

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

**M.A. No. 1167 of 2015 (I.A. No. 3620/2013)**

**In**

**W.P. (C) No. 202 of 1995**

**IN THE MATTER OF:**

**T.N. Godavarman Thirumalpad Vs. Union of India & Ors.**

**CORAM :** HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER  
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER

**Present Applicant:** Mr. Ritwick Dutta and Mr. Rahul Choudhary, Advs.  
**Respondent No. 1:** Dr. Abhishek Atrey and Mr. Sumit Mr. Devraj Ashok, Adv. for State of Karnataka  
**Amicus Curiae** Mr. A.D. N. Rao, Mr. Sudipto Sircar and Ms. Vaishali R. Advs.

	<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
	<b>Item No. 1</b> <b>February 15, 2016</b> <b>A</b>	<p>The I. A. No. 3620 of 2013 was transferred by the Hon'ble Supreme Court of India to this Tribunal for disposal of the said Application in accordance with law. This came to be registered as M.A. No. 1167 of 2015 upon transferred to the Tribunal.</p> <p>The Hon'ble Supreme Court of India vide its order dated 12<sup>th</sup> December, 1996 had passed certain directions as well as directed the CEC to submit its reports. The CEC had held meetings with the stake holders on 18.01.2010, 23.02.2010, 17.03.2010, 17.09.2010, 20.10.2010, 11.10.2010 and 14.12.2010; conducted site inspection along with others; and finally submitted its report to the Hon'ble Supreme Court of India on 22<sup>nd</sup> April, 2013. This report primarily relate to declaration of deemed forest and protection of eco sensitive area in the western Ghats in relation to State of Karnataka. The State of Karnataka had taken certain actions but have not fully</p>

discharged its responsibility in terms of the orders of the Hon'ble Supreme Court of India as well as declaration of the deemed forest in accordance with the provisions of the Forest Conservation Act, 1980. The CEC in its report made the following recommendations:-

*“in the above background following recommendations are made by the CEC for the consideration of the Hon'ble Supreme Court :-*

- i) The Karnataka Forest Department may be directed to review in a time bound manner, say within three months, the details of all the areas in Western Ghats which, based on its flora, fauna and/or other ecological considerations qualify to be identified and included in the list of “deemed forests”.*
- ii) The diversion of the forest land, including “deemed forests” under the Forest (Conservation) Act, 1980 for new mini/micro hydel power projects or for expansion of existing projects in the Western Ghats region in the State of Karnataka will be considered only after carrying out a comprehensive study to assess the carrying capacity of the Western Ghats region in Karnataka to sustain such projects and their individual and combined impact on the Western Ghats ecosystem; and*
- iii) The diversion of forest land falling in the Western Ghats in the State of Karnataka, irrespective of the extent of the forest land involved, will be permissible only after (a) examination of such proposal by the Forest Advisory Committee (FAC) constituted under the Forest (Conservation) Act, 1980 and (b) preparation of the detailed Environment Impact Assessment Report and grant of Environmental Clearance by the MoEF.”*

We have heard the Learned counsel appearing for the CEC as well as MoEF and State of Karnataka. They

are at ad idem that recommendations of the CEC should be directed to be implemented. Learned counsel appearing for the State of Karnataka has submitted that in furtherance to the directions passed, State had taken various steps for declaration of forest/deemed forest area. Survey was conducted and the note prepared has now been placed before the Cabinet. The Cabinet is to consider the same and pass appropriate directions including issuance of appropriation direction. As far as comprehensive study in relation to the establishment of new mini micro hydel power projects and expansion of existing projects in the Western Ghats Region in the State of Karnataka is concerned, the study had not been commenced as yet. The MoEF has filed an Affidavit before the Hon'ble Supreme Court of India which is on record before us. It has been stated in the Affidavit that until the list of deemed forests in Karnataka gets amended as recommended, it is necessary that all projects in Western Ghats region including eco tourism, wind power and hydro power should be stayed. It is further stated that until such area are identified and notified, no further Environmental Clearance should be considered for such projects on any forest land or deemed forest land.

As far as issue in relation to issuance of notification of eco-sensitive area of Western Ghats in the State of Karnataka, amongst others is concerned MoEF is stated to have taken steps. Firstly, Gadgil Report was submitted to the Government identifying the eco – sensitive area in Western Ghats. Thereafter Dr. Kasturi Rangan Committee was constituted to examine all over again and submit its report. That report has been submitted to the

Government. After receiving the report and examining the same, the MoEF has issued a draft Notification on 04<sup>th</sup> September, 2015 inviting objections to the report. It has also asked the State Governments to respond thereto. It is stated that the Notification is pending at that stage.

It is evident that that there has been undue delay in complying with the statutory obligations placed upon the Central Government and State Government under the Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986. We are of the considered view that it does not serve the purpose of any one, as even the development is at stand still because of non-completion of the above direction in relation to the Notification of the forest/deemed forest areas as well as eco sensitive area in the Western Ghats in the State of Karnataka. One is required to be done by the State Government and the other by the Central Government. Both the Central Government and State Government have to work in tandem to achieve the object of effective and expeditious demarcation and notification of the respective areas. It is necessary in the interest of environment and ecology that these areas are duly protected Western Ghats are one of the most natural precious and useful areas and they require due protection from undue invasion by starting industrial or other activities, which would cause irreparable damage to the nature, environment and ecology.

Another important aspect is that there has to be a definite study carried out before any development, industry/ hydro projects or otherwise can be permitted in line with the principle of sustainable development. After

declaration of eco-sensitive areas and deemed forest areas, it is to be examined what activity and to what extent can be permitted, if at all and such decision can be arrived at only when it is backed by appropriate cumulative study, as they are recommended even by the CEC.

Having heard the Learned counsel appearing for the parties and perusing the CEC report we dispose of this Application by passing following directions:-

1. We direct State of Karnataka to ensure that a notification in relation to the declaration of forest/deemed forest area should be processed and notified within three months from today. Not only the notification, steps should be taken by the State Government for physical demarcation of such areas.
2. The State Government shall also examine what activities should be permitted in such area while keeping in mind the restrictions imposed under the Forest (Conservation) Act, 1980.
3. We direct the MoEF to expedite the issuance of the Notification under the Environment (Protection) Act, 1986. All the State Governments which have not submitted their objections, if any, to the draft notification shall submit the same within two months from today. In the event any State Government does submit its objections to the MoEF, it should be presumed that the State wishes not to raise any objections to the draft notification. Thereupon MoEF should proceed to issue final notification in relation to the Western Ghats without further delay and demour.

4. The MoEF would issue a letter to the Chief Secretary of each State within one week from today communicating the order of the Tribunal to the respective States through Chief Secretaries.

5. Secretary, MoEF shall constitute a team majorly forming part of the State Government and the Ministry itself to conduct a comprehensive study to assess the carrying capacity of the Westerns Ghats region in the State of Karnataka, to sustain the projects as proposed. The said study should be submitted to the MoEF as well as to the State Government with a copy placed on record before the Tribunal. The study must relate to all projects including eco-tourism.

6. We make it clear that all the above directions are subject to the orders passed or which may be passed by the Hon'ble Supreme Court of India in the matters pending before the Apex Court.

7. The parties are granted liberty to move for clarification of any of the direction if the needs so arises.

Accordingly, M.A. No. 1167 of 2015 (I.A. No. 3620 of 2013 in W.P. (c) No. 202 / 1195 before Hon'ble Supreme Court of India)

stands disposed of without any order as to costs.

.....,CP  
(Swatanter Kumar)

.....,JM  
(M.S. Nambiar)

		<p>.....,JM (Dr. Jawad Rahim)</p> <p>.....,EM (Dr. D.K. Agrawal)</p> <p>.....,EM (B.S. Sajwan)</p>
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