

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

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**M.A. NO. 1153 OF 2015 (I.A. NO. 993/2003)
M.A. NO. 1154 OF 2015 (I.A. NO. 836/2002)
IN
W.P. (C) NO. 202 OF 1995**

AND

**M.A. NO. 1155 OF 2015 (I.A. NO. 895/1995)
IN
W.P. (C) NO. 202 OF 1995**

IN THE MATTER OF:

T.N. Godavarman Thirumalpad

.....Applicant

Versus

Union of India & Ors.

.....Respondents

AND

The State of Bihar

.....Petitioner

Versus

1. The Union of India
Through the Secretary
Ministry of Environment and Forest
CGO Complex, Lodhi Road,
New Delhi
2. The Additional Director General of Forest (Wildlife)
Ministry of Environment and Forest,
Government of India, CGO Complex,
New Delhi
3. The Director
Tiger Project
Ministry of Environment and Forest
Bikaner House Annexe
Shahjahan Road, New Delhi

4. Sri R.P. Verma
Resident of Village D.K. Shikerpur,
Post D.K. Shikarpur, Thana Shikarpur
Dist. Bettiah, West Champaran
Bihar
5. Sri Rai Brij Mohan Sharma
R/o Village Vilashpur
Post Harinagar (Ramnagar)
Thana Ramanagar, Distt. West Champaran
Bihar

AND

The State of Bihar

.....Petitioner

Versus

The Union of India & Ors.

.....Respondents

IN THE MATTER OF

Ramesh Prasad Verma

.....Applicant/Respondent No. 4

COUNSEL FOR APPLICANT:

(IN M.A. NO. 1153 & 1154 OF 2015)

None.

(IN M.A. NO. 1155 OF 2015)

Mr. Rahul Choudhary, Advocate.

COUNSEL FOR RESPONDENTS:

(IN M.A. NO. 1153 & 1154 OF 2015)

Mr. A.D.N. Rao and Sudipto Sircar, Advocate for Amicus Curiae.

Mr. Balendu Shekhar and Mr. Vivek Jaiswal, Advocate for
MoEF (Respondent No. 1).

Mr. Rahul Verma, AAG with Mr. Vivek Jaiswal for State of
Uttarakhand. Mr. Gopal Singh, Ms. Shreyas Jain, Mr. Rudreshwar
Singh and Mr. Gautam Singh, Advocates for State of Bihar
(Respondent No. 4).

(IN M.A. NO. 1155 OF 2015)

Mr. A.D.N. Rao and Sudipto Sircar, Advocate for Amicus Curiae.

Mr. Vivek Sharma, Advocate for MoEF (Respondent No. 1).

Mr. Gopal Singh, Ms. Shreyas Jain, Mr. Rudreshwar Singh and
Mr. Gautam Singh, Advocates for State of Bihar.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Prof. A.R Yousuf (Expert Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 12th January, 2016

Pronounced on: 18th February, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this order we shall dispose of M.A. No. 1155 of 2015 (I.A. No. 895 of 2003 in Writ Petition No. 202 of 1995 before the Supreme Court), M.A. No. 1154 of 2015 (I.A. No. 836 of 2002 in Writ Petition No. 202 of 1995 before the Supreme Court) and M.A. No. 1153 of 2015 (I.A. No. 993 of 2003 in Writ Petition No. 209 of 1995 before the Supreme Court) as all these matters relate to carrying on of mining activity and construction within the Valmiki National Park and Wildlife Sanctuary, West Champaran district, State of Bihar.

2. Commissioner and Secretary, Forests & Environment, State of Bihar had requested the Secretary, Ministry of Environment & Forests vide letter dated 21st November, 2001 to cancel the leases in favour of Sh. R.P. Verma and Rai Brij Mohan Sharma for mining and collection of float pebbles from Pandai river within Valmiki National Park and Wildlife Sanctuary, West Champaran district, State of Bihar. This cancellation was sought on various grounds including that collection of float pebbles from Pandai river was

violative of the orders passed by the Supreme Court of India in Writ Petition No. 202 of 1995. This request of the State Government was accepted by the Central Government and the State Government was directed to take action for cancellation of the lease in favour of these private parties. Aggrieved by the decision of the State Government, the private parties filed Writ Petition 15828 of 2001 and 478 of 2002 before the High Court of Patna. The Court directed that the appropriate authority i.e. MoEF should pass final order after giving an opportunity to the private parties. Thus, Additional Director General Forest (Wildlife) issued a show cause notice to the private parties. Vide order dated 20th August, 2002 the said authority allowed mining activity imposing certain conditions and also directed that the conditions contained in the letter dated 27th April, 1998 would remain unchanged for ensuring that work of construction of random rubble woven wire mesh wall is completed before 30th June, 2003 after realization of the cost of construction from lessees. The State of Bihar challenged the legality and correctness of the order dated 20th August, 2002 before the Supreme Court of India praying for quashing of said order by filing I.A. No. 836 of 2002 in Writ Petition No. 202 of 1995.

The Supreme Court of India, vide its order dated 16th December, 2002, not only stayed the operation of the order dated 20th August, 2002, passed by the Additional Director General Forest (Wildlife) restoring the mining lease of the private parties in the Valmiki National Park and Wildlife Sanctuary but even applied this order to the entire areas falling in that National Park. This order

was passed by the Supreme Court in I.A. No. 836 of 2002. The order reads as under:

“IA 836

Mr. Himanshu Shekhar, learned counsel accepts notice on behalf of Respondent No. 4 and Mr. Rao, learned counsel accepts notice on behalf of respondent Nos.1-3.

Counter affidavit be filed within four weeks. Rejoinder affidavit, if any, be filed in another two weeks.

Till further order, the operation of the order dated 20th August, 2002 shall remain in stayed.

The above order will apply to similar other areas in the National Park. It would be the responsibility of the State Government to ensure the compliance of the same.”

3. The private parties, namely, Sh. R.P. Verma & Ors. filed I.A. No. 895 of 2003 in Writ Petition No. 202 of 1995 before the Supreme Court of India praying that the above order of the Supreme Court of India dated 16thDecember, 2002 be vacated and they be permitted to carry on their mining activities.

Detailed replies/rejoinders were filed by the parties in I.A. No. 836 of 2002 on behalf of the State of Bihar. It was stated that the State is striving hard to fulfil its constitutional obligations of protection and conservation of its forest, wildlife, wildlife-habitat, bio-diversity, ecological-balance etc. While filing the compliance report, the State Government submitted that it has completely banned removal of forest produce from the forest declared as Sanctuary and National Park, even the seasonal collection of “Kendu”. It was also stated that Valmiki Wildlife Sanctuary, which is the lone Tiger Project of State of Bihar and is the 18th Tiger Project of the country is an asset and has bio-diversity and natural heritage. The Valmiki Wildlife Sanctuary have been notified under

the provisions of the Wildlife (Protection) Act, 1972 (for short 'Act of 1972') vide Notification dated 4th May, 1978. It was stated that the private parties are doing mining work inside the Sanctuary which is not permissible. The conditions imposed by MoEF were meaningless. It was also submitted that the private parties have committed various breaches and violations of the conditions imposed upon them. This plunder of the river Pandai inside the Sanctuary area resulted in severe harm. With these averments it was prayed that order dated 20th August, 2002 passed by the Additional Director General Forest (Wildlife) should be quashed.

4. MoEF had filed a separate counter affidavit in I.A. No. 836 of 2002 and submitted that the State Government had received various complaints that the private parties had been carrying on the mining activity in breach and violation of the conditions imposed upon them and therefore, vide the order dated 8th July, 1996, the mining lease were revoked by the Central Government. On 28th May, 1997 MoEF constituted a Committee to inspect mining area to suggest safeguards and stipulations subject to which mining could be allowed. The said Committee recommended that the mining should be allowed subject to a clear-cut demarcation of 25 per cent of either sides of the river as 'No Mining Zone' and restriction on vehicles beyond pre-determined points and should permit boulders picking by hand alone. However, in compliance to the order of the High Court of Patna dated 11th April, 2002, MoEF issued Show Cause Notice to one of the private parties vide letter dated 16th May, 2002 and after hearing the parties the Additional

Director General of Forest (Wildlife) had passed the order dated 20th August, 2002, which had been passed in accordance with law and after incorporating the safeguards and stipulations as suggested by the Committee and as such the order is not liable to be set aside. The private parties had filed their respective affidavits and completely denied that they had committed any breach of the terms and conditions of the mining lease granted in their favour. They fully supported the order dated 20th August, 2002 and prayed for the vacation of the order passed by the Supreme Court of India on 16th December, 2002.

5. While hearing these applications, the Supreme Court vide its order dated 1st September, 2003 had directed that all these applications may be sent to the Central Empowered Committee (for short 'CEC') and CEC was requested to send its views within eight weeks. In furtherance of the above order of the Supreme Court, the CEC held hearings on 16th September, 2003 and 23rd September, 2003 and submitted the report before the Supreme Court. The parties were given opportunity to file objections to said report, however, none of the parties filed objections and consequently vide order dated 4th February, 2005, the Supreme Court accepted the findings/recommendations by the CEC. The said order reads as under:

“I.A.No.993 in I.A.Nos.836 & 895:

No objections have been filed to the report of the C.E.C. dated 28th October, 2003. The recommendations of the C.E.C. are as under:

"(i) the MoEF's order dated 20.8.2002 allowing mining leases inside the Valmiki Wild Life Sanctuary may be set aside;

(ii) the State of Bihar may be directed to ensure immediate closure of all mining activities inside National Parks and Wild Life Sanctuaries including within the safety zone around the boundaries of the National parks and Sanctuaries;

(iii) the MoEF may be directed to ensure that no mining lease inside any National Park or Wild Life Sanctuary is approved under the F.C. Act without obtaining specific permission from this Hon'ble Court in view of the order dated 14.2.2000 passed in I.A.No.548;"

Mr. B. B. Singh, learned counsel appearing for the State of Bihar also submits that the report be accepted.

Having regard to the facts and circumstances, we accept the recommendations made in the report and direct the State of Bihar and MoEF to file compliance report within a period of eight weeks. List thereafter."

6. Finally, vide order dated 5th October, 2015 the Supreme Court transferred all these applications for final adjudication to the Tribunal, further with the directions that they should be dealt with and disposed of expeditiously. Upon transfer they were numbered as M.A. No. 1153 of 2015 (I.A. NO. 993/2003), M.A. No. 1154 of 2015 (I.A. No. 836/2002) and M.A. No. 1155 of 2015 (I.A. no. 895/1995) and have been heard together for final disposal.

As could be evident from the above narrated facts, the CEC had made three recommendations. It stated that the order dated 20th August, 2002 should be set aside, State of Bihar should be directed to close all the mining activities in the Valmiki National Park and Wildlife Sanctuary including within the 'safety zone' around the boundaries of the National Parks and Sanctuaries and MoEF be directed to ensure that no mining lease inside the National

Park or Wildlife Sanctuary under the Forest (Conservation) Act, 1980 (for short 'Act of 1980') should be granted without obtaining specific permission from the Court. Vide order dated 16th December, 2002, the Supreme Court had stayed the operation of the order dated 20th August, 2002 which had permitted mining in a restricted area with conditions.

It is the case of the State of Bihar that it is one of the most eco-sensitive area and vide Notification dated 4th May, 1978 and 6th March, 1990 it has been declared to be protected area. Mining activity in this area is bound to cause serious environmental, ecological, bio-diversity degradation and the damage thereto would be irreparable. The CEC has in its report specifically noticed that no mining can be allowed in the National Park or Wildlife Sanctuary without obtaining specific permission from the Supreme Court of India.

No permission has been taken from the Supreme Court of India by the private parties or by State Government. On the contrary the Supreme Court of India has consistently deprecated upon the manner of carrying on such mining in the forest area. Furthermore, Forest Clearance ought to have been taken in terms of Section 2 of the Act of 1980 from the State Government with prior approval of the Central Government. There are no powers vested with the Central Government to *suo moto* permit non-forestry activities in the forest area unless and until it is duly recommended by the State in the present case, State of Bihar. Since, the State of Bihar does not approve mining lease inside the forest area, MoEF

could not have granted or accorded any approval under the Act of 1980. Furthermore Section 29 of the Act of 1972 prohibits removal of wildlife from a Sanctuary unless and until it is beneficial for wildlife or the habitat and it is permitted by the Chief Wildlife Warden. Section 29 thus imposes a restriction on grant of permit unless State Government is satisfied that such destruction, exploitation or removal of wildlife from sanctuary is necessary. Section 29 of the Act of 1972 was amended in 20th January, 2003 and its scope was further enhanced. The amended provisions provided that no permit shall be granted unless State Government has satisfied itself in consultation with the Board that such removal of the wildlife from the Sanctuary or the change in the flow of water into or outside the sanctuary is necessary for improvement and better management of the wildlife therein. No forest produce can now be removed from the Wildlife Sanctuary for any commercial purpose. Besides all this it has also come on record that private parties had been carrying on the mining activity in violation of the conditions imposed upon them.

The State of Bihar had filed a compliance affidavit dated 22nd September, 2005 before the Supreme Court, where it was stated that recommendations of the CEC have been submitted on 28th October, 2003 and Supreme Court had accepted those recommendations and passed an order on 5th February, 2005 by which the State Government and MoEF were directed to file compliance report. Further, it was stated in the report that no mining activity is going on in any sanctuary or National Park of the

State of Bihar. The mining activity had been completely closed and the concerned mining leases had been cancelled by the State Government. Thus, Sanctuaries and National Parks of the State are free of mining activity. The proposal of declaring area around sanctuary as the 'safety zone' is under consideration of the State Government and after considering various aspects related to the matter it will be taken up with the Central Government. This stand had been reiterated by the State of Bihar even before the Tribunal. It was further stated that Valmiki Tiger Reserve (89893 ha) includes the Valmiki Wildlife Sanctuary (88078 ha) which in turn subsumes the Valmiki National Park (33564 ha) and is duly protected and free of mining activity. Attempts to restart mining in the form of collection of float pebbles from Pandai river or quarrying in the area based on claims of private land ownership or on arguments of raising of river bed and alleged adverse impact thereof have been disallowed and dispelled by the Forest Department of the State of Bihar.

7. There is, and cannot be any doubt that the mining activity in the National Park and Wildlife Sanctuary is not permissible. The laws lay down stringent regulatory regime in that behalf and none of the private parties at least in the present applications have even admitted not to comply with those laws. The environmental, ecological and bio-diversity degradation has to be checked on Precautionary Principle. Section 20 of the NGT Act, 2010 specifically mandates that the Tribunal would apply these principles to protect the environment and ecology. It was expected

of the State of Bihar to fix the 'safety zone' beyond the actual limits of National Park and Sanctuary in the huge area afore-stated. The State Government and MoEF both have failed to discharge their statutory obligations and identify, delineate and notify the requisite areas and prohibit any activity, mining, commercial or non-forest activity destructive of the wildlife. Therefore, we dispose of all these applications with the following directions:

- a. The order dated 20th August, 2002, passed by the authorities is contrary to law and in fact does not even take note of orders passed by the Supreme Court including the order of 14th February, 2000. The statutory provisions of the Act of 1980, Act of 1972 and the existence of Notification dated 4th May, 1978 has not even been taken note of and wherever noticed have not been applied in accordance with law. Thus, even for that reason the order is incapable of being sustained.
- b. M.A. No. 1154 of 2015 is allowed and M.A. No. 1155 of 2015 is dismissed. The order dated 20th August, 2002 is hereby quashed and set aside.
- c. We direct that State of Bihar would not permit any mining or commercial activity and also would not permit any non-forest activity being carried on in the entire area of Valmiki National Park and Wildlife Sanctuary admeasuring 2,11,535 ha.

- d. We further direct that within eight weeks from today the State Government shall submit a proposal to MoEF and with its approval issue a Notification declaring the 'safety zone' beyond the limit of the National Park / National Wildlife Sanctuary.
- e. As far as matter of fixation of 'safety zone' is concerned none of the parties appearing before the Tribunal had any objection for passing of such a direction by the Tribunal. In fact, the counsel appearing for the MoEF upon instructions from the concerned officer had stated that one km presently should be treated as 'safety zone'. This statement was recorded in the order dated 12th January, 2015, which reads as under:

“Arguments heard. Judgment reserved.
Mr. Harish Chand Chaudhary, Director, MoEF submits that the State Proposal for fixation of zonal area/eco-sensitive zone in relation to Valmiki Tiger Reserve in terms of the order of the Hon'ble Supreme Court of India has been examined and in consultation with NTCA and Wildlife institute of India area within 1 Km. radial distance from the boundary of the park has been identified to be buffer/eco-sensitive zone and the draft has been put up for approval accordingly.”

As an interim measure, we direct that area within one km radial distance from the boundary of Wildlife Sanctuary shall be treated as 'safety zone' and even in that area no mining activity or other activity having adverse effect on environment and ecology shall be permitted.

We make it clear that it is an interim protection and would not be treated as a precedent in other cases. It is peculiar to the facts and circumstances of the case and operative till issuance of an appropriate Notification by the competent authority in this regard. We also make it clear that it is without prejudice to the judgement passed by the Courts and Tribunals in other matters.

f. In light of the above and in any case the Tribunal must issue interim directions to prevent unscrupulous persons destroying the nature, ecology and environment of such eco-sensitive areas. The Government is expected to take appropriate actions at the earliest and in any case not later than three months, issue Notification declaring appropriate distance under the head of 'safety zone'.

8. With above directions we dispose of this application without any order as to cost.

Swatanter Kumar
Chairperson

U.D. Salvi
Judicial Member

M.S.Nambiar
Judicial Member

A.R Yousuf
Expert Member

Bikram Singh Sajwan
Expert Member

New Delhi,
18th February, 2016