



**Ministry of Environment and Forests**  
GOVERNMENT OF INDIA

**MOE&F HAILS SUPREME COURT ORDER ON LAFARGE MINING**

The Supreme Court on 6<sup>th</sup> July 2011 pronounced its final judgment on the LaFarge Umium Mining Case<sup>1</sup>. This decision was delivered by a bench comprising of the Hon'ble Chief Justice SH Kapadia, Justice Aftab Alam and Justice KS Radhakrishnan. The MoE&F believes this is a landmark judgment which will set the stage for further reforms in environmental governance.

The Hon'ble Bench refused to interfere with the decision of Ministry of Environment and Forests granting site clearance dated 18.6.1999, EIA clearance dated 9.8.2001 read with revised environmental clearance dated 19.4.2010 and Stage-I forest clearance dated 22.4.2010.

Invoking the principles of sustainable development, inter-generational equity and the doctrine of proportionality, the learned Bench has stated:

*"The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique land holding and tenure system of the Nongtraï Village. **On the facts of this case, we are satisfied with due diligence exercise undertaken by MoE&F in the matter of forest diversion.**"*

There are three specific features of the Judgment that the MoE&F particularly welcomes:

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<sup>1</sup> Being I.A. Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in TN Godhavarman v. Union of India [Writ Petition (C) No. 202 of 1995]

## **[1] Greater Role of National Forest Policy, 1988**

**The National Forest Policy 1988 prepared under the personal leadership of the then Prime Minister Rajiv Gandhi has been a guiding principle for forest administration for over two decades.** The Supreme Court has now given it a new and enhanced status by stating the following:

*“Time has come for this Court to declare and we hereby declare that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. The principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980.”*

The MOE&F will ensure that this direction of the Supreme Court is implemented in letter and spirit.

## **[2] Independent Regulator**

During the course of the hearings the learned Bench mentioned the need to have an independent and professional regulator to deal with perceived infirmities in the appraisal and clearance process. **While appearing for the MoE&F in this case the learned Attorney General then had the occasion to mention the intention of the MoE&F to establish an independent regulator to bring about greater professionalism in the appraisal of projects vis-à-vis environment and forestry clearances.** Concurring with this submission the learned Bench directed as follows:

*“Thus, we are of the view that under Section 3(3) of the Environment (Protection) Act, 1986, the Central Government should appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters.”*

**The MoE&F has already of its own accord initiated this process and a draft note on the establishment of an independent National Environment Appraisal and Monitoring Authority (NEAMA) has been circulated for inter-ministerial consultations and will be moved for Cabinet approval thereafter.**

**[3] Directions based on the Affidavit filed by the MoE&F**

**The Hon'ble Bench has also accepted certain recommendations made by the MoE&F in its Affidavit dated 29<sup>th</sup> April 2011 and has incorporated them as part of its final Order. These include the following:**

- In all future cases, the User Agency (project proponents) shall comply with the Office Memorandum dated 26.4.2011 issued by the MoE&F which requires that all mining projects involving forests and for such non-mining projects which involve more than 40 hectares of forests, the project proponent shall submit the documents which have been enumerated in the said Memorandum.
- If the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the Regional Office of MoE&F to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of State Forest Department to assess the Expert Appraisal Committee.
- At present, there are six regional offices in the country. This may be expanded to at least ten. At each regional office there may be a Standing Site Inspection Committee which will take up the work of ascertaining the position of the land (namely whether it is forest land or not). In each Committee there may be one non-official member who is an expert in forestry. If it is found that forest land is involved, then forest clearance will have to be applied for first.

- Constitution of Regional Empowered Committee, under the Chairmanship of the concerned Chief Conservator of Forests (Central) and having Conservator of Forests (Central) and three non-official members to be selected from the eminent experts in forestry and allied disciplines as its members, at each of the Regional Offices of the MoE&F, to facilitate detailed/in-depth scrutiny of the proposals involving diversion of forest area more than 5 hectares and up to 40 hectares and all proposals relating to mining and encroachments up to 40 hectares.
- Creation and regular updating of a GIS based decision support database, tentatively containing *inter-alia* the district-wise details of the location and boundary of (i) each plot of land that may be defined as forest for the purpose of the Forest (Conservation) Act, 1980; (ii) the core, buffer and eco-sensitive zone of the protected areas constituted as per the provisions of the Wildlife (Protection) Act, 1972; (iii) the important migratory corridors for wildlife; and (iv) the forest land diverted for non-forest purpose in the past in the district. The Survey of India toposheets in digital format, the forest cover maps prepared by the Forest Survey of India in preparation of the successive State of Forest Reports and the conditions stipulated in the approvals accorded under the Forest (Conservations) Act, 1980 for each case of diversion of forest land in the district will also be part of the proposed decision support database.
- The Office Memorandum dated 26.4.2011 is in continuation of an earlier Office Memorandum dated 31.03.2011. This earlier O.M. clearly delineates the order of priority required to be followed while seeking Environmental Clearance under the Environment Impact Assessment Notification 2006. It provides that in cases where environmental clearance is required for a project on forest land, the forest clearance shall be obtained before the grant of the environment clearance.

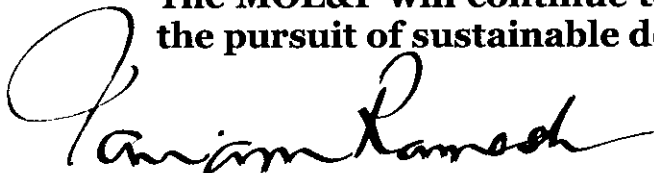
- In addition to the above, an Office Memorandum dated 26.04.2011 on Corporate Environmental Responsibility has also been issued by the MoE&F. This O.M. lays down the need for PSUs and other Corporate entities to evolve a Corporate Environment Policy of their own to ensure greater compliance with the environmental and forestry clearance granted to them.
- All minutes of proceedings before the Forest Advisory Committee in respect of the Forest (Conservation) Act, 1980 as well as the minutes of proceedings of the Expert Appraisal Committee in respect of the Environment (Protection) Act, 1986 are regularly uploaded on the Ministry's website even before the final approval/decision of the Ministry for Environment and Forests is obtained. This has been done to ensure public accountability. This also includes environmental clearances given under the EIA Notification of 2006 issued under the Environment (Protection) Act, 1986. Henceforth, in addition to the above, all forest clearances given under the Forest (Conservation) Act, 1980 may now be uploaded on the Ministry's website.
- Completion of the exercise undertaken by each State/ UT Govt. in compliance of this Court's order dated 12.12.1996 wherein *inter-alia* each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest (Conservation) Act, 1980.
- Incorporating appropriate safeguards in the Environment Clearance process to eliminate chance of the grant of Environment Clearance to projects involving diversion of forest land by considering such forest land as non-forest, a flow chart depicting, the tentative nature and manner of incorporating them proposed safeguards, to be finalized after consultation with the State/ UT Governments.

- The public consultation or public hearing as it is commonly known, is a mandatory requirement of the environment clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances;
- The MoE&F will prepare a comprehensive policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearances and identification of forests in consultation with the States (given that forests fall under entry 17A of the Concurrent List).

**The LaFarge Judgment puts in place a structure that will make the process of environmental governance more effective. The MOE&F is of the view that the judiciary has played a pivotal role in environmental and forest management.**

It is a matter of some satisfaction for the MOE&F that the National Green Tribunal set up pursuant to a Supreme Court decision became operational on July 4th 2011. In addition, over Rs.2000 crore under the CAMPA account have already been disbursed by the MOE&F to states following to a Supreme Court decision of July 2009.

**The MOE&F will continue to work closely with the judiciary in the pursuit of sustainable development.**



Jairam Ramesh  
MOS(I/C)E&F  
July 7<sup>th</sup>, 2011