

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

R E C O R D O F P R O C E E D I N G S

I.A. NOS.1598-1600 IN WRIT PETITION (C) NO.202 OF 1995

T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

I.A. No.1459 in Writ Petition (C) No.202 of 1995
(For Directions/modification)

Date: 04/08/2006 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

Mr. Harish N. Salve, Sr. Adv. (A.C.)
Mr. U.U. Lalit, Sr. Adv. (A.C.) (N/P)
Mr. Sidhartha Choudhary, Adv. (A.C.)

For Applicant(s) Mr. R.K. Jain, Sr. Adv.

In I.As.1598-1600: Ms. Abha R. Sharma, Adv.
In I.As.1601-1603: Mr. Vivek K. Tankha, Sr. Adv.
Mr. Joseph Pookkatt, Adv.
Mr. Prashant Kumar, Adv.

In I.A. 1535: Mr. Vinoo Bhagat, Adv.

In I.As.1413 and 1414: Mr. A.D.N. Rao, Adv.

In I.As. 1426 and

1454: Mr. Arun Jaitley, Sr. Adv.
Mr. Gopal Jain, Adv.
Ms. Nandini Gore, Adv.
Mr. Debmalya Banerjee, Adv.
Mr. Jayant Mohan, Adv.
Ms. Manik Karanjawala, Adv.

In I.A. 1428: Mr. Anil Karnwal, Adv.
Mr. S.K. Pillania, Adv.

Dr. K.P.S. Dalal,Adv.
Mr. Sushil Balwada,Adv.

In I.A. 1440: Mr. Arun Jaitley,Sr.Adv.
Mr. Mukul Rohatgi,Sr.Adv.
Mr. Jayant Bhushan,Sr.Adv.
Mr. Sanjeev Kumar,Adv.
Mr. S. Rakshit,Adv.

for M/s. Khaitan & Co.,Adv.

In I.A. 1441: Mr. Ajit Kumar Sinha,Adv.

In I.A. 1459: Mr. Arun Jaitley,Sr.Adv.
Mr. Sunil Dogra,Adv.
for M/s. Lawyer's Knit & Co.,Adv.

In I.A. 1460: Mr. Kailash Vasdev,Sr.Adv.
Mr. T. Harish Kumar,Adv.

In I.As.1466-1467: Mr. S.W.A. Qadri,Adv.
Mr. L.R. Singh,Adv.

In I.A.1591: Mr. Rajiv Dutta,Sr.Adv.
Mr. Ravi P. Mehrotra,Adv.
Ms. Anil Katiyar,Adv.

In I.A.4 in Cont. Ms. Sangeeta Kumar,Adv.

Pet. No.193/2001: Mr. Vijay Kumar,Adv.
Mr. Ashwani Garg,Adv.

In W.P. 603/2000: Mr. K.K. Rai,Adv.

For Respondent(s) Mr. P.K. Manohar,Adv.
Ms. Rachna Srivastava,Adv.
Mr. A.D.N. Rao,Adv.
Mr. Naveen Sharma,Adv.
Mr. B.S. Banthia,Adv.
Mr. Arun Jaitley,Sr.Adv.
Mr. Raju Ramachandran,Sr.Adv.
Mr. K. Raghavacharulu,Adv.
Mr. P.S. Narasimha,Adv.
Mr. Sridhar Potaraju,Adv.
Mr. K.N. Madhusoodhanan,Adv.
Mr. R. Sathish,Adv.
Mr. J.K. Bhatia,Adv.
Mr. Gopal Singh,Adv.
Mr. Ritu Raj Biswas,Adv.
Dr. R.G. Padia,Sr.Adv.
Mr. S.W.A. Qadri,Adv.
Mr. Rajeev Kumar Dubey,Adv.
Mr. Kamendra Mishra,Adv.

Mr. Anil Srivastava,Adv.
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Ms. Anil Katiyar,Adv.
Mr. Aruneshwar Gupta,Adv.
Mr. Naveen Kumar Singh,Adv.
Mr. S.S. Shinde,Adv.
Mr. V.N. Raghupathy,Adv.
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Ms. Nandini Gore,Adv.
Mr. Debmalya Banerjee,Adv.
Mr. Jayant Mohan,Adv.
Ms. Manik Karanjawala,Adv.
Mr. Manoj Saxena,Adv.
Mr. Rajnish Kumar Singh,Adv.
Ms. Sameena Ahmed,Adv.
Mr. Rahul Shukla,Adv.
Mr. T.V. George,Adv.
Mr. J.K. Das,Adv.
Mr. Sanjay R. Hegde,Adv.
Ms. Suparna Srivastava,Adv.
Ms. Pooja Matlani,Adv.
Mr. Rajesh Srivastava,Adv.
Ms. Sangeeta Kumar,Adv.
Mr. Vijay Kumar,Adv.
Mr. Ashwani Garg,Adv.
Mr. Vishwajit Singh,Adv.
Mr. Nikhil Nayyar,Adv.
Ms. A. Subhashini,Adv.
Mr. E.C. Agarwala,Adv.
Ms. Revathy Raghavan,Adv.
Mr. Ajay K. Agrawal,Adv.
Mr. B.V. Balam Das,Adv.
Mr. Kuldip Singh,Adv.
Mr. R.K. Pandey,Adv.
Mr. Sanjay Katyal,Adv.
Mr. A.K. Sinha,Adv.

Mr. Kh. Nobin Singh,Adv.
Mr. Ajay Siwach,AAG.,Haryana
Mr. Manjit Singh,AAG.,Haryana
Mr. Harikesh Singh,Adv.
Mr. T.V. George,Adv.
Ms. Hemantika Wahi,Adv.
Ms. Sumita Hazarika,Adv.
Ms. B. Sunita Rao,Adv.
Mr. N.M. Popli,Adv.
Mr. Bhawanishankar V. Gadnis,Adv.
Ms. Ritu Solanki,Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A. Nos.1413, 1414, 1454 in I.A. No.1413, 1426,1428, 1440,1439,1441,1444-1445, **1459 (FIMI)** and 1460 in Writ Petition (C) No.202 of 1995:

By order dated 16th September, 2005, it was, inter alia, directed that no Temporary Working Permissions or Temporary Permit or any other permission, by whatever name called, shall be granted for mining activities in the National Parks, Sanctuaries and Forest areas. It was further directed that no mining activity would continue under any Temporary Working Permit or Permission (T.W.P.), which may have been granted. This order was later relaxed on the applications filed by some of the applicants. Suggestions have been filed by the learned Amicus Curiae and the Ministry of Environment and Forests, besides the Federation of Indian Minerals Industries (FIMI) regarding the conditions, which would govern grant of T.W.P.

On consideration thereof, the conditions precedent for the grant of T.W.Ps. as well as the procedure for their grant shall be as provided hereinafter. At the outset, it is clarified that T.W.Ps. shall be granted only where the following conditions are satisfied.

PRE-CONDITIONS:

- i] T.W.Ps. can only be granted for renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency;
- ii] The mine is not located inside any National Park/Sanctuary notified under Section 18, 26-A or 35 of the Wildlife (Protection) Act, 1972;
- iii] The grant of the T.W.P. would not result in any mining activity within the safety zone around such areas referred to in (ii) above, (as an interim measure, one kilometer safety zone shall be maintained subject to the orders that may be made in I.A. No.1000 regarding Jamua Ramgarh Sanctuary);
- iv] The user agency who has broken up the area of the mine (in respect of which the T.W.P. is being sought) has or had the requisite environmental clearances and at no time prior to the grant of the T.W.P. was any mining being carried on by the user agency in relation to the mine in question, in violation of the provisions of the Forest (Conservation) Act [for short, "F.C. Act"]. In cases involving violation of the F.C. Act, a formal decision on merit should be taken under the F.C. Act after considering the gravity of the violation. However, the grant of a T.W.P. may be considered where past violations have been regularized by the Ministry of Environment and Forests [for short, "M.O.E.F."] by the grant of an approval under the F.C. Act with retrospective effect;
- v] The conditions attached to the approval under the F.C. Act for the grant of the mining lease (or the renewal of the mining lease), have been fulfilled, particularly those in respect of (but not limited to) compensatory afforestation, reclamation plan and over burden dumping on the specified site;
- vi] The user agency has, within the stipulated time, already filed a proposal in conformity with the Forest (Conservation) Rules, 1980, for seeking an approval under the F.C. Act along with the complete details as are required to be furnished. An application for the grant of the T.W.P. in favour of the user agencies, who have either not filed a proper proposal and/or have not provided complete information, particularly in respect of (but not limited to) compensatory afforestation, phased reclamation plan, felling of trees, details of minerals extracted in the past, etc., should not be entertained;
- vii] A T.W.P. shall be granted only limited to working in the area broken up legally and during the validity of the lease. No T.W.P. can be granted in respect of, or extending to either unbroken area or the areas which have been broken after the expiry of the mining lease or have been broken in violation of the F.C. Act or any other law for the time being in force;
- viii] In no circumstances can the duration of a T.W.P. extend beyond the period of one year. Where an application for grant of permission under the F.C. Act is not disposed of during the currency of

T.W.P., the applicant, on the strength of the same T.W.P., may continue to operate for a period not exceeding three months unless specific orders are obtained from this Court.

ix] A valid lease under the M.M.R.D. Act exists (including by way of a deemed extension in terms of Rule 24-A(6) of the Mineral Concession Rules) in respect of the area of the T.W.P.

PROCEDURE FOR GRANT OF CLEARANCES UNDER THE F.C. ACT
AND THE ISSUANCE OF TWPS (in relation to renewal of mining leases:

i] the user agency shall submit, in the first instance, to the State Government, proposals seeking renewal of the mining lease under the F.C. Act not less than two years prior to the expiry of the mining lease, except the leases which are due to expire before August, 2008, provided applications are made on or before 31st October, 2006;

ii] On receipt of the proposal within the stipulated time as aforesaid, and upon its examination, where the State Government is of the view that further details (besides the information submitted by the user agency in the prescribed formats) are necessary, the State Government shall give intimation thereof not later than ninety days of the receipt of the proposal;

iii] the State Government shall forward the proposal together with their recommendations to the Central Government not later than nine months after receipt of the proposal;

iv] the Central Government shall ordinarily dispose of the application for grant of permission not later than four months of its receipt;

Provided where the Central Government is unable to dispose of the application within four months as aforesaid, it shall record special reasons explaining the delay;

v] Where the application for grant of permission under the F.C. Act is delayed beyond the periods stipulated hereinabove, the user agency may then apply for the grant of a T.W.P. In such cases, the user agency will have the option of applying for a T.W.P. through the State Government in the proforma prescribed by M.O.E.F. with an advance copy both to the M.O.E.F. and the Regional Office of the M.O.E.F. Such applications shall be made at any time after the expiry of thirteen months from the date of filing of the proposal with the State Government but not later than nine months prior to the expiry of the existing approval under the F.C. Act. In cases where lease/renewal was granted prior to the enactment of the F.C. Act and the lease period has not expired, the application shall be made at least nine months prior to the expiry of lease period;

vi] the proposal seeking the T.W.P. shall be processed by the State Government and forwarded to the M.O.E.F. within a period of three months, who shall place the proposal before the F.A.C. constituted under Section 3 of the F.C. Act in its next meeting. The information/details, which have not been filed by the user agency, either in respect of the proposal under the F.C. Act or in the proposal for the T.W.P. shall also be sought by the State Government and made available by the user agency during this period;

vii] in the event of failure on the part of the State Government to send its recommendations on the proposal submitted by the user agency for grant of T.W.P. within the stipulated period, the advance copy of the application, already sent by the user agency to the Central Government, shall be placed before the F.A.C. for its consideration. The F.A.C. shall provide an opportunity to the State Government and user agency to be heard before giving its recommendations on the merits of the case.

viii] if the State Government, for reasons to be recorded in writing, recommends a refusal of the request to grant a T.W.P., the F.A.C. shall, after giving the user agency and the State an opportunity to present their views pass such orders as it thinks fit. The F.A.C. shall be at liberty to evolve a suitable procedure for this purpose;

ix] in respect of cases where no recommendation has been received from the State Government within the stipulated time, the F.A.C. shall, after giving the State an opportunity to be heard, examine the proposal on merit and pass appropriate orders. The F.A.C. should evolve a suitable procedure that shall be fair and reasonable and would ensure adherence with the time schedule;

x] All proposals for grant of F.C. Act clearances and T.W.Ps. in respect of mining leases shall be placed before the F.A.C. Where the F.A.C., by order recommends the grant of a clearance or a T.W.P., the M.O.E.F. shall, within a period of four weeks from the date of such order, issue orders for the grant of clearance on the usual terms, including those relating to payment of N.P.V.;

Provided where a T.W.P. is being granted, it shall only be for a period not exceeding one year and upon payment of N.P.V. for the already broken up area;

xi] decision on grant of T.W.P. shall be taken before the expiry of the mining lease. Decision of the M.O.E.F. on the proposal for diversion of forest land for mining lease under the F.C. Act shall be conveyed to the user agency before the expiry of the T.W.P.

xii] in case the M.O.E.F. disagrees with the recommendation of the F.A.C., it shall record its reasons in writing and communicate the same to the F.A.C., and the F.A.C. may, after considering such reasons, pass such further orders as it thinks fit;

Provided where the Government still disagrees with the order passed by the F.A.C., it may seek appropriate directions from this Court;

xiii] all the orders of the F.A.C. shall be made available to the user agency and the State Government;

xiv] in cases where the recommendations have been made by the F.A.C. without ascertaining the views of the State Government, the T.W.P. shall become effective only after the details made available by the user agency are confirmed by the State Government within a maximum period of one month. In case the information furnished by the user agency is found to be at variance with the factual position, the State Government shall refer the matter back to the M.O.E.F., who may, if so advised, suspend the grant of the T.W.P.;

xv] the T.W.P. shall become effective only after the payment towards the N.P.V. for the already broken up area is deposited by the user agency;

xvi] in cases where site inspection by the Regional C.C.F. is mandatory, the proposal for the T.W.P. shall be examined by the F.A.C. after considering the site inspection report of the Regional C.C.F.; the Regional C.C.F. shall ensure that the inspection is completed in such time as may be directed by the F.A.C.; and

xvii] at the time of payment of N.P.V. at the present rate, the user agency shall also give an undertaking to pay the additional N.P.V., if so determined as per the final decision of this Court.

Those who are continuing to operate on the strength of the temporary permit under the interim protection granted by this Court, would continue, as before, for a period of not exceeding four months. We direct that their cases shall be decided by the F.A.C. within the said period of four months. The State Governments are directed to consider and send their recommendations to the M.O.E.F. forthwith, and not later than six weeks from today, with a view to ensure decision within the stipulated period of four months.

[T.I. Rajput]

A.R.-cum-P.S.

[V.P. Tyagi]

Assistant Registrar

The complete order can be download from: <http://judis.nic.in/temp/20219953482006p.txt>