

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Original Application No. 123 of 2013

Prafulla Samantara Vs. Union of India & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. (DR.) P.C. MISHRA, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

Present: **Applicant:** Mr. Raj Panjwani, Sr. Advocate & Mr. Rahul Chaudhary, Advocate
 Respondent No. 1: Ms. Neelam Rathore Advocate along with Ms. Syed Amber, Advocate.
 Respondent No. 2: Mr. Shibashish Misra and Mr. Suvinay Dash, Advocates.
 Respondent No. 3: Mr. Pinaki Mishra, Sr. Advocate, Ms. Sangeeta Mandal Advocate, Mr. Ramnesh Jerath, Advocate and Ms. Vineeta Bhardwaj, Advocate.

Date and Remarks	Orders of the Tribunal
<p>Item No. 1 January 24, 2014</p>	<p>We have heard the Learned Counsel appearing for the parties at some length.</p> <p>The applicant has filed this application with the only prayer that prohibitory orders be issued against the Respondents to stop work, including tree felling in the forest land until the provisions of the Forest (Conservation) Act, 1980 (for short the 'Act of 1980') are complied with and appropriate order in that regard is issued by the State Governments.</p> <p>It is not necessary for us to notice the facts in any greater detail in view of the order we propose to pass and the only prayer made in this application. The short question that needs to be answered by this Bench is whether the order contemplated under Section 2 of the Act of 1980 is to be passed by the State Government or not.</p> <p>Section 2 of the Act of 1980 reads as under:-</p> <p>Restriction on the de reservation of forests or use of forest land for non forest purpose:- "Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any Order directing,:-</p> <p>(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time</p>

being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) That any forest land or any portion thereof may be used for any non-forest purpose;

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation:- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) Any purpose other than reforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

The above provisions of the Act of 1980 are to be read in conjunction with Section 2(A) of the Act of 1980. Section 2(A) empowers any person aggrieved, by an order or decision of the State Government or other authority made under Section 2 of the Act of 1980, to file an appeal before the Tribunal. It is thus, only the order of the State Government passed under Section 2 of the Act of 1980 or the decision of the authority of the State Government that becomes appealable under Section 2(A) of the Act. The words 'other authority' have to be construed *eiusdem generis* to the expression, 'State Government'. The other authority thus would be an authority appointed by the State to discharge such functions as spelled out under Section 2 of the Act of 1980. Such authority would have to necessarily be a part of the State.

The only embargo that the Legislature has placed upon the exercise of such power by the State Government is that this order must essentially be preceded by a prior approval of the Central Government. The expression 'prior

approval' clearly connotes that the Central Government must accord its approval which must then be followed by an appropriate order of the State Government in terms of Section 2 of the Act of 1980, permitting any of the activities to be carried on in the forest area as stated in that provision.

Approval of the Central Government is a *sine qua non* to the passing of an order by the State Government. It is only when the State Government passes a reasoned order or an authority appointed by the State takes a reasoned decision allowing the activities of non-forest nature in the forest area or declares reserved forest as non-reserved forest, that an order as required under Section 2 of the Act of 1980 comes into existence. On the cumulative reading of these provisions it appears to us that the approval granted by the Central Government is neither an order nor a decision as contemplated under Section 2 of the Act of 1980 nor is it appealable under Section 2(A) of the Act. The State Government is expected to apply its mind and examine its original proposal sent to the Central Government in light of the approval granted and then pass an order which has to be implemented in terms of the provisions of the Act. The approval granted by the Central Government merges into the final order by the State Government. According to approval by the Central Government to the initial proposal submitted by the State Government would include variations, addition or subtraction of conditions stated in the said proposal. That approval then must convert itself into a final order to be passed by the State Government. Due application of mind by the State Government is contemplated under the legislative scheme of the Act. It can pass an appropriate order in terms of the approval granted by the Central Government. The State Government can further impose conditions or vary the same but without changing in any way the structure and spectrum of the essence of the approval granted by the Central Government. The State Government would be well within its jurisdiction in referring the matter back to the Central Government if in the considered opinion of the State Government the conditions imposed with the approval granted are not acceptable and/or are unreasonable. The approval granted by the Central Government technically loses its independent existence upon

passing of an order under Section 2 of the Act of 1980. However, the legality and correctness of the order passed by the State Government under Section 2 of the Act of 1980 can always be examined by the appropriate forum. Approval by the Central Government is not an order in fact and/or in law as contemplated under Section 2 of the Act of 1980. Every State Government is obliged and essentially must pass an order under Section 2 of the Act of 1980 and which must be a proper administrative order in terms of requirements of the provisions of the Act.

This question also came for consideration before a Bench of this Tribunal in the case of *Vimal Bhai v. Union of India* in Appeal No. 7 of 2012 dated 7th November, 2012.

In addition to the aforesaid, we do concur with the Judgment of Bench of this Tribunal in *Vimal Bhai v. Union of India* (supra) to the extent that the State Government is obliged to pass an Order then alone non forest activity can be carried on in the forest area in terms of section 2 of the Act of 1980.

The Learned Counsel appearing for the parties have also brought to our notice a reply in the form of information to a RTI query raised under Right to Information Act, 2005. In this it is recorded that the State Government does not pass any order under Section 2 of the Act of 1980. This reply is contrary to the requirements of law and we, therefore, specifically set-aside such view and direct that all State Governments shall pass an appropriate order in accordance with law in terms of Section 2 of the Act of 1980.

Having answered the above question, nothing survives in this application and accordingly Original Application No. 123 of 2013 is disposed of. The Respondent No. 3 (Project Proponent) is at liberty to approach the State Government for appropriate Orders in accordance with law.

Till such Order is passed by the Competent Authority, Respondent No. 9 would not carry on tree cutting/felling in the forest area.

In view of our above Order we consider it unnecessary to go into any other questions raised in this application, which are specifically kept open.

Copy of this order be sent to Secretary MoEF and all Chief Secretaries of the States for compliance.

.....,CP
(Swatanter Kumar)

.....,JM
(U.D. Salvi)

.....,EM
(Dr. D. K. Agrawal)

.....,EM
(Prof (Dr.) P.C. Mishra)

.....,EM
(Dr. R.C. Trivedi)

