

ITEM NOS.301 & 303
SECTION PIL

COURT NO.1

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

RECORD OF PROCEEDINGS

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

T.N. GODAVARMAN THIRUMULPAD Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(For Directions, impleadment and exemption from filing O.T.)

With I.A. Nos.1601-1603 in Writ Petition (C) No.202 of 1995

(For Directions, impleadment and exemption from filing O.T.)

I.A. Nos.1485 and 1507 in Writ Petition (C) No.202 of 1995

(Recommendations of C.E.C.)

(Appln.(s) for permission to file affidavit along with documents)

I.A. No.1574 in Writ Petition (C) No.202 of 1995

(Report of C.E.C. in Appln(s) No.845)

I.A. Nos.827,1122,1216,1337 and 1473 in Writ Petition (C) No.202/1995

Recommendations of C.E.C. regarding transfer of funds, Report of
C.E.C. in Appln.(s) No.847 for direction)

I.A. No.1591 in Writ Petition (C) No.202 of 1995

(For Directions)

I.A. No.1535 in I.A. No.548 in Writ Petition (C) No.202 of 1995

(Appln.(s) on behalf of the Raika-Camel and livestock breeders and pastoralists-for protecting their traditional grazing rights)

I.A. No.1413 in Writ Petition (C) No.202 of 1995
(For Directions)

I.A. No.1414 in Writ Petition (C) No.202 of 1995
(For Directions)

I.A. No.1426 in Writ Petition (C) No.202 of 1995
(For Directions)

I.A. No.1428 in Writ Petition (C) No.202 of 1995
(For Directions)

I.A. No.1440 in Writ Petition (C) No.202 of 1995
(Appln.(s) for intervention and directions)
(For Directions)

I.A. No.1441 in I.A. No.566 in Writ Petition (C) No.202 of 1995
(For Direction and recommendation of C.E.C.)

I.A. No.1454 in Writ Petition (C) No.202 of 1995
(For Directions)

I.A. No.1459 in Writ Petition (C) No.202 of 1995

(For Directions/modification)

I.A. No.1460 in Writ Petition (C) No.202 of 1995

(For impleadment and directions)

I.A. Nos.1466-1467 in Writ Petition (C) No.202 of 1995

(For Directions and impleadment)

I.A. No.4 in Cont. Pet. (C) No.193/2001 in W.P. (C) No.202 of 1995

(For Directions)

Writ Petition (C) No.603 of 2000

(With appln.(s) for stay and office report)

I.A. No.1614 in Appln.(s) Nos.863 and 905 in W.P. (C) No.202 of 1995

(Report of the C.E.C. in Appln.(s) Nos.863 and 905 filed before C.E.C.)

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

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

Mr. Harish N. Salve, Sr. Adv. (A.C.)

Mr. U.U. Lalit, Sr. Adv. (A.C.) (N/P)

Mr. Sidhartha Choudhary, Adv. (A.C.)

For Applicant(s)

Mr. R.K. Jain, Sr. Adv.

In I.As.1598-1600: Ms. Abha R. Sharma,Adv.

In I.As.1601-1603: Mr. Vivek K. Tankha,Sr.Adv.
Mr. Joseph Pookkatt,Adv.
Mr. Prashant Kumar,Adv.

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

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

In I.As. 1426 and Mr. Arun Jaitley,Sr.Adv.
1454: Mr. Gopal Jain,Adv.
Ms. Nandini Gore,Adv.
Mr. Debmalya Banerjee,Adv.
Mr. Jayant Mohan,Adv.
Ms. Manik Karanjawala,Adv.

In I.A. 1428: Mr. Anil Karnwal,Adv.
Mr. S.K. Pillania,Adv.
Dr. K.P.S. Dalal,Adv.
Mr. Sushil Balwada,Adv.

...3/-

In I.A. 1440: Mr. Arun Jaitley, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Jayant Bhushan, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
Mr. S. Rakshit, Adv.
for M/s. Khaitan & Co., Adv.

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

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

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

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

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

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

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

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

For Respondent (s) Mr. P.K. Manohar, Adv.
Ms. Rachna Srivastava, Adv.

Mr. A.D.N. Rao, Adv.

Mr. Naveen Sharma, Adv.

Mr. B.S. Banthia, Adv.

Mr. Arun Jaitley, Sr. Adv.

Mr. Raju Ramachandran, Sr. Adv.

Mr. K. Raghavacharulu, Adv.

Mr. P.S. Narasimha, Adv.

Mr. Sridhar Potaraju, Adv.

Mr. K.N. Madhusoodhanan, Adv.

Mr. R. Sathish, Adv.

Mr. J.K. Bhatia, Adv.

Mr. Gopal Singh, Adv.

Mr. Ritu Raj Biswas, Adv.

Dr. R.G. Padia, Sr. Adv.

Mr. S.W.A. Qadri, Adv.

Mr. Rajeev Kumar Dubey, Adv.

Mr. Kamlendra Mishra, Adv.

...4/-

Mr. Anil Srivastava, Adv.

Mr. Rajiv Dutta, Sr. Adv.

Mr. Ravi P. Mehrotra, Adv.

Ms. Anil Katiyar, Adv.

Mr. Aruneshwar Gupta, Adv.

Mr. Naveen Kumar Singh, Adv.

Mr. S.S. Shinde, Adv.

Mr. V.N. Raghupathy, Adv.

Mr. Arun Jaitley, Sr. Adv.

Mr. Gopal Jain, Adv.

Ms. Nandini Gore, Adv.

Mr. Debmalya Banerjee, Adv.

Mr. Jayant Mohan, Adv.

Ms. Manik Karanjawala, Adv.

Mr. Manoj Saxena, Adv.

Mr. Rajnish Kumar Singh, Adv.

Ms. Sameena Ahmed, Adv.

Mr. Rahul Shukla, Adv.

Mr. T.V. George, Adv.

Mr. J.K. Das, Adv.

Mr. Sanjay R. Hegde, Adv.

Ms. Suparna Srivastava, Adv.

Ms. Pooja Matlani, Adv.

Mr. Rajesh Srivastava, Adv.

Ms. Sangeeta Kumar, Adv.

Mr. Vijay Kumar, Adv.

Mr. Ashwani Garg, Adv.

Mr. Vishwajit Singh, Adv.

Mr. Nikhil Nayyar, Adv.

Ms. A. Subhashini, Adv.

Mr. E.C. Agarwala, Adv.

Ms. Revathy Raghavan, Adv.

Mr. Ajay K. Agrawal, Adv.

Mr. B.V. Balaram Das, Adv.

Mr. Kuldip Singh, Adv.

Mr. R.K. Pandey, Adv.

Mr. Sanjay Katyal, Adv.

Mr. A.K. Sinha, Adv.

...5/-

Mr. Kh. Nobin Singh, Adv.

Mr. Ajay Siwach, AAG., Haryana

Mr. Manjit Singh, AAG., Haryana

Mr. Harikesh Singh, Adv.

Mr. T.V. George, Adv.

Ms. Hemantika Wahni, Adv.

Ms. Sumita Hazarika, Adv.

Ms. B. Sunita Rao, Adv.

Mr. N.M. Popli, Adv.

Mr. Bhawanishankar V. Gadnis, Adv.

Ms. Ritu Solanki, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A.Nos.1598-1600 in Writ Petition (C) No.202 of 1995:

Ms. Rachana Srivastava, learned counsel,
accepts notice on behalf

of the respondents.

Reply to the applications be filed within four
weeks. Two weeks'

time thereafter is granted for filing rejoinder affidavit.

I.A.Nos.1601-1603 in Writ Petition (C) No.202 of 1995:

The Central Empowered Committee may examine
the matter and

file its report within two weeks.

The interlocutory applications are adjourned
for two weeks.

I.A. Nos.1485 and 1507 in W.P. (C) No.202 of 1995:

The Government of India and the National
Mineral Development

Corporation may file their response within two weeks.

The interlocutory applications are adjourned
for three weeks.

I.A. No.1574 in Writ Petition (C) No.202 of 1995:

The affidavit dated 15th June, 2006, filed by
Mr. A.K. Srivastava

in compliance with the orders of

...6/-

this Court dated 28th April, 2006, is utterly vague and does not disclose

the relevant information as per the Report of the Central Empowered

Committee dated 27th April, 2006, which, in turn, refers to the restoration

of Gangao Dam. It was stated that first phase of the work would be

executed within a period of three months, i.e., from 1st April, 2006, to 30th

June, 2006, and the second phase would be executed during the period 1st

July, 2006 and 30th June, 2007. The affidavit does not show whether the

first phase, as proposed by the same officer, is complete or not. It does

not even show whether the work has even commenced or not.

Undisputedly, the damage came to the notice of the respondent in July,

2005. Under these circumstances, we direct the Principal Secretary,

Irrigation, to file a detailed affidavit after verification of all relevant facts

within three weeks.

I.A. Nos.827,1122,1216,1337 and 1473 in Writ Petition (C) No.202/1995:

I.A. No.827:

Report of the Central Empowered Committee dated
31st July,

2006, regarding non-recovery of the Net Present Value by the Ministry
shall be registered as a separate interlocutory application.

As prayed by Mr. A.D.N. Rao, learned counsel,
Ministry of

Environment and Forests is granted four weeks' time to file its response.

Audit Report is taken on record.

I.A. Nos.1122, 1337 and 1473:

The interlocutory applications are adjourned.

I.A. No.1216:

This application has been worked out. It is,
accordingly,

disposed of.

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I.

A. No.1591 in Writ Petition (C) No.202 of 1995:

As requested in the letter dated 31st July, 2006, the Central

Empowered Committee is granted eight weeks' time to file its Report.

List the interlocutory application after receipt of the Report.

I.A.No.1535 in I.A. No.548 in W.P. (C) No.202 of 1995:

The prayer in the interlocutory application is to direct the State of

Rajasthan to continue grant of grazing permits in the Kumbalgarh

Sanctuary to the right-holders and concessionists 'Raika'. According to the

applicants, the cause for approaching this Court is the letter dated 2nd July,

2004, sent by the Central Empowered Committee to all the Chief

Secretaries, Principal Chief Conservator of Forests and Chief Wildlife

Wardens, which has led to the State Government stopping the issuance of

the grazing permits.

We have perused the Report of the Central Empowered

Committee dated 13th July, 2006. One of the suggestions made is that, in

terms of the provisions of the Wildlife (Protection) Act, 1972, the concerned

Chief Wildlife Warden may be asked to assess the carrying capacity of each

of the wildlife sanctuary, i.e., the number and type of domestic animal which

can safely be allowed to graze in the sanctuary area without adversely

affecting the requirement of the herbivores in area. Further, the Chief

Wildlife Warden should also provide the details of the livestock which have

been immunized along with the mechanism put in place to ensure that over-grazing does not take place.

Section 33 of the Wild Life (Protection) Act, 1972, vests in the

Chief Wildlife Warden the authority to control, manage and maintain all

sanctuaries and

...8/-

for that purpose within the limit of any sanctuary, he may regulate or

control or prohibit, in keeping with the interest of wildlife, the grazing or

movement of livestock. Immunization measures are required to be taken, as

stipulated. The Chief Wildlife Warden shall submit a report as to the

carrying capacity of the sanctuary in question, namely, Kumbalgarh

Sanctuary, in terms of the suggestion made in Paragraph (17) of the Report

of the Central Empowered Committee dated 13th July, 2006, including the

details of immunization measures and the mechanism which is in place in

the said sanctuary.

Paragraph (17) of the Report reads as under:

"It is submitted that in terms of the provisions of the Wildlife (Protection) Act, the concerned Chief Wildlife Warden may

be asked to assess the carrying capacity of each of the wildlife sanctuary, i.e. the number and type of domestic animal which can safely be allowed to graze in the sanctuary area without adversely effecting (affecting?) the requirement of the

herbivores in area. The Chief Wildlife Warden should also

provide the details of the livestock which have been immunized alongwith the mechanism put in place to ensure that over grazing does not take place. After receipt of the above information, if required, appropriate directions may be issued by this Hon'ble Court for allowing grazing in the Sanctuary area."

The Report shall be submitted within three weeks.

List the interlocutory application after four weeks.

I.A. Nos.1413, 1414, 1454 in I.A. No.1413, 1426,1428, 1440,1439,1441,1444-

1445, 1459 and 1460 in Writ Petition (C) No.202 of 1995:

By order dated 16th September, 2005, it was, inter alia, directed

that no Temporary Working Permissions or Temporary Permit or any

other permission, by whatever name called, shall be granted

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for mining activities in the National Parks, Sanctuaries and Forest areas. It

was further directed that no mining activity would continue under any

Temporary Working Permit or Permission (T.W.P.), which may have been

granted. This order was later relaxed on the applications filed by some of

the applicants. Suggestions have been filed by the learned Amicus Curiae

and the Ministry of Environment and Forests, besides the Federation of

Indian Minerals Industries (FIMI) regarding the conditions, which would

govern grant of T.W.P.

On consideration thereof, the conditions precedent for the grant of

T.W.Ps. as well as the procedure for their grant shall be as provided

hereinafter. At the outset, it is clarified that T.W.Ps. shall be granted only

where the following conditions are satisfied.

PRE-CONDITIONS:

i] T.W.PS. can only be granted for renewal of mining leases, and not

where the lease is being granted for the first time to the applicant user

agency;

ii] The mine is not located inside any National Park/Sanctuary

notified under Section 18, 26-A or 35 of the Wildlife (Protection) Act, 1972;

iii] The grant of the T.W.P. would not result in any mining activity

within the safety zone around such areas referred to in (ii) above, (as an

interim measure, one kilometer safety zone shall be maintained subject to

the orders that may be made in I.A. No.1000 regarding Jamua Ramgarh

Sanctuary);

iv] The user agency who has broken up the area of the mine (in

respect of which the T.W.P. is being sought) has or had the requisite

environmental clearances and at no time prior to the grant of the T.W.P.

was any mining being carried on by the user agency in relation to the mine

in question, in violation of the provisions of the Forest (Conservation) Act

[for short, "F.C. Act"]. In cases

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involving violation of the F.C. Act, a formal decision on merit should be

taken under the F.C. Act after considering the gravity of the violation.

However, the grant of a T.W.P. may be considered where past violations

have been regularized by the Ministry of Environment and Forests [for

short, "M.O.E.F."] by the grant of an approval under the F.C. Act with

retrospective effect;

v] The conditions attached to the approval under the F.C. Act for the

grant of the mining lease (or the renewal of the mining lease), have been

fulfilled, particularly those in respect of (but not limited to) compensatory

afforestation, reclamation plan and over burden dumping on the specified

site;

vi] The user agency has, within the stipulated time, already filed a

proposal in conformity with the Forest (Conservation) Rules, 1980, for

seeking an approval under the F.C. Act along with the complete details as

are required to be furnished. An application for the grant of the T.W.P. in

favour of the user agencies, who have either not filed a proper proposal

and/or have not provided complete information, particularly in respect of

(but not limited to) compensatory afforestation, phased reclamation plan,

felling of trees, details of minerals extracted in the past, etc., should not be

entertained;

vii] A T.W.P. shall be granted only limited to working in the area

broken up legally and during the validity of the lease. No T.W.P. can be

granted in respect of, or extending to either unbroken area or the areas

which have been broken after the expiry of the mining lease or have been

broken in violation of the F.C. Act or any other law for the time being in

force;

viii] In no circumstances can the duration of a T.W.P. extend beyond

the period of one year. Where an application for grant of permission under

the F.C. Act

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is not disposed of during the currency of T.W.P., the applicant, on the

strength of the same T.W.P., may continue to operate for a period not

exceeding three months unless specific orders are obtained from this Court.

ix] A valid lease under the M.M.R.D. Act exists (including by way of a

deemed extension in terms of Rule 24-A(6) of the Mineral Concession Rules)

in respect of the area of the T.W.P.

PROCEDURE FOR GRANT OF CLEARANCES UNDER THE F.C. ACT

AND THE ISSUANCE OF TWPS (in relation to renewal of mining leases:

i] the user agency shall submit, in the first instance, to the State

Government, proposals seeking renewal of the mining lease under the F.C.

Act not less than two years prior to the expiry of the mining lease, except the

leases which are due to expire before August, 2008, provided applications

are made on or before 31st October, 2006;

ii] On receipt of the proposal within the stipulated time as aforesaid,

and upon its examination, where the State Government is of the view that

further details (besides the information submitted by the user agency in the

prescribed formats) are necessary, the State Government shall give

intimation thereof not later than ninety days of the receipt of the proposal;

iii] the State Government shall forward the proposal together with

their recommendations to the Central Government not later than nine

months after receipt of the proposal;

iv] the Central Government shall ordinarily dispose of the application

for grant of permission not later than four months of its receipt;

Provided where the Central Government is unable to dispose of the

application within four months as aforesaid, it shall record special reasons

explaining the delay;

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v] Where the application for grant of permission under the F.C. Act

is delayed beyond the periods stipulated hereinabove, the user agency may then apply for the grant of a T.W.P. In such cases, the user agency will have

the option of applying for a T.W.P. through the State Government in the

proforma prescribed by M.O.E.F. with an advance copy both to the

M.O.E.F. and the Regional Office of the M.O.E.F. Such applications shall

be made at any time after the expiry of thirteen months from the date of

filing of the proposal with the State Government but not later than nine

months prior to the expiry of the existing approval under the F.C. Act. In

cases where lease/renewal was granted prior to the enactment of the F.C.

Act and the lease period has not expired, the application shall be made at

least nine months prior to the expiry of lease period;

vi] the proposal seeking the T.W.P. shall be processed by the State

Government and forwarded to the M.O.E.F. within a period of three

months, who shall place the proposal before the F.A.C. constituted under

Section 3 of the F.C. Act in its next meeting. The information/details, which

have not been filed by the user agency, either in respect of the proposal

under the F.C. Act or in the proposal for the T.W.P. shall also be sought by

the State Government and made available by the user agency during this

period;

viii] in the event of failure on the part of the State Government to send

its recommendations on the proposal submitted by the user agency for grant

of T.W.P. within the stipulated period, the advance copy of the application,

already sent by the user agency to the Central Government, shall be placed

before the F.A.C. for its consideration. The F.A.C. shall provide an

opportunity to the State Government and user agency to be heard before

giving its recommendations on the merits of the case.

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viii] if the State Government, for reasons to be recorded in writing,

recommends a refusal of the request to grant a T.W.P., the F.A.C. shall,

after giving the user agency and the State an opportunity to present their

views pass such orders as it thinks fit. The F.A.C. shall be at liberty to

evolve a suitable procedure for this purpose;

ix] in respect of cases where no recommendation has been received

from the State Government within the stipulated time, the F.A.C. shall,

after giving the State an opportunity to be heard, examine the proposal on

merit and pass appropriate orders. The F.A.C. should evolve a suitable

procedure that shall be fair and reasonable and would ensure adherence

with the time schedule;

x] All proposals for grant of F.C. Act clearances and T.W.Ps. in

respect of mining leases shall be placed before the F.A.C. Where the F.A.C.,

by order recommends the grant of a clearance or a T.W.P., the M.O.E.F.

shall, within a period of four weeks from the date of such order, issue

orders for the grant of clearance on the usual terms, including those relating

to payment of N.P.V.;

Provided where a T.W.P. is being granted, it shall only be for a period not

exceeding one year and upon payment of N.P.V. for the already broken up

area;

xi] decision on grant of T.W.P. shall be taken before the expiry of the

mining lease. Decision of the M.O.E.F. on the proposal for diversion of

forest land for mining lease under the F.C. Act shall be conveyed to the user

agency before the expiry of the T.W.P.

xii] in case the M.O.E.F. disagrees with the recommendation of the

F.A.C., it shall record its reasons in writing and communicate the same to

the F.A.C., and the F.A.C. may, after considering such reasons, pass such

further orders as it thinks fit;

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Provided where the Government still disagrees with the order passed by the

F.A.C., it may seek appropriate directions from this Court;

xiii] all the orders of the F.A.C. shall be made available to the user

agency and the State Government;

xiv] in cases where the recommendations have been made by the F.A.C.

without ascertaining the views of the State Government, the T.W.P. shall

become effective only after the details made available by the user agency are

confirmed by the State Government within a maximum period of one

month. In case the information furnished by the user agency is found to be

at variance with the factual position, the State Government shall refer the

matter back to the M.O.E.F., who may, if so advised, suspend the grant of

the T.W.P.;

xv] the T.W.P. shall become effective only after the payment towards

the N.P.V. for the already broken up area is deposited by the user agency;

xvi] in cases where site inspection by the Regional C.C.F. is mandatory,

the proposal for the T.W.P. shall be examined by the F.A.C. after

considering the site inspection report of the Regional C.C.F.; the Regional

C.C.F. shall ensure that the inspection is completed in such time as may be

directed by the F.A.C.; and

xvii] at the time of payment of N.P.V. at the present rate, the user

agency shall also give an undertaking to pay the additional N.P.V., if so

determined as per the final decision of this Court.

Those who are continuing to operate on the strength of the

temporary permit under the interim protection granted by this Court,

would continue, as before, for a period of not exceeding four months. We

direct that their cases shall be decided by the F.A.C. within the said

period of four months. The State Governments are directed to consider

and send

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their recommendations to the M.O.E.F. forthwith, and not later than six weeks from today, with a view to ensure decision within the stipulated period of four months.

To consider the question of constitution of appropriate F.A.C.,

adjourned to 25th August, 2006.

I.A.Nos.1466-1467 in Writ Petition (C) No.202 of 1995:

The learned counsel seeks leave to withdraw the interlocutory

applications. They are, accordingly, dismissed as withdrawn.

I.A. No.4 in Cont. Pet. (C) No.193/2001 in W.P. (C) No.202 of 1995:

Not taken up.

Writ Petition (C) No.603 of 2000:

Not taken up

I.A. No.1614 in Appln.(s) Nos.863 and 905 in W.P. (C) No.202 of 1995:

The learned counsel appearing for the State of Gujarat, states

that all the conditions recommended in the Report of the Central

Empowered Committee dated 28th July, 2006, are acceptable to the State

Government. In this view, permission sought for in I.A. Nos.863 and 905

is granted on the State Government complying with the conditions as

under:

"i] the requisite approval under the Forest (Conservation) Act for use of the forest land will be obtained;

ii] the NPV for the forest land will be deposited in the Compensatory Afforestation Fund with an undertaking to pay additional NPV as per the decision taken by this Hon'ble Court;

iii] 5% of the project cost will be deposited in the Compensatory Afforestation Fund for undertaking conservation and protection works in the sanctuary;

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of iv] as recommended by the Standing Committee
the National Board for Wildlife, a ten year master plan for
attention the revitalization of the sanctuary with focused
and concerted efforts on wildlife conservation and
management will be immediately prepared and
area. implemented for rehabilitation of the sanctuary

Funds for this purpose will be made available by the State
Government on priority basis; and

v] no area presently falling within the sanctuary will
be used for mining purposes in future.

Appln. Nos.863 and 905 are disposed of accordingly.

[T.I. Rajput]

A.R.-cum-P.S.

[V.P. Tyagi]

Assistant Registrar

