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# *eRc Journal*

*An update on news, views and developments  
in India's EIA process*

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## Many Shades of Green

*People and companies employing the word 'green' in environmental contexts are guilty of "misuse, overuse, general uselessness."* This was the conclusion of the 2009, Annual Survey of Lake Superior State University in Michigan of words that should be banished. India is no different and the use (and the misuse) of the word 'Green' is common - 'Green Clearances', 'Green Minister', 'Green India Mission', 'Green Bench'! The latest 'green' could be an exception : *The National Green Tribunal*

The National Green Tribunal is a key institution to watch. It has a pivotal role in India's environmental governance structure. Its role is bound to be tough, given the fact that the present state of environmental governance is at its worst, the NGT faces a herculean task in trying to get the Union Ministry of Environment & Forests (MoEF) as well as the various State Governments to gear up to the task of environment protection and provide speedy justice to affected communities and struggle groups across the country

The last two years has seen controversial projects like Lavasa, Navi Mumbai Airport, Jaitapur Nuclear Power Project or Posco Steel Plant getting approval from the MoEF led by what the media and

some within the environmental circle termed as the 'Green Minister'. The Minister did live up to this title by giving 'green' signals to these projects on what he termed as purely strategic and economic concerns! Such speaking orders only showed that extraneous factors were the guiding force.

Has environmental governance changed under the new Union Minister for Environment & Forests: Ms Jayanthi Natrajan ? If the experiences of the last few months are to go by, it is a clear no. Projects continue to be approved at the same pace and with minimum appraisal; nor has there been any reform in either monitoring or in taking action against violators and not a single policy related reform! Neither does the credit for making the NGT functional go to MoEF since it's the Supreme Court's regular direction in a petition that is forcing the Government to constitute it. The recent approvals granted to the Lower Demwe Hydel Power Project in Arunachal Pradesh despite serious concerns of the National Board for

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The tendency of the MoEF to overrule the decisions of the Forest Advisory Committee (FAC) even in the few rare instances 'where it says no to a project', reflects mindset to never accept a no.

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Wildlife and the approval granted to the Alaknanda Hydel Power Project in Uttarakhand despite its rejection by Forest Advisory Committee shows the rather predictable manner of functioning where post clearance studies concurrent with project implementation become the basis for approval.

Various Environment Appraisal Committees (EACs) continue to be headed by persons with no expertise on environment and no effort has been made to ensure that policy reforms in the direction of effective appraisal and monitoring takes place. The functioning of the State/Union Territories Appraisal bodies (SEIAA and SEAC) has largely escaped public scrutiny. The

end result has been that all projects are given 'green signal' by MoEF. To that extent, MoEF is a green ministry and we do have a green minister.

The Year 2012 marks the 20 years of Rio Summit. On June 2012 when the world meets at Rio for Rio + 20, the Government of India will surely be proudly announcing its efforts to implement the commitments it made 20 years back – albeit, On paper!. In terms of action however, none of its recent decision can be said to be complying with any of the Rio Principles.

**Ritwick Dutta**

**Editor**

# National Green Tribunal Update

## Environment Clearance for Mining project at Sindhudurg District, Maharashtra set aside

*The Tribunal observed that the EIA consultant should be made liable for furnishing wrong and insufficient information which leads to a wrong decision by the Expert Appraisal Committee (EAC)/ Ministry of Environment & Forests (MoEF)*

**Questions the roles of EIA consultants, Expert Appraisal Committee, need to fix criminal liability for EIA consultants and directs cumulative impact assessment**

The first decision of the NGT comprising of Justice C.V Ramulu and Dr Devendra Kumar Aggarwal on 12-9-2011 raises critical questions on the role of EIA consultants in the Environment Clearance process. While hearing the appeal filed by the Gram Sarpanch, Tiroda against the grant of 'environment clearance' to M/s Gogte Minerals for conducting mining operations at Tiroda Iron Ore Mine in Tiroda village, Sawantwadi Taluk, Sindhudurg District of Maharashtra, . The Tribunal took note of the fact that the EIA report was prepared by the project proponent through his own consultants at his own expenditure who do not disclose proper facts and information. Furthermore the

Environment Clearance itself was set aside because the Tribunal found institutional bias in the constitution of EAC as the Chairperson of the EAC (mines) M.L. Majumdar was serving on the Board of four Mining companies himself

### **Observations made by the Tribunal**

The Tribunal took note of substantial procedural lacuna on the part of Expert Appraisal Committee/Ministry of Environment & Forests and made the following observations also:

*Role of Expert Appraisal Committee in making proper evaluation of the Environment Impact Assessment Report*

The Tribunal observed that the EAC plays a significant role in the Environment Clearance process as the decision to grant or reject the Environment Clearance is completely based on the recommendation of the EAC. Since the EIA report is prepared by the project proponent through his own consultants at his own expenditure, there is every possibility of concealing certain intrinsic information, which may go against the proponent if revealed. Hence, it's the responsibility of the EAC to properly evaluate the EIA report. In the present case the project proponent did not comply with the Terms of Reference prescribed by the Ministry of Environment & Forests. Furthermore, the entire baseline data pertained to the

*The EAC also to call for a fresh report as to existence of number of iron ore mines in Sawantwadi Taluk and their cumulative effect on the environment and ecology of the area particularly the Tiroda village.*

period much prior to the issuance of the Terms of Reference. Thus, the Expert Appraisal Committee/ Ministry of Environment & Forests acted unreasonably in ignoring the non compliance of the Terms of Reference by the project proponent.

*Suspension of Environment Clearance with directions to MoEF*

The Tribunal suspended the Environment Clearance with the following directions to the Ministry of Environment & Forests and to complete the entire process within a period of 6 months from the date of receipt of this judgment:

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*NGT Direction*

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- Environment Clearance to be kept in abeyance till fresh decision is taken with regard to grant of environment clearance.
- To place the matter before new EAC (Mining) to which Majumdar (person with interest in the matter) is not a party and seek a fresh consideration of the matter taking all the material available as on date on compliances. If the EAC considers necessary to impose additional conditions, it may direct the proponent to comply with the same including fresh EIA based on prescribed ToR before taking a decision for revival of the EC. Furthermore, the EAC is at liberty to reject or accept the proposal for recommending revival of EC in favour of the project proponent.
- The EAC to call for fresh report in so far as causing air, noise and water pollution keeping in view the proximity of the school as observed in this

judgment and may recommend for relocating the school by constructing a new building at a safe location within Tiroda revenue village with similar accommodation and suitable playground around, along with all modern basic amenities as required by the local Education Department.

- The EAC also to call for a fresh report as to the existence of number of iron ore mines in Sawantwadi Taluk and their cumulative effect on the environment and ecology of the area particularly the Tiroda village.

## **Tribunal mandates Radiation studies before granting**

*“MoEF to include in the Terms of Reference of all the future projects asking the proponent to furnish details of possible nuclear radioactivity levels of the coal proposed to be used for the thermal power plant.”*

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*NGT Direction*

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## **‘environment clearance’ to thermal power plants**

**EAC failed to consider impact due to radiation; ‘Terms of Reference’ for all projects to include impact due to radiation**

The National Green Tribunal in the judgment dated 20.09.2011 issued directions to the Ministry of Environment & Forests to conduct a scientific study with regard to the long term impacts of nuclear radiation caused by the thermal power plants. The directions were issued by the NGT Bench comprising Justice C.V. Ramulu and Dr. Davendra Agrawal on hearing the appeal [Appeal No. 7/2011(T)] filed by the residents of the Koradi village against the ‘Environment Clearance’ granted to the Maharashtra State Power Generation Co. Ltd for expansion of 3x660 MW coal based thermal power plant at Koradi in Nagpur district of Maharashtra. [Case : *Krishi Vigyan Arogya*

*Sanstha & Ors Vs Ministry of Environment & Forests & Ors]*

### **Observations made by the Tribunal:**

The Tribunal observed that while granting environment clearance to the project, the following aspects were not considered by the Expert Appraisal Committee/Ministry of Environment and Forests:

- *Impact of nuclear radiation caused by thermal power plant on human habitation and ecology of the area*

- *Cumulative impact of various existing and proposed thermal power plants in and around the project area*
- *The Tribunal observed that the issue with regard to effect of nuclear radiation on human population and ecology in and around the area was raised in the public hearing but the same was neither examined nor incorporated in the final Environment Impact Assessment report.*
- *The Tribunal relied on various research publications on Radioactivity submitted by the appellants, which highlighted the fact that the waste produced by the coal plants is more radioactive than that generated by the nuclear power plants which can result into severe environment and human health problems.*

*National standards to be prescribed as to the permissible levels of nuclear radiation in residential, industrial and ecologically sensitive areas of the country.*

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**NGT Direction**

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***Directions issued to the Ministry of Environment and Forests***

The Tribunal issued the following directions to the Ministry of Environment & Forests and disposed of the appeal with liberty to the Appellants to take appropriate steps if the same are not complied with:

- I. ***Long term study with regard to the impacts of Nuclear radiation:***  
To conduct a long term study of the impacts caused by nuclear radiation from the thermal power projects by involving Bhabha Atomic Research Agency or any such other recognized institution dealing with nuclear radiation with reference to the coal ash generated by the thermal power project particularly the cumulative effect of a number of thermal power project located in the area on human habitation, environment and ecology and to also consider the health profile of the residents within the area in which the pollutants are expected to spread from the thermal power project.
- II ***Radiation studies to be a mandatory part of the Terms of Reference:***  
To include in the Terms of Reference of all the future projects asking the proponent to furnish details of possible nuclear radioactivity levels of the coal proposed to be used for the thermal power plant.

## II. *National Standards to be prescribed from the Department of Atomic Energy:*

To get the national standards prescribed from the Department of Atomic Energy, Govt. of India within a period of one year from the date of receipt of this order, as to the permissible levels of nuclear radiation in residential, industrial and ecologically sensitive areas of the country.

Considering the above, the Tribunal also took note that the grant of Environment Clearance is basically a procedural law and any procedural lapses such as collection and evaluation of basic data which may lead to threat to the environment, ecology and conservation of natural resources, shall have to be taken seriously by the Tribunal while dealing with the disputes coming before it. It further stated that the Expert Appraisal Committee/ Ministry of Environment and Forests should consider even small deficiencies in the Environment Impact Assessment report which should be rectified by the project proponent.

## **NGT Directs MoEF to Critically Review Municipal Solid Waste Rules, 2000**

The National Green Tribunal on hearing an application challenging the construction of Solid Bio-Waste Management Plant at Himachal Pradesh issued directions to the Ministry of Environment & Forest to critically review the Municipal Solid Waste (Management and Handling) Rules, 2000 (MSW) and make them more pragmatic and workable. The application was filed by Gram Panchayat (Majthali) seeking prevention of setting up of the waste disposal plant at village on the ground and that the mandatory requirements stipulated in the MSW Rules have not been duly followed. [*Judgment dated 11-10-2011 in the case (2/2011) Gram Panchayat, Totu (Majthali) & others vs State of Himachal Pradesh and others*]

### **MSW Rules, 2000 – Vague and Ambiguous**

The Tribunal comprising of Justice A.S Naidu and Dr G.K Pandey while referring to some of the requirements to be followed for setting up a landfill site under Schedule III of the MSW Rules, 2000 observed that the provisions of the statute are vague and ambiguous and leads to irresistible conclusions. It referred to clause 8 and clause 9 of Schedule III which provides specifications for land fill site which stipulates:

“Clause 8: The landfill site shall be away from habitation clusters, forest areas, water bodies, monuments, National Parks, Wetlands and places of important cultural, historical or religious interest.

Clause 9: A buffer zone of no-development shall be maintained around landfill site and shall be incorporated in the Town Planning Department's land use plans.”

The Tribunal observed that: Similarly, the exact area of buffer zone to be maintained around the MSW site is also not specified in the rules.

Bearing in mind the precautionary principles, the Tribunal directed the MoEF that keeping in view the requirement for protection of natural habitat, human settlement, water bodies and other sensitive areas etc. by specifying the minimum distance required to be maintained from the MSW Plant vis a vis those areas. It further directed that the said exercise be completed within a period of six months

### **Tribunal's landmark decision on Locus Standi: Opens the door to concerned citizen**

The NGT Bench of Justice C V Ramalu and Dr. D K Agrawal in a judgment dated 14 December 2011 expanded the meaning of “**person aggrieved**” and held that protecting and improving the natural environment is the fundamental duty of a citizen under the Constitution and therefore any person can approach the Tribunal and agitate his grievance as to protection and improvement of the natural environment. Thus, the Tribunal held that .

The appeal (5/2011) was filed against the Forest Clearance (FC) approving the diversion of 80.507 ha of Government forest land for construction of 65m high diversion dam across river Alaknanda near village Helong in Chamoli district of Uttarakhand State for the purpose of generating hydroelectricity. (Case : Vimal Bhai and others v MoEF and others )

***Observations made by the Tribunal:*** The tribunal held that under the Preamble and Section 20 of the NGT Act, the tribunal has got vast jurisdiction to decide the environmental disputes such as enforcement of legal rights relating to environment, compensation, damages to persons and property, and matters connected therewith and incidental thereto including conservation of natural resources.

*“...It may not be proper for this Tribunal to reject an Application on the ground that the applicant/appellant as the case may be, is not the resident of the area or not directly injured or aggrieved. The nature has been created over lakhs of thousands of years and such nature cannot be allowed to do away with one stroke of pen, in the guise of development, without properly examining the environmental and ecological impact of the project proposed. No scientific study assumes finality as with the progress of time our knowledge and understanding of the subject matter undergoes metamorphous with new evidence.”*

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*NGT in Vimal Bhai Vs Union of India*

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### **Every citizen entitled to approach the Tribunal**

While referring to Article 48 A and 51A of the Constitution, the Tribunal held that the statutory provisions are subservient to the constitutional mandates. The person as defined or person aggrieved as occurs in Section 2(j) 16 and 18 (2) of the NGT Act cannot be placed above “every citizen” as it appears in Article 51A of the Constitution of India. Once the mandate is of every citizen, any person can approach the Tribunal complaining environmental threat in the activities of the State or any organization or individual.

### ***Directions to the Ministry of Environment and Forests***

The Tribunal after hearing both the parties concluded that there are no substantial merits calling for interference into the FC in question and disposed of the appeal with the following direction to the MoEF

I. To setup an appropriate committee of experts drawn from Indian Institute of Technology, Rourkee (IITR) and Wildlife Institute of India (WII) in the preparation of Cumulative Impact Assessment (CIA) report of the five projects considered in WII report to integrate the physical, biological and social impacts in making comprehensive cumulative impact assessment report and frame appropriate conclusions and recommendations within a reasonable timeframe for consideration and final review by the Ministry of Environment and Forests to avoid any unforeseen environmental and ecological threat in the study area.

II. To ensure sound evaluation of forestland diversion proposals MoEF was asked to prepare the guidelines for cost benefit analysis, may be

updated/modified to provide clear instructions regarding the various cost and benefit elements to be incorporated for the purpose of arriving at cost benefit ratio and applications for Forest Diversion will be done following the prescribed procedure.

## **MoEF directed to develop mechanism to check authenticity of environmental data & black listing of EIA consultants providing cooked/wrong data**

The NGT bench of Justice A.S. Naidu and Dr. G.K. Pandey in a judgment on 09.02.2012 took a strong view on the conduct of the EIA consultant who furnished 'cooked' and 'wrong' data in the Environment Impact Assessment Report and asked MoEF to develop proper mechanism to check authenticity of environmental data reported in the EIA/EMP report. Also, steps should also be taken for black listing such Consultants.

**The tribunal observed that the EIA report prepared by the EIA consultant suffers from gross infirmities which casts doubt on the reliability of the data produced in the report.**

In this case the Tribunal also asked the MoEF to conduct public hearing and suspended the environment clearance till the completion of the same.

The appeal (22/2011 (T) was filed by *Jan Chetna* challenging the Environmental Clearance granted to M/s Scania Steel and Power Ltd. for expansion of its existing Sponge Iron Plant by adding one more unit and installing an Integrated Steel Plant & Captive Power Plant in

Chhattisgarh without conducting public hearing

### ***Observations made by the Tribunal:***

#### ***Principles relating to Industrial Development vis-à-vis sustainable development***

The Tribunal while relying upon the judgment of the Supreme Court in *Vellore Citizens Welfare Forum vs Union of India*(1996 5 SCC 647) stated that though the industrial development is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose health hazards.

#### ***Locus Standi of the Appellants***

The Tribunal while dealing with the issue of locus standi observed that the expression "aggrieved persons" cannot be considered in a restricted manner.

Referring to *Gulam Qadir vs Special Tribunal and Other* 2002 (1) SCC 33 and Delhi High court judgment in *Prafulla Samantra vs MoEF*, the Tribunal held that since the appellants have been working in the area in question and are concerned with the impact of the project on ecology and environment, they satisfy the definition of person aggrieved and have the locus standi to file the appeal.

### **Incorrect EIA Report**

The tribunal observed that the EIA report prepared by the EIA consultant suffers from gross infirmities which casts doubt on the reliability of the data produced in the report.

*The Tribunal stated that the reflected data (in EIA Report) casts a doubt on the reliability of the ambient air quality data produced in the EIA report as the levels of sulphur dioxide reported in the area range between 5.1 and 5.3 micrograms per cubic metre, whereas the minimum detectable limit of the pollutant itself is only 6 micrograms per cubic metre.*

***i. Baseline data much prior to the grant of ToR***

The study period for collection of base line data regarding meteorology, ambient air quality, noise quality, surface and ground water quality, soil quality etc., was found to be much earlier to the date Terms of Reference (TORs) were communicated to the Project which defeated the very purpose of collection of latest base line data based on TORs prescribed by EAC/MoEF.

***ii. Pollution levels below the minimum detectable limits***

The Tribunal stated that the reflected data casts a doubt on the reliability of the ambient air quality data produced in the EIA report as the levels of sulphur dioxide reported in the area range between 5.1 and 5.3 micrograms per cubic metre, whereas the minimum detectable limit of the pollutant itself is only 6 micrograms per cubic metre.

***iii. Levels of heavy metal such as Mercury***

***not been estimated***

The mercury levels in the ambient air was not been estimated despite the fact that there was likelihood of increased mercury levels in view of the consumption of large quantities of coal by a number of sponge iron plants located in the area.

**iv. *Unrealistic Water quality Data***

The fluoride levels were found to be almost same in the ground water and surface water which seems to be unrealistic.

***Decision to exempt Public Consultation not just and proper:***

The Tribunal observed that considering the magnitude of the proposed project, opportunity should have been given to the public to form views with regard to the project. The Tribunal held that since no environmental clearance was granted for the existing Sponge Iron plant under the EIA Notification, 2006, the project does not satisfy the requirements of clause 7 (ii) to the EIA Notification, 2006 where concession not to hold Public Hearing can be granted . Thus, the concession not to hold public consultation cannot be extended to this proposed project. It further stated:

“Only because, the authorities have exempted Public Consultation in respect of some other projects, cannot be ground for exempting the same so far as Scania is concerned. Law is well settled that each case has to be determined and decided in consonance with the facts and circumstances relating to the said case and there cannot be an universal decision to either conduct or exempt public hearing while granting EC.”

***EIA consultant to be black Listed:***

The Tribunal directed the Ministry of Environment and Forests to develop appropriate mechanism to check the authenticity of environmental data reported in the EIA/EMP report which would facilitate a more realistic environmental appraisal of project. Steps should also be taken for black listing Consultants found to have reported “cooked data” or “wrong data” and for producing sub-standard EIA/EMP report.

***Suspension of Environment Clearance till completion of public hearing***

Considering the above, the Tribunal directed the Ministry of Environment and Forests and State Pollution Control Board to conduct public hearing and suspended the environment clearance till the completion of the same. It also directed the MoEF to take prompt steps for completing the exercise of public consultation (Public Hearing) and curing the deficiency in EIA/EMP, and re-visit the entire project in the light of the observations made by NGT and complete entire exercise as expeditiously as possible.

## Approval for Solid Waste Processing Plant set aside

The National Green Tribunal Bench of Justice C.V. Ramalu and Prof. R. Nagendran in a significant judgment dated 24.02.2012 made serious observations on the conduct of the EIA consultant for providing false information in the EIA report and directed the concerned authority to take appropriate steps to prevent such occurrences by taking suitable action against the EIA consultant and strictly warning him in writing.

The judgment was passed by the NGT on hearing an appeal (18/2011(T) filed against the Environment Clearance granted to the Municipal Corporation of Chennai by Tamil Nadu State Environment Impact Assessment Authority for setting up of Integrated Municipal Solid Waste Processing Plant of 1400 TPD capacity at Pallikaranai village, Kanchipuram District, Tamil Nadu

**NGT: ‘the information furnished by the EIA consultant as to the distance is not only a gross negligence but also a professional misconduct’ :**

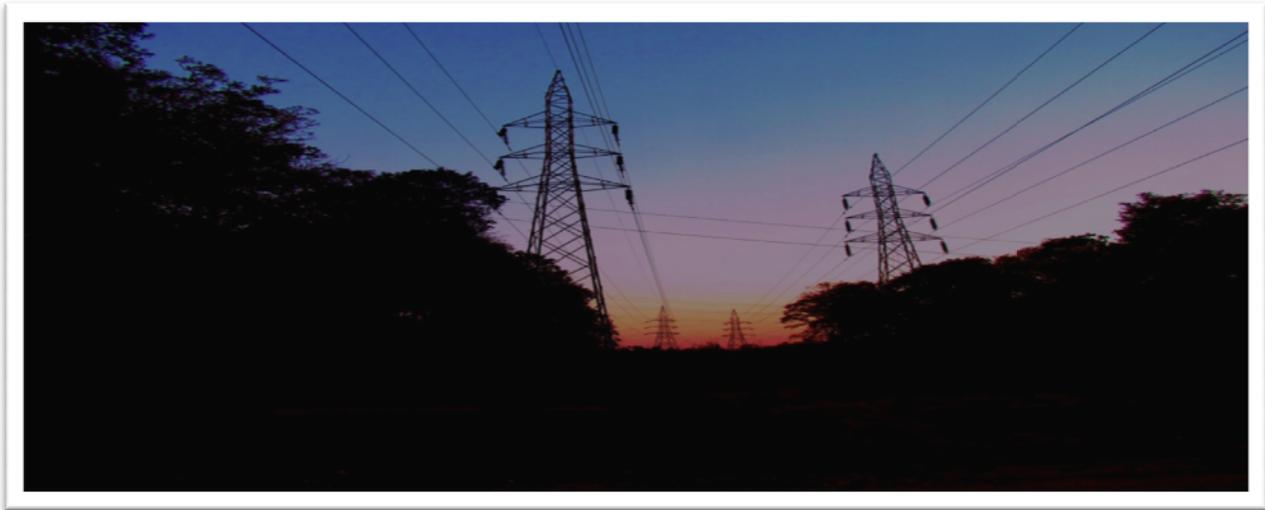
*Distance between the project site and National Park wrongly calculated*

The appellant contended that the distance between the project site and Guindy National Park was wrongly calculated in the EIA report which led to the grant of Environment Clearance by the SEIAA. Since the project was located within 10 km of the Guindy National Park, it was to be treated as a ‘category A’ project which required Environment Clearance from the Central Government (MoEF) as per the EIA Notification, 2006. The Tribunal took notice of the fact on perusal of the report submitted by the Principal Chief Conservator of Forests and the Chief Wildlife Warden which stated the aerial distance between the two nearest points of the project site and the boundary of the National Park as 5.6 km and 6.2 km.

While dealing with the issue of conduct of EIA consultants, the Tribunal stated that they had deprecated such practice adopted by the EIA consultant in furnishing false information and the Central Government (MoEF) had issued suitable guidelines to deal with such project proponents who are guilty of false information resulting in grant of projects., unmindful of the legal and environmental consequences. It further observed that the information furnished by the EIA consultant as to the distance is not only a gross negligence but also a professional misconduct.

*Environment Clearance set aside*

The Tribunal while setting aside the Environment Clearance on the ground of jurisdiction vis-à-vis distance directed the Ministry of Environment & Forests to consider the grant of EC on the basis of a fresh EIA report.



## **Tribunal directs no felling in wildlife corridor and issuance of fresh guidelines for transmission lines in forest areas**

The National Green Tribunal Bench of Justice A.S. Naidu and Dr. G.K.Pandey in a judgment dated 07.03.2012 directed MoEF to notify detailed fresh guidelines for laying transmission line through forest area and incorporate necessary changes to mitigate the difficulties which arise during granting forest clearance.

The appeal (10 of 2012) was filed challenging the Forest Clearance granted to Karnataka Power Transmission Corporation Ltd. for diversion of 172.53 ha of forest land for construction of 400 KV Double circuit Transmission lines from generation station of Udupi Power Corporation at Yellur village of Udupi District, to the receiving stations situated at Shantigram (Hassan). (Case : Jan Jagrithi Samiti vs Union of India & Others)

The Tribunal directed the project proponent not to cut trees nor destroy forest in 8.3 km stretch of Vallur Reserve Forest. It further stated:

“.....certain sections of the line cross through areas of rich wild life and biodiversity and are of greater ecological value. Out of the said lands, a portion measuring about 8.3 km. long, as would be evident from the map produced before us, between the proposed tower locations AP 100 to AP 107 passes through Vallur Reserve forest. The said section of line crosses through high biodiversity ever green forests and shola – grass lands, which harbours a variety of endangered wild life. Drawing overhead lines of the proposed 400 KVA transmission line over the said section may cause significant adverse impacts not only on wild life and biodiversity but also would cause restrictions in habitat connectivity and corridor values of the forest.”

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*Forest Advisory  
Committee  
recommended the  
project despite serious  
ecological concerns in  
view of the 'Power  
Crisis in the state.*

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***Directions issued by the Tribunal:***

The Tribunal disposed of the appeal with the following directions:

- i. Project proponent not to fell trees nor destroy the biodiversity in the stretch of Reserve Forest land measuring 8.3 km. i.e. AP 100 to AP 107.
- ii. Project proponent to fell minimum number of trees in rest of the forest lands for which clearance has been granted and shall adopt the procedure of trimming the branches than uprooting the trees, as and when possible.
- iii. To ensure maximum height of the towers in the forest area to be 70 mts or above, following the contour of the terrain.
- iv. Below the conductor, width clearance of 3 mts permitted for taking the tension stringing equipment. The trees on such strips to be felled as and where required but after stringing work is completed, the natural regeneration of vegetation will be allowed to come up. Felling/pollarding/pruning of trees to be done with the permission of the local forest officer whenever necessary to maintain the electrical clearance.
- v. Steps to be taken to promote and nourish the undergrowth and for afforestation with endemic species.

The Tribunal observed that the guidelines for laying transmission lines through forest areas formed by the MoEF had become obsolete by afflux of time and though fresh guidelines have been formulated, the same have not been notified. Keeping this in view, the Tribunal directed the incorporation of necessary changes to mitigate the difficulties which arise during the granting of forest clearance, as expeditiously as possible preferably within a period of two months from the date of communication of this order.

**Ministry of  
Environment and  
Forests to take steps  
and notify the detailed  
fresh guidelines for  
laying transmission  
line through forest  
area,**

## **NGT Circuit Benches – Reaching Out to People**

Parul Gupta<sup>1</sup>

**O**ne of the main concern raised against environmental courts is that it will be inaccessible since its based at Delhi making it difficult for affected people to access it. The NGT however is likely to be different. The Principal Bench of the Tribunal at Delhi became operational from 4 July 2011. Presently, the Tribunal consists of two judicial members and three environmental experts. Principal Bench has jurisdiction over NCT Delhi, Chandigarh, Haryana, Himachal Pradesh, Punjab, Uttarakhand and Jammu & Kashmir, but presently Principal Bench is taking up cases from all over the country.

Besides the Principal Bench, four Circuit Benches have been recently established in different parts of the country. **Bhopal:** The first Circuit Bench of the National Green Tribunal was inaugurated in Bhopal on 17 November 2011. An appeal filed against the 'environment clearance' granted to Scania Steel and Power Ltd for expansion of steel and captive power plant in Raigarh, Chhattisgarh was heard by the Bench of Justice A. Suryanarayan Naidu and expert member Dr. Gopal Krishna Pandey. The jurisdiction of the Bench is Madhya Pradesh, Chhattisgarh and Rajasthan.

**Kolkata:** The Second Circuit Bench was inaugurated at Kolkata on 10 February 2012 at the premises of Zoological Survey of India (ZSI), Same day, the Bench comprising judicial member Justice A. Suryanarayan Naidu and expert member Dr. Gopal Krishna Pandey heard an appeal filed by Hindustan Coca Cola Beverages Private Ltd. against an order issued by the West Bengal Pollution Control Board.

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<sup>1</sup> Lawyer, Legal Initiative for Forest and Environment, New Delhi

The jurisdiction of the Bench at Kolkata is all seven North Eastern States, Sikkim, West Bengal, Odisha, Bihar, Jharkhand and the Andaman and Nicobar Islands.

**Pune:** The third Circuit Bench was launched on 17 February 2012 at Pune in the premises of the Court of Board of Revenue, Council Hall. The bench comprising of Justice C.V. Ramulu and expert member Dr Devendra Kumar Agrawal heard an appeal filed by Lavasa Corporation challenging the pre environmental clearance conditions imposed by the Ministry of Environment and Forests. The Bench has jurisdiction over the States of Maharashtra, Gujarat, Goa, Daman and Diu and Nagar Haveli.

**Chennai:** The Circuit Bench at Chennai was launched on 24 February 2012. The Bench comprising of Justice C.V. Ramulu and expert member, Dr. R. Nagendran at its very first hearing set aside the 'environmental clearance' granted to the Chennai Municipal Corporation for setting up of a solid waste management plant. The Bench has jurisdiction over the States of Tamil Nadu, Andhra Pradesh, Karnataka, Kerala, Pondicherry and Lakhshadweep.

Benches	Location	Launch Date	Jurisdiction
Principal Bench Chairperson's Bench	New Delhi	04.07.2011	NCT Delhi, Chandigarh, Haryana, Himachal Pradesh, Punjab, Uttarakhand and Jammu& Kashmir,
Principal Bench	New Delhi	04.07.2011????	"
Circuit Bench	Bhopal, MP	17.11.2011	Madhya Pradesh, Chhattishgarh and Rajasthan
Circuit Bench	Kolkata, West Bengal	10.02.2012	North Eastern States, Sikkim, West Bengal, Odisha, Bihar, Jharkhand and the Andaman and Nicobar Islands
Circuit Bench	Pune Maharashtra	17.02.2012	Maharashtra, Gujarat, Goa, Daman and Diu and Nagar Haveli
Circuit Bench	Chennai Tamil Nadu	24.02.2012	Tamil Nadu, Andhra Pradesh, Karnataka, Kerala, Pondicherry and Lakhshadweep

## Hubli-Ankola Railway Line

TamilSelvi Jaychandran<sup>2</sup> and Gaurav Shirodkar<sup>3</sup>

**H**ubli-Ankola railway line proposed through the Western Ghats in Karnataka has been in a suspended state for over a decade now and is a classic example of a sleeping dragon. Despite being rejected several times it re-emerges.

A revised proposal of SWR reduced the forest land requirement to 720 ha from the originally proposed 965 ha.

However, the 'reduced' requirement of forest land does not help the cause of environment - It still requires felling of over 2 lakh trees, fragmentation of the traditional elephant migratory corridor and will affect the catchment of the Kali, the Bedthi and the Gangavali rivers.

Two field visits by EIA Resource and Response Centre (ERC) to the area (30 January to 8 February & 22 to 24 February 2012) of the proposed railway line and discussion with local people and officials were highly revealing.

The railway line was mooted by former Prime Minister A B Vajpayee during his tenure in May, 1999 and took off in 2003. The project was in a stalemate in 2004 when 'Environmental Clearance' was denied. Despite the pending Clearance, South Western Railway (SWR) started the groundwork (digging the earth and digging trenches) in non-forest area on a 40-km stretch between Hubli and Kalghatgi. While the Central Empowered Committee of Supreme Court took serious view of the activity and stayed further construction, platforms had

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<sup>2</sup> Coordinator, EIA Response Centre (eRc), Nilgiris

<sup>3</sup> EIA Response Centre (eRc), Konkan and Sahyadri, Goa

already been raised for laying tracks and 3 bridges stand completed halfway through.

A revised proposal of SWR reduced the forest land requirement to 720 ha from the originally proposed 965 ha. However, the 'reduced' requirement of forest land does not help the cause of environment - It still requires felling of over 2 lakh trees, fragmentation of the traditional elephant migratory corridor and will affect the catchment of the Kali, the Bedthi and the Gangavali rivers.

The revised proposal for the line was also rejected by the then Environment Minister Jairam Ramesh in 2010. Following this, an Indian Institute of Science expert team headed by Dr. T.V. Ramachandra was appointed to do a feasibility study and submit its opinion. The release of this report is awaited.

According to a news report, Dr T V Ramachandra's team has suggested many tunnels and bridges to minimise the ecological damage and also the relocation of endemic flora to accommodate the railway line. The relocation of endemic flora is contradictory in itself.

The field staff of the Karnataka Forest Department told the ERC coordinators that the railway line would cut through 60 km (approx) of forests falling in two Forest Circles (Uttara Kannada and Dharwad) and eight Forest Ranges. In the last 30 years, the district of Uttara Kannada has lost about 13% of its forest cover and a total of 1,07,411 ha of forest land has already been either diverted or encroached. Dharwad Forest Circle has only 8% of its district area as forests and the best of them fall in the proposed layout and stand to lose some of them if the rail line comes up.

It seems evident that the design and layout of the proposed railway line have not been prepared in cognizance of the real damage to the environment and not weighed against the huge cost of environmental destruction and loss of ecosystem services.

The railway line was initially visualized for the transport of iron ore from Bellary/Hospet region to the ports of Karwar and Tadri. Supreme Court orders dated 29 July and 26 August, 2011 have presently prohibited mining in Bellary, Tumkur and Chitradurga districts of Karnataka. Connectivity or the lack of it cannot be claimed as a reason for the rail line as there is already a railway line from Hubli to the ports of Madgaon and Vasco via Castlerock and Kulem, which is grossly underutilized. A well maintained National Highway (NH63) also exists between Hubli and Ankola. Forest Advisory Committee mindful of the above facts while rejecting the project proposal in 2004 stated, *"The rail distance between Hubli-Vasco is 230 km, whereas the distance between proposed Hubli-Ankola-Karwar is 212 km. There is a marginal difference of 18km in the distance between*

*the existing and the proposed railway track for which such a large area of beautiful forests and biological hot-spot eco fragile Western Ghats should not be sacrificed”.*

The proposed project does not have much potential in terms of traffic or profit. There also stands an existing power transmission line which crosses the rail line at places and would have to be shifted. This would mean overhaul at places where the lines exist and destruction in new places where the transmission line will be shifted.

Presently, there is respite for the Forest Department of Karnataka and environmentalists since the Union Railway Budget 2012 has not allocated any funds for the Hubli-Ankola Railway Line though what action the Karnataka Government takes on the basis of the IISc Report for pushing on with the project is to be seen. One hopes that this unnecessary and detrimental project would be dropped all together for there is no justification for irrationality.



## MISSING PUBLIC

Rahul Choudhary<sup>4</sup>

The last two years have seen for the first time ‘environmental clearances’ being set aside due to faulty public hearing. Yet no lessons have been learnt and Chhattisgarh happens to be among the worst offenders. The latest is from Korba.

A national daily<sup>5</sup> reports the statement of the District Magistrate who presided over a Public Hearing at Korba in an interview “All the legal formalities of the public hearing were complete. If even one project affected person gives his opinion...the legal requirements are fulfilled,” adding that 24 people had participated in the hearing. This was stated after the Public Hearing for the expansion of Lanco Amarkantak Power Limited’s thermal power plants’ capacity from its existing 600MW to 1320 MW The mandatory Public Hearing for the project was scheduled

<sup>4</sup> Environmental lawyer and Trustee Legal Initiative for Forest and Environment (LIFE)

<sup>5</sup> <http://www.thehindu.com/news/states/other-states/article2803877.ece>

on 07.01.2012 at Resadiapara. There was strong opposition against the project by the affected villagers living around the existing power plant. People alleged that the project proponent disposed untreated waste in Jogi Nala, used by villagers resulting in contamination of water. Villagers get skin diseases and cattle die due to use of the contaminated water. Gaseous effluents from the plant affect agricultural fields. Noise pollution too is huge a nuisance.

Thus, around 3000 villagers blocked the way to the Public Hearing venue to protest against the project. The State Pollution Control Board and District Magistrate completed the formalities of the Public Hearing on the same day by changing the venue to a nearby village Imlibhata. This act of manipulation by the administration agitated the villagers and the police beat them severely.

This shows that the Public Hearing process is reduced not only to a formality but a farce. Since the EIA process would not be complete without the proceedings of the Public Hearing, the officials are compelled to conduct one, no matter how it is conducted.

## Lighter Side of Green Justice

Pushp Jain<sup>6</sup>

National Green Tribunal is a serious business. At stake are the so called “developmental” project e.g. POSCO Steel plant in Odisha; Sompeta Thermal Power Plant at Srikakulam, Andhra Pradesh; OPG Mundra Thermal Power Plant in Gujarat; Transmission Line for Power evacuation from Thermal Power Plant at Udupi, Karnataka; ... On the other side are natural and social environmental impact issues of destruction of wetland, forest, pollution of air and water, loss of livelihood and home for local communities. There are allegations of manipulation and fabrication of information for preparation of EIA reports and faulty EIA processes to obtain clearances. And there are issues with the protector of environment, forest and biodiversity, the government itself, which through its various committees and executives give clearances without ‘looking at facts of the matter seriously’ or ‘not applying its mind’ or ‘not applying the precautionary principle’ in the cases where there is doubt.

Generally, the appellants are poor local communities from the backyard of the country or some local NGO striving to help the local people in saving the environment. On the other hand, the respondents are government agencies e.g. Union of India, State Governments and Project Proponents. These are represented by a battery of highly paid lawyers - the numbers, influence and money power of the respondents are threatening.

On the face of it, Green Tribunal may seem a very gloomy scenario but paradoxically, very

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<sup>6</sup> Director, EIA Response Centre

important environment battles are fought in the Tribunal in a very friendly and jovial environment notwithstanding occasional heated exchanges among lawyers.

First of all, the setting is generally informal. When I went for the first time to attend the Tribunal hearing accompanying an environmental lawyer, I was cautious to follow decorum and rules. I asked my friend “which seat I should take.” He answered “take any except the ones on dais!”

There is freedom for all to attend hearings, of course, with maintenance of certain discipline.

With numerous appellants and respondents one or the other has some problem and request for adjournment (i.e. postponement), which all parties take in good spirit and accept, howsoever pressing the need for early conclusion of the case maybe. And many a times the request is purely on personal grounds e.g. marriage in the family (not one’s own)!

During the hearing, what goes on in the mind of My Lord Judges is anybody’s guess but interestingly, most of the present members of the Tribunal have smiling faces and jovial nature and try their best to get to the root of the issue. They would not let the argument get too serious and intervene from time to time with some lighter anecdote or joke to pacify the charged nerves of litigants. The combination of judicial and technical members at times create problems for lawyers who tend to be more acquainted with the law than scientific facts.

For example, the other day, huge cultural differences in same class of people from different part of the country was explained in the following manner by the Honorable justice. “There was a national conference of pundits (priests) from all over the country. During lunch a Rajasthani pundit objected to the smell of garlic in vegetable while a pundit from Maharashtra asked for onion. Rajasthani pundit was not amused by onion eating by a pundit! The next man in the row was a Bengali pundit who wanted a fish. All pundits were aghast! Bengali pundit explained fish is only a water vegetable!!

On occasions when a lawyer goes too far with the presentation taking unnecessarily long time, judge may jokingly enquire whether he is providing information beyond required which may end up become supporting material for the opponent.

And given the Delhi traffic, Judges are kind enough to adjust the hearings for few minutes if a party is caught in traffic and sends an urgent telephonic request!

It is quite frequent, the arguments are interrupted with lunch breaks. Here it is not uncommon for the lawyers from all sides to sit together for lunch or tea/coffee and have good time.

So it is fun on the side, while serious green justice is happening.

**Pushp Jain, Naturalist & Director, ERC, New Delhi**

(the views are purely personal and not intended to be taken seriously !)

# Supreme Court Pays Major Attention to Mismanagement of Minor Minerals

Lekha Sridhar<sup>7</sup>

## Background

The Government of Haryana issued a number of auction notices for mining of minor minerals, sand and gravel quarries of an area not exceeding 4.5 hectares as well as

**Leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting 'environmental clearance' from the MoEF.**

auction notices for areas exceeding 5 hectares for quarrying of minor minerals, road metals, stone mines etc, with certain restrictions on quarrying in the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati basin, Dohan basin, etc. As per the EIA 2006 notification, mining leases for minor minerals on less than 5 hectares of land do not require any prior EIA clearance. These auction notices were challenged before the Supreme Court of India in the case Deepak Kumar v. State of Haryana (S.L.P. (C) NO. 19628-19629 OF 2009).

The Ministry of Environment and Forests (MoEF) then constituted a Core Group under the Chairmanship of the Secretary (Environment & Forests) to look into the environmental aspects associated with mining of minor minerals, vide

its order dated 24.03.2009 and a Report was accordingly prepared in March 2010 with several recommendations. The MoEF later submitted an affidavit stating that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006.

The Supreme Court directed the CEC (Central Empowered Committee of Supreme Court) to conduct a site visit to see if the said auction notices were a deliberate attempt to flout the EIA Notification's requirement of EIA and whether the activities in the area were having an adverse ecological impact.

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<sup>7</sup> Lawyer, Legal Initiative for Forest and Environment, New Delhi

## Judgment

On 27-02-2012, the bench comprising of Justice K.S. Radhakrishnan and Justice C.K. Prasad, delivered a judgment that held:

Leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting 'environmental clearance' from the MoEF.

Directed all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

## Supreme Court's Observations

### *On the CEC's Site Visit Report*

The Apex Court found that the CEC Report was silent on several issues, including **"the disturbing trend of serious illegal and unrestricted upstream, in-stream and flood plain sand mining activities and the prevailing degree of degradation of the sites and the environment, especially on the river beds mentioned earlier."**

Furthermore, it was observed that the CEC Report did not throw any light on whether there has been, in fact, an attempt to flout the notification by breaking the homogeneous area into pieces of less than 5 hectares and the possible environmental or ecological impact on quarrying of minor minerals.

*On Sand Mining* The Court observed that "sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics."

### *On the Impact of Mining of Minor Minerals*

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“Over the years, India’s rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc”

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The Court observed that while proposals for mining of major minerals typically undergo environment impact assessment and environmental clearance procedure, due attention had not been given to environmental aspects of mining of minor minerals. The Court also made note of the fact this lacuna had come to the notice of the MoEF which found that less attention was given to environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant.

The Supreme Court took notice of the recommendations and observations made by the above-mentioned Core Group of the MoEF. Some of the important recommendations were:

- There was a need to reconsider the definition of "minor minerals";
- The operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals.
- There was a need for uniformity in area granted in mining leases and recommended that the minimum size of mine lease should be 5 ha for a minimum period of 5 years so that eco friendly scientific and sustainable mining practices are adopted.
- The necessity of the preparation of “comprehensive mines plan” for contiguous stretches of mineral deposits by the respective State Governments should also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.
- Since minor mineral mining has significant potential to adversely affect the environment, Model Mineral Concession rules may be framed for minor minerals as well as a simpler regulatory regime, which is, however, similar to major minerals regime.

*Model Rules, 2010 (Ministry of Mines)*

Taking note of the adverse effect on bio-diversity as loss of habitat caused by sand mining and other technical, scientific and environmental matters, the MoEF, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines.

The Supreme Court was of the view that all State Governments / Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. The Court also held that the Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

The Court was of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol, which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

### **CIC directs MoEF to Publish all EC and FC related information on Website**

The Central Information Commission (CIC) vide orders dated 18.01.2012 and 29.02.2012 issued directions to the Ministry of Environment and Forests (MoEF) to publish information relating to the Environment Clearance (EC) and Forest Clearance (FC) on its website. The orders were passed by Mr Sailesh Gandhi, Information Commissioner, CIC, New Delhi on the complaints filed by Shibani Ghosh, Environmental Lawyer, Delhi. The complaints were filed seeking certain category of information to be made available on the website of the MoEF. It was contended that such information should be made available *suo motu* and should not require filing of RTI application under the Right to Information Act, 2005. The Commission issued directions to the MoEF to publish information on the website in a prescribed time line.

**Following Information related to Environment Clearance to be made available w.e.f 01.04.2012.**

- ✓ Copies of applications and related documents submitted by the Project Proponent while seeking prior environmental clearance, particularly the Form 1/ Form 1A.
- ✓ Additional information submitted to the Expert Appraisal Committees (EAC) of the Ministry of Environment and Forests by the Project Proponent as well as reports/studies commissioned by the Expert Appraisal Committees.
- ✓ Six-monthly compliance reports that are to be submitted to the Ministry by the Project Proponent.
- ✓ Reports of committees which may have been constituted to monitor the compliance of conditions by the Project Proponent.
- ✓ Copies of additional studies/reports stipulated by the MoEF such as mitigation plans have to be done after the clearance has been granted.

The Commission directed MoEF to issue an order to all State Pollution Control Boards (SPCBs) to ensure that the proceedings are displayed regularly on their website within seven days of the issue of the Minutes of the Public Hearing.

Further, the Ministry has been directed to upload Site inspection and monitoring reports available with the regional offices of the Ministry by 1 June 2012.

**Following Information related to Forest Clearance (FC) to be made available before 01.05.2012.**

- ✓ Form A & Form B submitted by the user agency/Project Proponent to the State Government with regard to diversion of forest land to be uploaded within 10 days of placing the project on the Agenda of the Forest Advisory Committee (FAC).
- ✓ Minutes of meetings of the FAC to be uploaded online within 10 days after they are approved.

- ✓ Any additional documents/reports/studies sought by the FAC or
- ✓ Any site visit undertaken by the FAC, to be uploaded within 10 days of receipt of the information

MoEF Orders in View of CIC Directions - EIA Related Information to Go Online

*Pursuant to the CIC order dated 18.01.2012, MoEF has issued orders to the Project Proponent to submit electronic copies of the documents/details related to Environment Clearance process for uploading on the Ministry's website.*

- ⇒ *State Pollution Control Boards (SPCBs)/Union Territory Pollution Control Committees (UTPCCs) to upload all Public Hearing proceedings on their websites.*
- ⇒ *EAC and SEIAA(State EIA Authority) to upload the following information w.e.f 01.04.2012*
  - *Form-I*
  - *Form- IA*
  - *Pre-feasibility report*
  - *Draft Terms of Reference(ToRs)*
  - *EIA report*
  - *Filled in Questionnaire for environmental appraisal projects*
  - *Public Hearing proceedings*
  - *All the study reports undertaken at the instance of the EACs and*
  - *Any additional information submitted by the Project Proponent to the EACs.*
  - *EAC and State Expert Appraisal Committee (SEAC) site visit Report*

*Further, it has also stated that any application or subsequent communication submitted without the documents both in hard and soft copies shall be considered incomplete and will not be processed further.*



## EIA Resource & Response Centre (ERC)

*ERC is a joint initiative of the Legal Initiative for Forest and Environment (LIFE), The Environics Trust and PEACE Institute.*

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