 does not have any application.

In *Joseph Kurian v. Union of India*³⁶⁸, where the issue was banning consideration of proposals for utilisation of forest land by private individual came up for consideration the court held that conservation and preservation of the environment has long seized to be the luxury of the developed nations and has now become an imperative obligation for preservation of humanity. The planet earth is in peril and the environmental depredation can be reversed only by positive efforts, concerted actions and carefully planned initiatives with determination. It is a realisation of this grave situation that has led to the enactment of the

³⁶⁴ 2000 (2) KLT 7 (C. No.7)

³⁶⁵ Ibid

³⁶⁶ AIR 1998 Pat. 20

³⁶⁷ AIR 1996 Kel. 213 at 218

³⁶⁸ 2009 (2) KLT SN 50 (C. No.54)

Forest (Conservation) Act, 1980. The legislature has, in its wisdom, decided that conservation was too important a matter to be left to the localised decision making of the respective States and has entrusted the Central Government with the said duty. This duty has to be approached in the national and global perspective. The Central Government has overriding powers under the Act in supercession of all other enactments, to implement the policy of conservation. Forest constitutes the invaluable wealth not only of this nation but the entire humanity, which are to be preserved not only for the present generation but also for the future generation and for posterity. For realising the above objective it is open to the Central Government to ban all activities of the private persons inside the forest.

TIMBER TRADE

Timber trade has been recognised as one of the major causes of deforestation and unsustainable forest management. These issues were extensively and widely considered by the Supreme Court in the Godavarman case³⁶⁹. However the Supreme Court has considered the issue in various other cases also. In State of Uttar Pradesh v. Mahendra Singh³⁷⁰, it has been held by the court where it was evident that the forest wood recovered was sold by auction with a direction that the sale proceeds should be deposited under proper head. Held, since ownership of the wood was not claimed by the respondent accused, they are not entitled to claim withdrawal of the sale proceeds deposited after auction.

In State of Tripura v. Sudhir Ranjan Nath, it was decided by the Supreme Court that in Vam Organic Chemical Industries v. Collector of Central Excise³⁷¹ and Bihar Distilleries v. Union of India³⁷², the High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by the sub-rules (2) and (4) of Rule 3 of the Tripura Transit Rules as bad on that basis. It was held that, the fee levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41 of the 1927 Act.

M/s. Mahavir Timber Merchant v. Government of Andhra Pradesh & Another³⁷³ it was held by the Supreme Court that timber is a forest produce even after it is cut or sawn in a sawmill-cut and sawn timber if found in a cart track or any other vehicle, it is a forest produce and transit rules are applicable to it.

³⁶⁹ (1996) 9 S.C.R 982

³⁷⁰ 2003(4) AIC 459 (U'chal)

³⁷¹ (1997) 1 JT (SC) 625 at 641

³⁷² (1997) 2 JT (SC) 20

³⁷³ AIR 2002 AP 58 FB

In the State of Bihar v. Ranchi Timber Traders Association³⁷⁴, it has been decided by the Supreme Court that, on hearing counsel for the parties on the subject, and giving earnest consideration, the court get to the view that the conclusion of the High Court was totally erroneous. The variety of subjects provided in the sub-heads of sub-section (2) of Section 41 are preluded with the expression “in particular and without prejudice to the generality of the forgoing power”, wholesome power stands conferred on the State Government to make rules under sub-section (1) of Section 41 with regard to transit of timber and other forest produce by land or water. Conferral of such powers inheres in it the power to frame rules in order to regulate places for stoppage, reporting, examination and marking of timber or other forest produce. Necessarily, duty, fee, royalty or charges due thereon become due, if imposed. In order to avoid breach of the rules, Section 42 gets into line. Then comprehensive power on the subject is given generally to the State Government as additional powers to make rules to carry out the provisions of the Act. No one can be permitted to deny that regulating the activity of keeping a saw-pit or a depot is not an activity to which the provisions of Indian Forest Act, 1927 would not be attracted. Thus requiring all the saw-pit holders, or depot holders to obtain regulatory licences, squarely fall within clause (d) of Section 76 if not (without holding so) under the power to regulate transit by land or air available under Section 41 of the Act. These three provisions namely Sections 41, 42 and 76 reflect an integrated scheme to carry out the provisions of the Act and as the preamble of the Act is suggestive to consolidate the laws relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. The power to regulate by license the upkeep of saw-pits and Depots is in any event ancillary to the main power.

In Anil Chandel v. State of Himachal Pradesh³⁷⁵, it was alleged that the accused had transported the timber in illicit manner in a tempo. It was pleaded by the accused that he was not present in tempo as he was admitted to hospital at relevant time. Accused had produced OPD Slip and discharge slip in support of his plea. Driver of tempo stated before police that he was all alone in tempo. Witnesses were not cross-examined on this point. Such non-examination amounted to admission of fact stated by witnesses. Conviction of accused was liable to be set aside as case against accused could not be said to have been made out. In State v. Mariamma Varghese³⁷⁶ the court stated that it is the duty of the owner of the vehicle to show that he had taken reasonable and precautionary measures against the use of the vehicle

³⁷⁴ AIR 1984 Pat 261

³⁷⁵ 2008 Cri LJ 1792 (HP)

³⁷⁶ 1999 (1) K LJ 872

involved in forest offence. He cannot plead mens rea. He cannot contend that owner was unaware of the dubious dealings of the driver of the vehicle.

In State of Kerala v. Mathew³⁷⁷, it was held that it is not sufficient that the owner establishes his innocence alone; it must further be shown that the person who was in charge of the vehicle had taken reasonable and necessary precautionary measures against such use of the vehicle. In Manoj Kumar Sharma v. State of Bihar³⁷⁸, it has been decided by the court that there is no escape from the conclusion that once it is established that vehicle has been used in commission of forest offence, the onus shifts on the owner of the vehicle to establish that the vehicle was used without his knowledge or connivance or that of his servant and agent and also to establish that he had taken all reasonable and necessary precaution against the use of the vehicle. Nothing has been brought on record by the petitioner to satisfy those requirements and as such the authority did not err in confiscating the truck in question.

In Nand Lal v. State of Uttar Pradesh³⁷⁹, it has been decided by the court that it did not prohibit that license to operate saw-mills should be granted on any condition. The basic condition is that the license for saw-mill shall not be granted in a forest area. The second proviso to Rule 5 itself provides that an application for grant of license for saw mill situate within 10Kms area of any existing forest shall not be deemed to have been allowed if not disposed of within 60 days as provided under the first proviso to Rule 5. This provision implies that an application for grant of license to establish, erect or operate any existing saw mill if it situate within 10Kms area of any existing forest is not to be granted. It is for the State Government to define the forest area and the area within which the license to establish, erect or operate the saw mill should be granted. The application was rejected without considering this aspect of the matter.

In G.N. Saw Mill v. State of Assam³⁸⁰, it was stated by the Supreme Court that pendency of a civil suit about lease in respect of land on which saw mill is situated could not be a sufficient ground to refuse renewal of license.

In Ottav's Timber Merchant Association v. State³⁸¹, the court held that the expression “specified in local limits” is not with reference to area of any local authority or local body in context of regulating transit of forest produce, to specified limits whichever it might be.

³⁷⁷ 1995 (2) KLT 772

³⁷⁸ 2004 Cr.LJ 1156 at 1158-1159

³⁷⁹ AIR 2002 All 141 at 145-146

³⁸⁰ AIR 1988 Gau. 28

³⁸¹ AIR 1987 MP 57,61,62

The Bombay High Court in *Kantilal Premjith Patel v. State of Maharashtra*³⁸² stated that “the submission that the provisions of Section 52 of the Kerala Forest Act, 1961 do not empower the forest authority to seal the machinery in the saw mill cannot be accepted.

In *Surma Valley Saw Mill (P) Ltd. v. State of Assam*³⁸³, Gauhati High Court held that “the language of the amended Section 49 of the Assam Forest Regulation enables the forest officer to seize the machinery, including machinery used in saw mill located outside the forest area if there is reason to believe that the same has been used in the commission of a forest offence.

In *Jairaj A.P. v. The Chief Conservator of Forest (Wildlife), Thiruvananthapuram*³⁸⁴, it was held that any rate, there is no doubt multiplicity of trees have to be cut and removed, though appellant would say that more than a dozen trees are to be chopped off for this purpose. Hence, whatever be the number of trees involved it is held that clearance of forest land is necessary for constructing the proposed Forest Lodge.

However, this judgment, today has no value because of the rulings of the Supreme Court in series of Godavarman cases which bans cutting of trees for any purpose whatsoever unless it is under the State Working Plan approved by the Central Government

In *T. N. Godavarman Thirumulpad v. Union of India*³⁸⁵, it was held by the Supreme Court that State Government and its functionaries are directed not to cut any tree, even the alleged diseased trees, unless it is confirmed that only the diseased and infectious trees are being cut.

The Supreme Court is alleged to have over stepped the boundaries of separation of powers while dealing with a series of Godavarman cases. The Supreme Court took the Godavarman case as an opportunity to address the forest (mis)management that led to progressive decrease of forest cover in the country. Unless some drastic measures were quickly adopted and strictly implemented the countries ecological stability and biodiversity were under threat. Ordinarily this should have been recognised by the executive and the loss should have been ruthlessly implemented. Unfortunately this did not happen. Therefore it can be said that the Supreme Court had no other alternative but to overstep the boundaries of judicial separation and intervene in the matter. The Supreme Court noticed that those authorities at the National and State levels responsible for protecting the forests were failing as custodians of forest. To

³⁸² 1986 Cr.LJ 536 / 1986 (3) Bom.CR 613

³⁸³ AIR 1988 Gau. 35

³⁸⁴ AIR 1996 Ker 362/ILR 1996 (2) Ker 270 / 1996 (1) Ker LJ 364

³⁸⁵ AIR 1999 SC 43

this extent it would be unjust to criticise the Supreme Court instead of that the executive should be under critical review. Given the alarming statistics the action of the Supreme Court is fully justified. The 2003 report of the Forest Survey of India (FSI)³⁸⁶ reports 20.64% of the countries geographic area under forest cover which should ideally have been 33%. This shows that India is still under-forested. FSI reports that 8.76% of India forest cover is open forest which means the density of the forest is merely 10% per hectare. Moreover, there is no distinction made between private and public land, orchards, plantations (coffee, tea, rubber & cardamom). Therefore the report does not reflect the actual natural forest cover of India and is pseudo-optimistic.

Given the above situation Supreme Court's aggressive stance towards forest management is welcome. One may also like to recall here the Supreme Court's pro-active role in sustainable environmental management. India already had environmental laws for environmental protection and preservation and conservation of forest, but sub-competence, lack of infrastructure and staff, corruption and overall lackadaisical attitude of the executive compels the Supreme Court to wear the hat of environmental policing as well. Supreme Court's radical orders and assumption of wild powers appears to have arrested ecologically dangerous activities. The Supreme Court has also raised awareness concerning forest. Although its orders may have caused many predictable and unpredictable consequences but it has certainly benefited the forest of India. It has successfully controlled and regulated the timber trade in India with the help of a series of logically sound and ground level reality oriented policies which on one hand benefitted the forest but on the other hand challenge the weak and corrupt executives at the state and local level. An argument runs that the Supreme Courts orders violated the right to life of several people and community by banning and or severely controlling the timber industry, but one is constrain to recall that right to a clean and healthy environment is also right to life just as right to livelihood is also a right to life. Between these two competing claims of right to life the Supreme Court's action in controlling timber trade appears to be justified because the alternative is too frightening with climate change, desertification, loss of biodiversity, loss of water and untold miseries. The Supreme Court merely has chosen a lesser evil path to forestall a greater evil consequence. It is another argument altogether that the efficiency of Supreme Court will perpetuate an incompetent, inefficient, corrupt, bureaucracy. The centralization of forest management with the help of

³⁸⁶ The State of Forest Report, 2003, Forest Survey of India, Ministry of Environment and Forest, Dehradun, June 2005