

Date of Order: 29/10/2002

I.A. No. 566

Coram:

Issues Dealt With: Regarding Compensatory Afforestation, setting up of Compensatory Afforestation Fund, charging of Net Present Value of forest land diverted for non-forest use under Forest (Conservation) Act, 1980.

On 23rd November, 2001, Mr. Kirit N. Raval, the learned Additional Solicitor General during the hearing of the IA Nos. 419 and 420 had placed on record a statement showing the position of the cases approved for diverting forest area for non-forest purposes, compensatory afforestation stipulated and what was actually done, funds to be received and were actually received and utilised. This Court then issued notices to the defaulting States which had recorded poor progress in utilization of the said funds and had not submitted quarterly progress reports.

The order of 23rd November, 2001 envisaged a scheme being formulated by the Ministry of Environment & Forest, inter alia, for ensuring proper utilization of the funds for compensatory afforestation in respect of permission granted for user –agency of forest land.

The Central Empowered Committee examined this question while dealing with I.A. No. 566 and after notice of all State Governments and hearing the learned counsel has submitted a Report dated 5th September 2002. The Report, inter alia, provides that there should be a change in the manner in which the funds are released by the State Government relating to compensatory afforestation. It has, therefore, been observed in this Report by the Central Empowered Committee that it is desirable to create a separate fund for compensatory afforestation wherein all the monies received from the user-agencies are to be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular state would be utilised in the same State.

There was also consensus amongst the States and the Union Territories that the funds for compensatory afforestation which were to be recovered from the user-agencies as well as the unutilized funds lying with the States should be transferred to such a fund. This fund will not be part of general revenues of the Union, of the States or part of the Consolidated Fund of India.

The said Report of the Central Empowered Committee contemplates the involvement of user-agencies for compensatory afforestation. The report also refers to the permissible activities under compensatory afforestation, adequate compensation to be received for loss of forest land and funds for catchment area treatment plant. The Committee has also made eight recommendations. Copy of the Report of September, 2002 of the Central

Empowered Committee was given to the counsel for the parties. An affidavit on behalf of Union of India in response to the said Report has been filed. In paragraph 5 of the same, it is being submitted by the Ministry of Environment & Forest that it accepts the recommendations of the Central Empowered Committee in principle. It is, further, mentioned in this affidavit that major institutional reorganization of the present mechanism has to be undertaken and that it was proposed that comprehensive rules would be framed which will inter alia also relate to the procedure and compensation. It is also proposed that there will be a body for the management of the Compensatory Afforestation Funds (CAF). The proposal in this affidavit of the Union of India is that the said body of management would be composed of a Director General and Special Secretary who will be the ex-officio Chairman and Inspector General of Forest who will be the ex-officio Member Secretary. Comprehensive rules etc will be placed before this Court for examination.

No other States has filed any response to the said Report of the Central Empowered Committee, It is, therefore, presumed that the State Governments are not opposed to the said Report and like Union of India, they have accepted the same.

We have examined the said Report and are of the opinion that it merits acceptance by us as well. As recommended by the Central Empowered Committee we direct as follows:

- (a) The Union of India shall within eight weeks from today frame comprehensive rules with regard to the Constitution of a body and management of the compensatory afforestation funds in concurrence with the Central Empowered Committee. These rules shall be filed in this Court within eight weeks from today. Necessary notification constituting this body will be issued simultaneously.
- (b) Compensatory Afforestation Funds which have not yet been realized as well as the unspent funds already realized by the States shall be transferred to the said body within six months of its constitution by the respective states and the user-agencies.
- (c) In addition to above, while according transfer under Forest Conservation Act, 1980 for change in user-agency from all non-forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment & Forest in consultation with Central Empowered Committee as and when necessary.

- (d) A 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan Funds, etc shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month.
- (a) The funds received from the user – agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26A or 35 of the Wild Life (Protection) Act, 1972 for undertaking activities related to protection of bio-diversity, wildlife etc. shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States / Union Territories.
- (b) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States/Union Territories or any amount that is yet to be recovered from the user-agency shall also be deposited in this Fund.
- (c) Besides artificial regeneration (plantations), the fund shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner.
- (d) The user agencies especially the large public sector undertaking such as Power Grid Corporation, N. T. P. C., etc which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the Ministry of Environment & Forests with the concurrence of the Central Empowered Committee.
- (e) Plantations must use local and indigenous species since exotics have long term negative impacts on the environment.
- (k) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilization of funds.

Place it before a Bench of which Hon'ble Mr. Justice Y. K. Sabharwal and Hon'ble Mr. Arijit Pasayat are members for examination of the Rule