

86°15'0"E

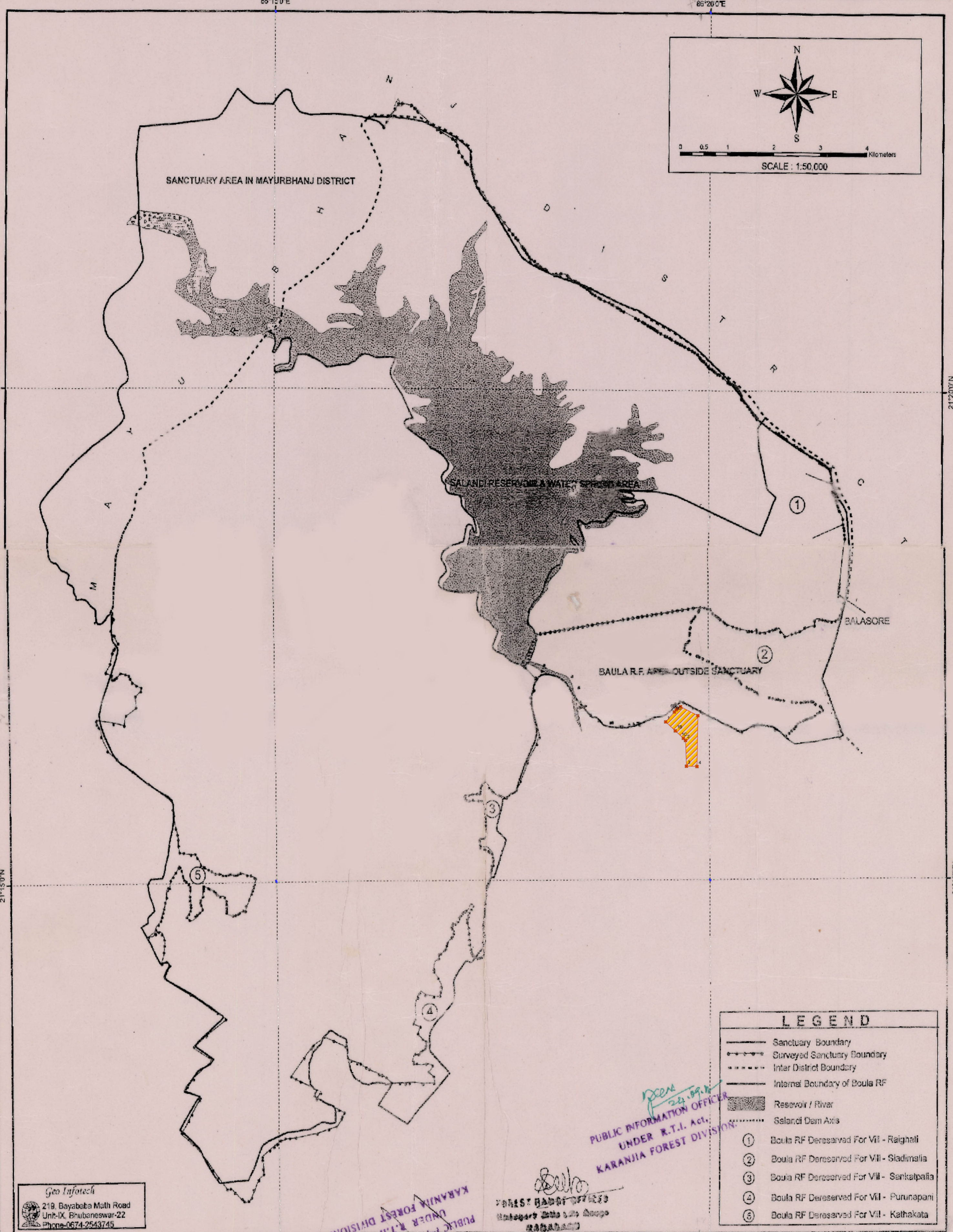
86°20'0"E

21°25'0"N

21°25'0"N

### MAP OF HADAGARH WILDLIFE SANCTUARY

(AS PER SANCTUARY NOTIFICATION, OUTLINE ON TOPO, PERIPHERAL CADASTRAL SHEETS, DERESERVE NOTIFICATION & GROUND SURVEY)



21°20'0"N

21°20'0"N

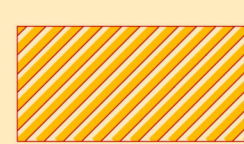
21°15'0"N

21°15'0"N

86°15'0"E

86°20'0"E

## Legend

 ML Boundary of N C Mines

Petition(s) for Special Leave to Appeal (C).....CC No(s).  
4086/2014  
(Arising out of impugned final judgment and order dated  
21/12/2012 in MC No. 15324/2012 in WP No. 17693/2012 passed by  
the High Court Of Orissa At Cuttack)

U.O.I &amp; ORS

Petitioner(s)

VERSUS

M/S INDIAN METAL & FERRO ALLOYS LTD  
(with appln(s) for c/delay in filing SLP)

Respondent(s)

Date : 08/10/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR  
HON'BLE MR. JUSTICE J. CHELAMESWAR  
HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s) Mr. Maninder Singh, ASG  
Ms. Vimla sinha, Adv.  
Ms. Sukhbeer Bajwa, Adv.  
for Mr. Shreekant N. Terdal, AOR

For Respondent(s) Dr. A.M. Singhvi, Sr. Adv.  
Ms. Vijayalakshmi Menon, Adv.  
Ms. Ekta Kapil, Adv.  
Ms. Akriti, Adv.  
Ms. Tarinee, Adv.  
Mr. Aditya Sarin, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Learned counsel for the petitioner, after arguing for  
some time, states, that he may be permitted to withdraw this  
petition with liberty to file a review petition before the High  
Court.

The special leave petition is accordingly dismissed as

Signature Not Verified

Digitally signed by

withdrawn with liberty, as aforesaid.

Parveen Kumar Chawla  
Date: 2014.10.09  
16:26:22 IST  
Reason:

(Parveen Kr. Chawla)  
Court Master

(Phoolan Wati Arora)  
Assistant Registrar

IN THE HON'BLE HIGH COURT OF ORISSA, CUTTACK  
(Original Jurisdiction Case)

W.P (C) No.17693 of 2012

In the matter of:

A petition under Article 226 and 227 of the Constitution of India

AND

In the matter of:

Forest (Conservation) Act, 1980; Wild Life (Protection) Act, 1972  
and Environmental Protection Act, 1986

AND

In the matter of:

An application to declare the action of the Collector and District Magistrate Keonjhar (Opposite Party No.3) in issuing orders dated 16 February 2012 and 18 June 2012 of Opposite Party No. 3 and letters dated 22 December 2011 and 23 January 2012 of Opposite Party No 1 as arbitrary, unconstitutional, without application of mind and without authority of law to keep the mining activities of Dhanurjaypur Chromite Mines at Dhanurjaypur, District Keonjhar, Odisha of Indian Metals & Ferro Alloys Ltd., in abeyance

AND

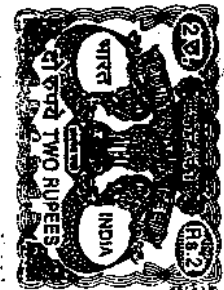
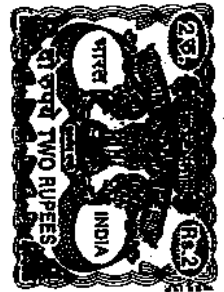
In the matter of:

M/s. Indian Metals & Ferro Alloys Ltd.,  
a company incorporated under the  
Companies Act, 1956 having its Regd. &  
Head Office at Bomikhal, P.O. Rasulgarh,  
Bhubaneswar, Dist. Khurda,  
Represented through its Director,  
Smt. Paramita Mahapatra.

... Petitioner

-Vrs-

1. Union of India represented through  
the Secretary, Ministry of Environment &  
Forests, Paryavaran Bhavan, C.G.O.  
Complex, Lodhi Road, New Delhi 110003, and  
having Eastern Regional office at Chandra Sekharpur,  
Bhubaneswar-751023.



- 2. State of Odisha represented through the Principal Secretary, Department of Forest & Environment, Secretariat Building, Bhubaneswar 751001
- 3. Collector & District Magistrate, Keonjhar, At/P.O./Dist. Keonjhar.
- 4. Divisional Forest Officer, Keonjhar Wildlife Division, Office at Salapada, At/P.O. Anandpur Dist. Keonjhar.

...Opposite Parties

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HIGH COURT OF ORISSA : CUTTACK

Misc. Case No. 15324 of 2012  
(Arising out of W.P.(C.) No. 17693 of 2012)

In the matter of an interim application for stay under Rule 27(a) of Chapter IV of Orissa High Court Rules, 1948.

M/s. Indian Metals & Ferro Alloys Ltd. ....

*Petitioner.*

*-Versus-*

Union of India & three Others

..... *Opposite parties.*

*For petitioners:*

Mr. Pinaki Mishra, Sr. Advocate  
M/s. D.P. Nanda, A. Dutt, R.K. Kanungo,  
Mrs. S. Das, B.P.Panda & Ms. P. Nanda.

*For Opp. Parties :*

Mr. Ashok Mohanty, Advocate General.  
(for O.P. Nos. 2 to 3)

Mr. S. D. Das, Asst. Solicitor General  
(for O.P. No.1)

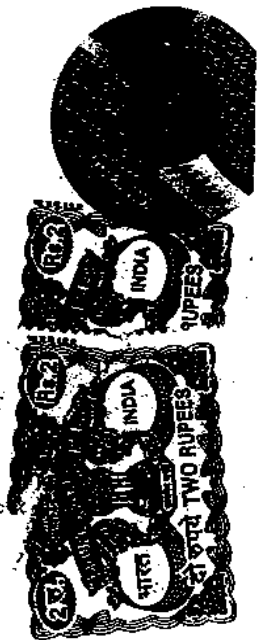
**R E S E N T :**

**THE HONOURABLE CHIEF JUSTICE MR. V.GOPALA GOWDA,  
- AND  
THE HONOURABLE MR. JUSTICE B.K. MISRA**

**Date of Order : 21.12.2012**

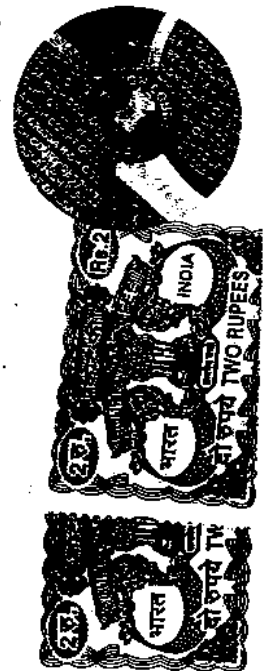
**V. GOPALA GOWDA, C.J.** The present Misc. Case has been filed by the petitioner-Company with a prayer to stay orders dated 16.02.2012 and 18.06.2012 (Annexures-1&2) issued by the opposite party No.3-Collector & District Magistrate, Keonjhar and also the letters dated 22.12.2011 and 23.01.2012 (Annexures-29 & 30) issued by O.P. No.1-Union of India in the Ministry of Environment & Forest (MoEF).

2. For considering the interim prayer in the Misc. Case, it is necessary to discuss the case of the petitioner in the writ petition in brief. The petitioner-Company is the manufacturer and seller of High Carbon Ferro Chrome. It is also a lessee of Chrome Ore Mine over an area of 40.46 hectares in village Dhanurjayapur & Bangur under Anandpur Sub-Division of Keonjhar district in the State of Odisha since 1991. The petitioner's lease has also been renewed on 29.04.2000 for a further period of 20 years w.e.f. 1994, which is valid up to 1<sup>st</sup> December, 2014. It is stated that prior to 1991 one M/s. Serajuddin & Co. was the lease holder over the said area since 1974. In the year 1978 in exercise of power U/s. 18 of the Wildlife (Protection) Act, 1972, Government of Odisha declared the area as "Hadagarh Sanctuary". The Dhanurjayapur Chromite mines of the petitioner is situated at a distance of 2.5 KM from the boundary of the said Hadgarh Sanctuary. It is stated that the O.P. No.1-MoEF vide its letter dated 24.03.1999 had also granted approval U/s. 2 of the Forest (Conservation) Act, 1980 for diversion of 0.339 Hc. of forest land for renewal of Dhanurjayapur chrome mines. Further in compliance to the statutory provisions, petitioner in order to do underground mining in place of open cast mining, submitted its proposal to the O.P. No.1 for getting environmental clearance. The said proposal was placed before the Expert Committee (Mining) in July, 2003 and the Committee recommended the proposal for approval subject to the approval from Chief Wildlife Warden(CWLW) for mining operation in the proximity of Hadgarh Wildlife Sanctuary. Accordingly petitioner approached the



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CWLW to issue No-Objection Certificate for mining operation in the said mines of the petitioner. The Addl. Principal Chief Conservator of Forest (Wildlife) and CWLW, Odisha recommended the proposal of the petitioner for environmental clearance vide letter dated 28.01.2004 subject to certain conditions as mentioned therein, to which the petitioner was agreed. Further, O.P. No.2 vide letter under Annexure-15 also intimated the O.P. No.1 that CWLW, Odisha has furnished his views on the mining operation in the area of the petitioner and suggested for consideration of environmental clearance for Dhanurjayapur mines. Accordingly, on 9<sup>th</sup> July, 2004 the O.P. No.1 accorded the environmental clearance to the petitioners under Annexure 17. Further has also obtained the consent U/s. 25 of Water (Prevention & Control of Pollution Act, 1974 (hereinafter called "Water Pollution Act") and also U/s. 21 of the Air (Prevention & Control of Pollution) Act, 1981 (hereinafter called the 'Air Pollution Act') to establish and operate the mines in respect of Dhanurjayapur mines from the State Pollution Control Board, Odisha. It is submitted that petitioner is carrying out its mining activities within the leasehold area with all statutory permissions including the approval from Indian Bureau of Mines and Director General of Mines Safety. The O.P. No.4- DFO, Keonjhar vide its dated 31<sup>st</sup> July, 2007 directed the petitioner No.1 to show cause as to why the mining activities of the petitioner company shall not be stopped with immediate effect for violation of Wildlife (Protection) Act, 1972 without conducting any joint inspection. Challenging the said notice petitioner instituted a Civil Suit before the



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Civil Judge (Jr. Divn.) Anandpur. On 04 August, 2008 a joint inspection was conducted by the forest officials with regard to boundary line of the petitioner's leasehold area and it was found that the petitioner has not encroached any forest land coming under Reserve Forest and its mining activities is confined within the lease area. Basing on the complaint of O.P. No.3, the Indian Bureau of Mines also inspected the petitioner's mines and conducted joint inspection with O.P. No.4 along with officials of the petitioner on 22.01.2009 and it was concluded that there is no encroachment of Hadagarh Reserve Forest area. The said suit was also decreed in favour of the petitioner vide judgment dated 29.11.2008. However, in the year 2002 the O.P. No.1 took a decision in the meeting under the Chairmanship of the then Prime Minister of India to notify 10 Km area of the boundary of the National Park and Sanctuary as Eco-sensitive area/Eco-fragile zone and accordingly said decision was communicated in 2005 to CWLW of all States/Union Territories to initiate measures for identification of suitable area and submit proposals at the earliest. While the matter stood thus, on 04<sup>th</sup> August, 2006 the Hon'ble Supreme Court in W.P.(C) No. 202 of 1995 (T.N. Godavarman Thirumulpad Vs. Union of India & Ors) while considering the procedure for grant of Temporary Working Permissions (TWP) that the grant of TWP would not result in any mining activity within the safety zone around such areas referred to in the judgment, however, as an interim measure, one kilometer safety zone shall be maintained subject to orders that may be made in future". Thereafter, the Supreme Court in W.P.(C) No. 460 of 2004 (Goa Foundation Vs. Union of India) vide order



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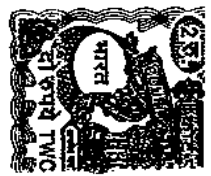


dated 04.12.2006 directed the MoEF-O.P. No.1 to give a final opportunity to all States/Union Territories to respond to its letter dated 27<sup>th</sup> May, 2005 to initiate measures for identification of suitable area around the Wildlife Sanctuaries. On the basis of the said order in Goa Foundation case the O.P. No.1 issued an Office Memo on 02.12.2009 identifying the procedure for consideration of proposal for grant of environmental clearance under the Environment Impact Assessment Notification, 2006 stating that the project proponent should submit their application for Wildlife Clearance/ Clearance from Standing Committee of the National Board for Wildlife before coming for environmental clearance. On 19<sup>th</sup> August, 2010 the O.P. No.1 issued direction to all the States and Union Territories to the effect that the projects which require environmental clearance under Impact Assessment Notification, 2006 and also involve the diversion of forest land for non-forestry purpose falling within 10 kms of National Park/Sanctuary will have to be placed before the Standing Committee of National Board for Wildlife (SCNBW). In response to the said letter of O.P. No.1, the O.P. No.2 while confirming that forest clearance granted in favour of the petitioner-Company is co-terminus with the mining lease period ending on November, 2014 sought further clarification from the MoEF on 23.09.2011. On 15<sup>th</sup> March, 2011, MoEF-O.P. No.1 issued a guidelines wherein at para 3.1 it is mentioned that 'In case the project site is located within the eco-sensitive zone or 10Kms in absence of delineation of such zone from the boundaries of National Parks/Sanctuaries, the User Agency/Project Proponent should seek prior



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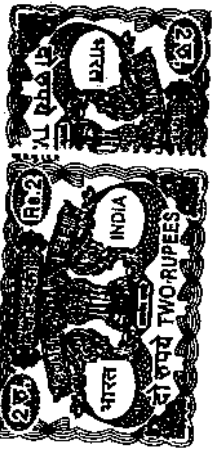
clearance from the Standing Committee of NBWL before seeking Environmental Clearance. On the basis of the that vide letter dated 15.12.2011 the O.P. No.4 directed the petitioner-Company to submit the show cause as to why the petitioner's mining activities in Dhanurjayapur mines, falling within 10 kms from Hadagarh Wildlife Sanctuary boundary shall not be stopped as per the direction of the Supreme Court in W.P.(C) No. 460/2004 i.e. in Goa Foundation case. In response to the same petitioner-Company submitted the reply to the show cause on 26.12.2011 to O.P. No.4 intimating that there is no violation of any order of the Supreme Court of MoEF as the Government of Odisha has failed to define the Eco-Sensitive zone etc. Thereafter, vide impugned letter under Annexure-29 dated 22.12.2011 the Asst. Inspector General of Forests of O.P. No.1 intimated the Chief Conservator of Forests to take appropriate action to keep the forest clearance of the petitioner company in abeyance till necessary clearance is obtained by the State Government from National Board for Wildlife. On the basis of the same Dy. Conservator of Forests (Central) O.P. No.1 has kept the forest clearance, which was obtained by the petitioner on 24<sup>th</sup> March, 1999, in abeyance till necessary clearance is obtained by the State Government from the NBWL and directed the O.P. No.2 to take appropriate action in respect of Dhanurjayapur Mines of the petitioner and obtain prior approval from National Board for Wildlife vide impugned letter dated 23.01.2012 under Annexure-30. Basing on the said direction, the O.P. No.4 requested the O.P. No.3 to take necessary steps for stopping of the mining activities of the petitioner in the said



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mines till pending receipt of clearance as required from the NBWL as the mining lease area of the petitioner is coming within 10 Kms from the boundary of Hadagarh Wildlife Sanctuary. Accordingly O.P. No.2 intimated the petitioner vide impugned notice under Annexure-1 dated 16.02.2012 directing the petitioner to keep the mining activities in abeyance till receipt of further communication from O.P. No.2.

3. Mr. Mishra, learned Sr. Counsel on behalf of the petitioner-Company submitted that the order dated 4<sup>th</sup> December, 2006 in Goa Foundation case is applicable to the cases where forest clearance had already been granted. It is stated that the forest clearance was granted by O.P. No.1 in favour of the petitioner on 24<sup>th</sup> March, 1999 after satisfying all the requirements by the petitioner. Further, in the said order the Hon'ble Supreme Court had given final opportunity of 4 weeks to the States/Union Territories to identify those sanctuaries which require buffer zone of 10 kms failing which the Court will pass necessary orders. In the meanwhile, those mining leases which had environmental clearance but were within 10 kms zone, were required by MoEF to be referred to Standing Committee of NBWL. It is submitted that the Supreme Court in its order have not directed the MoEF to refer those cases who also had forest clearance to the NBWL until and unless those were declared by the State Government or by subsequent Supreme Court order to be within Eco-sensitive zone of the sanctuary. The petitioner's case is neither coming within the purview of the Supreme Court order nor within the circular/guidelines issued by the MoEF in any event. Referring to the relevant portion of the order

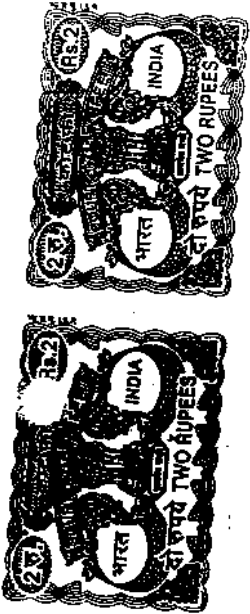


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dated 4<sup>th</sup> December, 2006 in Goa Foundation case (supra) wherein the Supreme court has observed as under:

".....The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21<sup>st</sup> January, 2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

The MoEF would also refer to the Standing Committee of the National board for Wildlife, under Sections 5(b) and 5(c) of the Wildlife Protection Act, the cases where environment clearance has already been granted where activities are within 10km. zone"



4. Placing reliance upon the same, Mr. Mishra, learned Senior counsel for the petitioner submits that the Supreme Court has made it clear that the MoEF would refer the cases where the State Government had failed to declare a site as being within eco-sensitive or eco-fragile area but was within 10 kms of a sanctuary. Further, the Hon'ble Supreme Court did not require suspension of mining activity during consideration of the cases by the NBWL for grant of permission. Therefore stopping the petitioner from mining activities by suspending the permission which has already granted is violative of Articles 19(1)(g) of the Constitution. Further, the State Government by its letter dated 14<sup>th</sup> February, 2007 has expressly stated that no illegal mining is taking place, inter alia, in the Dhanurjayapur Mines and has refused to declare the said mines of the petitioner to be constituting eco-sensitive area. The mines area is 2.5 kms away from the sanctuary

*b*

which is well beyond 1.00 K.M. limit imposed by the Hon'ble Supreme Court in its order dated 4<sup>th</sup> August, 2006 in T.N. Godavarman (supra). Therefore, the opposite parties could not have put the forest clearance granted in favour of the petitioner in abeyance pending consideration of the case of the petitioner before the NBWL. Learned Sr. Counsel on behalf of the petitioner placed much reliance upon the decision of the Supreme Court in T.N. Godavarman case and submitted that the order passed in T.N. Godavarman case is a three Judge Bench order whereas the order passed in Goa Foundation is a two Judge Bench order, therefore, the order issued in T.N. Godavarman case will prevail over the order in Goa Foundation (supra). However, it is further submitted that even if the order in Goa Foundation will be taken into consideration, the Hon'ble Supreme Court nowhere directed that the Company who has been granted clearance earlier is required to stop the mining activities till consideration of its case by the NBWL.

5. It is further submitted that Dhanurjayapur Mines of the petitioner employ about 5000 direct and indirect workers, whose livelihood is being threatened and there is a risk of industrial unrest in the area. Further due to closure of the said mine, petitioner is not getting the rawmaterials for its Ferro Chrome Plant and it also leads to closure of the Ferro Chrome Plant of the petitioner and thereby thousands of employees in the Ferro Chrome plant will loose their livelihood. The petitioner No.1 had even suggested that the forest area of 0.339 hectares is not required for the mine and the petitioner is willing to give up the said area which the opposite parties have failed to

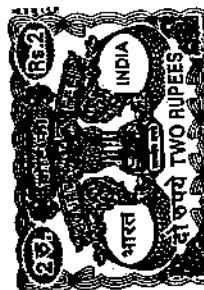
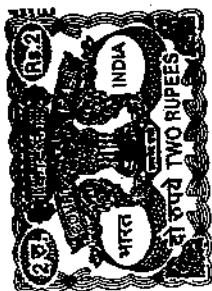


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consider. The petitioner has also in fact applied for permission from NBWL on 15<sup>th</sup> July, 2012 and yet the opposite parties have failed to permit the petitioner to mine till the application is considered by the NBWL. It is submitted that neither any statute nor any order of the Hon'ble Supreme Court of India permits the opposite parties from denying mining to be undertaken during pendency of matter before the NBWL as the petitioner has received all statutory clearances in accordance with law. Further, the Supreme Court order has neither attained its finality nor did Supreme Court pass any order/directions to notify the area within 10 kms as "Eco Sensitive Zone". Therefore, it is prayed that pending consideration of the writ petition, the interim prayer sought for in this Misc. Case may be allowed, as there is no prohibition in any order of the Supreme Court or any statutory law.

6. On the other hand a Preliminary Counter Affidavit has been filed by O.P. No.1-MoEF placing reliance upon the order dated 04.12.2006 in Goa Foundation case and Office Memorandum dated 15.03.2011 along with other certain documents traversing the petitioners averments.

7. It is stated that the Wildlife Division in the MoEF vide its Office Memo dated 15.3.2011 issued a guidance documents containing various steps that need to be followed for taking up non-forestry activities within the wildlife habitats. In accordance with the order of Supreme Court as per para 3.1 of the said guidance document, in case a project site is located within the eco-sensitive zone or 10 kms in absence of delineation of such a zone from the boundaries of a National



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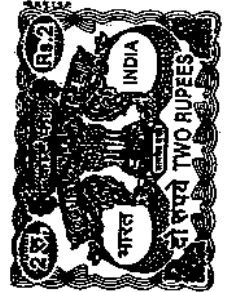
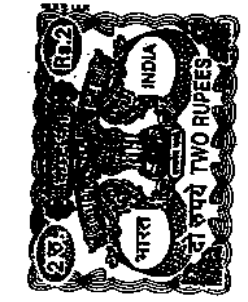
Park/Sanctuary the user agency/project proponent should seek prior clearance from Standing Committee of NBWL before seeking environmental clearance and the procedure as mentioned under paragraph 2.1 to 2.8 of guidance documents. The Wildlife Division in the MoEF vide note dated 24.10.2011 sent a copy of the letter dated 17<sup>th</sup> October, 2011 received from Mr. Biswajeet Mohanty, Member, Standing Committee of the NBWL regarding the operation of Baoula, Dhanurjayapur and Bangur Chromite mines situated inside/around Hadgarh Wildlife Sanctuary within 10 kms of boundary without mandatory clearance from the NBWL and requested the Forest Conservation Division in the Ministry to take necessary action to keep the approval accorded under the Forest (Conservation) Act, 1980 to these mines in abeyance till necessary clearance is obtained by the State Government from the NBWL. It is submitted that keeping in view the approval under the Forest(Conservation) Act, 1980 for diversion of 0.339 hcs. Of forest land for renewal of Chromite Mines of the petitioner was accorded by the MoEF vide letter dated 24.03.1999. The MoEF vide its letter dated 22.12.2011 requested the Eastern Regional Office, Bhubaneswar to take appropriate action to keep Forest Clearance, granted in favour of the mine in question of the petitioner, in abeyance till necessary clearance is obtained by the State Government from the NBWL and communicate the same to the Government of Orissa and accordingly the impugned letters were issued by the MoEF. Therefore, it is prayed that petitioner cannot raise any dispute till clearance



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obtained from the NBWL and accordingly prayer of the petitioner may be rejected.

8. Counter affidavit has also been filed on behalf of O.P. Nos. 2 & 4, inter alia, stating that in view of the direction of the MoEF-O.P. No.1 vide letters dated 22.12.2011 and 23.01.2012 (Annexures-29 & 30) the opposite party No.3 & 4 have issued the impugned order under Annexures-1&2. It is stated in the counter that undisputably it is fact that the joint verification reports revealed that the applicant has not encroached upon the mining area but the report does not say that the mining boundary is 2.5 kms away from the Hadagad Sanctuary. It is further stated that the MoEF vide letter dated 15.03.2011 have issued guidelines with regard to procedure for taking upon non-forestry activities in wildlife habitats. That guidelines at para 1.4 specially deal with on activies within 10 kms from boundary of National park and Wild Life Sanctuary and also provides that environment clearances for all such projects that fall within 10 kms boundary of the Sanctuary will be subject to the recommendation of the Standing Committee of NBWL. Therefore, it is for the applicant-petitioner to obtain environmental clearance from NBWL to be able to operate the mine in question. As the petitioner has not received recommendation from the Standing Committee of NBWL, the O.P. Nos. 3 & 4 have rightly issued notice and MoEF, Govt. of India have rightly kept the forest clearance in abeyance vide letter dated 23.01.2012. It is not a fact that the order dated 18.6.2012 of O.P. No.3 is not a speaking one, since it is clearly mentioned in that order that due to want of clearance from NBWL, the

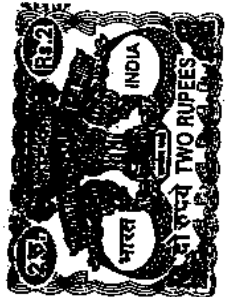
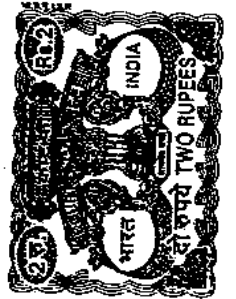


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forest clearance being kept in abeyance, the mining activities are also to be kept in abeyance. In such view of the matter, no further reason is necessary and therefore, it is stated that the O.P. Nos. 3 & 4 have rightly passed the impugned order following the direction of the MoEF.

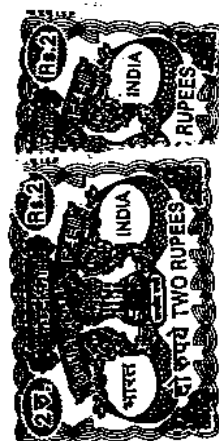
9. In view of the aforesaid factual and rival legal contentions of the respective parties, we have carefully gone through the records produced before us and the decisions of the Supreme Court rendered in *Goa Foundation (supra)* and *T.N. Godavarman Thirumulpad (supra)*, so as to consider the entitlement of the petitioner for the interim relief.

10. It is undisputed fact that the petitioner-Company is carrying its mining activities over the Dhanurjayapur mine in question since 1991. The petitioner's lease has also been renewed on 29.04.2000 for a further period of 20 years w.e.f. 1994, which is valid up to 1<sup>st</sup> December, 2014. The O.P. No.1-MoEF vide its letter dated 24.03.1999 had also granted approval U/s. 2 of the Forest (Conservation) Act, 1980 for diversion of 0.339 Hc. of forest land for renewal of Dhanurjayapur chrome mines. Further, on 9<sup>th</sup> July, 2004 the O.P. No.1 accorded the environmental clearance to the petitioners under Annexure 17. Report of the joint inspection conducted by the forest officials with regard to boundary line of the petitioner's leasehold area reveals that the petitioner has not encroached any forest land coming under Reserve Forest and its mining activities is confined within the lease area. On 15<sup>th</sup> March, 2011, MoEF-O.P. No.1 issued a guidelines wherein at para 3.1 it is mentioned that "In case the project site is located within the eco-sensitive zone or 10Kms in absence of delineation of such zone



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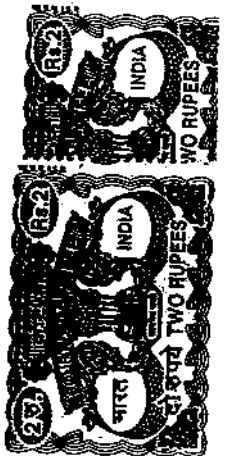
from the boundaries of National Parks/Sanctuaries, the User Agency/Project Proponent should seek prior clearance from the Standing Committee of NBWL before seeking Environmental Clearance. On the basis of the that vide letter dated 15.12.2011 the O.P. No.4 directed the petitioner-Company to submit the show cause as to why the petitioner's mining activities in Dhanurjayapur mines, falling within 10 kms from Hadagarh Wildlife Sanctuary boundary shall not be stopped as per the direction of the Supreme Court in W.P.(C) No. 460/2004 i.e. in Goa Foundation case. In response to the same petitioner-Company submitted the reply to the show cause on 26.12.2011 to O.P. No.4 intimating that there is no violation of any order of the Supreme Court of MoEF as the Government of Odisha has failed to define the Eco-Sensitive zone etc. Thereafter, vide impugned letter under Annexure-29 dated 22.12.2011 the Asst. Inspector General of Forests of O.P. No.1 intimated the Chief Conservator of Forests to take appropriate action to keep the forest clearance of the petitioner company in abeyance till necessary clearance is obtained by the State Government from National Board for Wildlife. On the basis of the same Dy. Conservator of Forests (Central) O.P. No.1 has kept the forest clearance, which was obtained by the petitioner on 24<sup>th</sup> March, 1999, in abeyance till necessary clearance is obtained by the State Government from the NBWL and directed the O.P. No.2 to take appropriate action in respect of Dhanurjayapur Mines of the petitioner and obtain prior approval from National Board for Wildlife vide impugned letter dated 23.01.2012 under Annexure-30. Basing on the said direction, the O.P.



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No.4 requested the O.P. No.3 to take necessary steps for stopping of the mining activities of the petitioner in the said mines till pending receipt of clearance as required from the NBWL as the mining lease area of the petitioner is coming within 10 Kms from the boundary of Hadagarh Wildlife Sanctuary. Accordingly O.P. No.2 intimated the petitioner vide impugned notice under Annexure-1 dated 16.02.2012 directing the petitioner to keep the mining activities in abeyance till receipt of further communication from O.P. No.2.

11. It is undisputed fact that the impugned orders under Annexures-1 & 2 have been issued by the O.P. Nos. 3 & 4 pursuant to impugned letters under Annexures-29 & 30 of the O.P. No.1 wherein the O.P. No.1 instructed to take appropriate action to keep the forest clearance of the petitioner company in abeyance till necessary clearance is obtained by the State Government from National Board for Wildlife which is on the basis of the order dated 04.12.2006 in Goa Foundation case referred to above. Mr. Mishra, learned Sr. Counsel placed strong reliance upon the decision of the Supreme Court dated 04<sup>th</sup> August, 2006 in W.P.(C) No. 202 of 1995 (T.N. Godavarman Thirumulpad Vs. Union of India & Ors) wherein, while considering the procedure for grant of Temporary Working Permissions (TWP) the three Judge Bench of the Supreme Court observed that the grant of TWP would not result in any mining activity within the safety zone around such areas referred to in the judgment, however, as an interim measure, one kilometer safety zone shall be maintained subject to orders that may be made in future.



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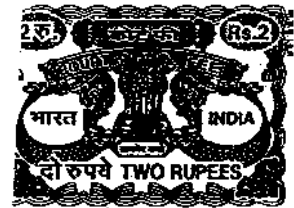


12. In view the above, we are required to examine as to whether the Supreme Court in any of the aforesaid decisions has imposed restriction that the Company, who has been granted clearance earlier, is required to stop the mining activities till getting clearance from the NBWL. In this regard it is necessary to extract the relevant portion of the decisions in Goa Foundation, on the basis of which the impugned orders have been passed and also the decision in T.N. Godavarman case. Vide order dated 4.12.2006 in Goa Foundation, the Supreme Court directed as under:

" The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its letter dated 27<sup>th</sup> May, 2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21<sup>st</sup> January, 2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5(b) and 5(c) of the Wildlife Protection Act, the cases where environment clearance has already been granted where activities are within 10km. zone"

13. From the above order, it is clear that the MoEF would refer the Standing Committee of NBWL the cases where the environment clearance has already been granted where the activities are within 10 km zone. But it is not stated that the mining activities of such



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Company, who have obtained clearance earlier, shall stop mining operation till decision is taken by the NBWL. In fact the petitioner has applied for permission from NBWL and yet the same is pending consideration before the NBWL:

14. On the other hand in T.N. Godavarman case (supra) the Supreme Court in its order dated 04<sup>th</sup> August, 2006 in W.P.(C) No. 202 of 1995 directed as under :

"i) TWP's can only be granted for renewal of mining lease and not where the lease is being granted for the first time to 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 TWP would not result in any mining activity within the safety zone around such areas referred to in the judgment; however, as an interim measure, one kilometer safety zone shall be maintained subject to orders that may be made in I.A. No.1000 regarding Jamua Ramgarh sanctuary)"

Further, vide order dated 18.09.2012 in T.N. Godavarman case (supra) the Supreme Court directed as under:

"...It is expected that once the application and all the documents are received at the MoEF, there will be no undue delay in taking a final decision in regard to the grant of permission under Section 2 of the Forest (Conservation) Act, 1980.

The applicant is allowed to carry on its mining activities for a period of two months from today".

15. The case in T.N. Godavarman was also lastly came up for consideration before the Supreme Court on 03.12.2012, wherein the Hon'ble Court while adjourning the matter to December 07, 2012, directed as under:

"Put up on December 07, 2012.

No coercive measures will be taken against the applicant to force it to close the mining operations till that date."



Lastly on 07.12.2012 when the matter again came up for consideration, the Supreme Court has passed the following order.

IA No. 1000 in WP (C) No. 202/1995 and connected IAs  
(BUFFER ZONE)

Put up after the ensuing winter vacation.

IA Nos. 2062-2063 in WP (C) No. 202/1995

Put up after the ensuing winter vacation.

IA Nos. 1349 in 1246-1247, 1378-1380, 1446-1447,  
1502,

2299-2300, 2652-2653, 2866-2867, 2952-2953, 2954-  
2956, 3462, 3406-3408, 3504-3505, 3513-3514, 3517-  
3518, 3519- 3520, 3521-3522, 3536-3537 in 1378-1380 with  
Cont.Pet.(C) No. 390/2012 in IAs 1378-1380 in WP (C) No.  
202/1995

(KHASHRA 220, KHATNI)

Mr. B.S. Banthia, counsel appearing for the State of  
Madhya Pradesh, has circulated a letter praying for time on the  
ground of personal difficulty.

Put up after the ensuing winter vacation.

WP(C) No. 202/1995 (With Office Report for  
directions)(307)

As prayed by Mr. A.D.N. Rao, amicus curiae, this  
matter is deferred.

IA No. 3529 in IA No. 3480 in IA Nos. 2904-  
2905 in WP (C) No. /1995

The site inspection has been made by the Regional  
Office of the MoEF and its report has been sent by the  
Conservator of  
Forests (C) to the MoEF vide letter No. 5-ORA153/2012-BHC  
dated

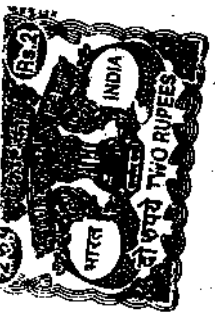
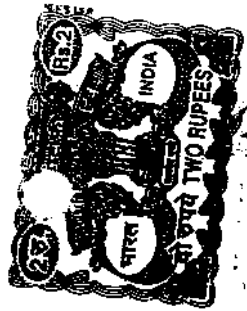
November 23, 2012. The site inspection report is  
now to be considered by the Forest Advisory Committee,  
which we are told is likely to meet by the middle of this month.  
Thereafter, a formal decision will be taken on the grant of  
clearance under Section 2 of the Forest Conservation  
Act.

Mr. Haris Beeran stated that a final decision, in light of the  
decision of the Forest Advisory Committee, is likely to be  
taken by the end of this month.

In that view, we extend the interim order granted earlier  
till January 04, 2013. It is hoped and expected that by that  
date the MoEF shall take a final decision on grant of  
clearance under Section 2 of the Act. The applicant shall  
abide by the final decision taken by the MoEF.

In view of the interim order being extended, there  
should  
be no impediment in the way of the applicant in despatching  
the coal.

IA stands disposed of."



16. From the above said orders it is seen that the Hon'ble Supreme Court has not imposed any restriction on the mining activities in the cases like petitioner, who are continuing with the mining activities on the basis of their present environmental clearance, and matter is under consideration before the Supreme Court and the Court is also extending the interim order time to time, pending decision by the NBWL. Therefore, on the basis of the aforesaid interim direction of the Hon'ble Supreme Court, and taking into consideration the entire fact situation of the present case, as an interim measure, it is directed that the opposite parties shall permit the petitioner-Company to continue its mining activities in its Dhanurjayapur mining area in question. However, the same shall be subject to the further decisions of the Supreme Court, if any, which would be passed in the aforesaid two cases and/or till the disposal of this writ petition. It is further directed that the petitioner-Company shall expedite the matter approaching the NBWL to obtain environmental clearance.

With the aforesaid observation and direction the Misc. Case is allowed to the extent indicated above.

*Sd. V. Gopala Gowda CJ.*

*Sd. B. K. Misra, J.*

B.K. Misra, J. I agree.

Orissa High Court, Cuttack  
The 21<sup>st</sup> day of December, 2012/A.Dash

*Copy by*  
*[Signature]*  
*21.12.12*

