

RECOMMENDATIONS OF THE CENTRAL EMPOWERED COMMITTEE

I.A. No. 276 of 1998

IN

Writ Petition (Civil) No. 202 of 1995
(Under Article 32 of the Constitution of India)

T. N. Godavarman ThirumalkpadPetitioner

VERSUS

Union of India & Others.Respondents.

together with

I. A. No. 413 of 1999 (Application for impleadment filed by the District
Farmers and Coffee Growers Welfare Association, Chickmagalur,
Karnataka).

I. A. No. 437 (Application for extension of time by State of karnataka)

I. A. No. 453 (Application for impleadment filed by Shri B. L. Shankar).

I. A No. 454 (Application for impleadment filed by Shri H. M.

Sheshegowda and others).

Date of hearing : 26.7.2002 and 5.8.2002

CORAM : 1. Shri P. V. Jaykrishnan Chairman
2. Shri N. K. Joshi Member
3. Shri Valmik Thapar Member
4. Shri Mahendra Vyas Member
5. Shri M. K. Jiwrajka Member Secretary

On behalf of
Amicus Curiae : Shri Siddhartha Chowdhary, Advocate

- For M/o Environment &
Forests : Sh. A. D. N. Rao, Advocate
- Special Invitees : Chief Secretary, Karnataka (on 5.8.2002)
Sh. R. M. N. Sahai, Court Commissioner (on
26.7.2002)
Sh. A. M. Annaiah, DCF(on 26.7.2002)
- From State of
Karnataka : Sh. N. Ganpathy, Advocate
Sh. N. Gokulram, Principal Secretary
(Forests)
Sh. R. M. Ray, PCCF
Sh. U. V. Singh, Chief Conservator of
Forests (FC)
Sh. Dipak Sarmah, Secretary Forests
- For I. A. No. 413 : Sh. D. P. Chaturvedi, Advocate
Sh. S. N. Bhatt, Advocate
- For I. A. No. 453 : Sh. G. RamaKrishna Prasad, Advocate
Sh. V. Lakshmi Narayana, Advocate
Sh. M. Wasay Khan, Advocate
Sh. D. K. Garg, Advocate
Sh. B. L. Shankar
- For I. A. No. 454 : Sh. S. K. Grover, Advocate
Shri S. M. Sheshegowda

Observations and Recommendation of the Committee

Hearing of I.A. No.276 filed through Amicus Curiae was held on 26.7.2002 and 5.8.2002 along with IA Nos, 413, 437, 453 and 454 for impleadment.

2. In IA No.276, it is stated that in blatant violation of the Supreme Court orders dated 12.12.96, Forest (Conservation) Act, 1980, Karnataka Forest Act 1963 and Karnataka Preservation Trees Act, 1976 large areas of reserved forests have been destroyed and encroached by influential and powerful people in Chikamagalur Forest Division, Karnataka. The forest area of Chikamagalur Division is part of the ecologically fragile Western Ghats and is rich in bio-diversity. These exceedingly rich forest are rapidly being destroyed and fragmented due to encroachment for growing coffee plantations, agriculture and mining activities. The people involved in this illegal activity are powerful and influential people who include Shri B.L. Shankar, President of the Janta Dal, his brother Shri B.L. Diwakar and others. In the application prayer has been made for investigation into the large-scale encroachment in reserved forest at Chikamagalur and to initiate contempt proceedings against the offenders/violators of Hon'ble Supreme Court orders.

Appointment of Court Commissioner

3. After hearing the matter on 29.7.98, Hon'ble Supreme Court appointed Shri R.M.N. Sahai, Conservator of Forests, Karnataka as the Commissioner of the Court. Relevant portion of the order of 29.7.98 of Hon'ble Supreme Court is reproduced below:-

"The learned Amicus-Curiae has brought to our notice that so far as Thatkola Reserve Forest is concerned, in District Chickmagalur, there has been large scale deforestation even after the orders of this court prohibiting the felling of trees were made.

We appoint Mr. R.M.N. Sahai, Conservator of Forests, as the Commissioner of the Court, and direct that Mr. Sahai shall immediately go to Thatkola Reserve Forest and give a report about the present state of affairs in that forest. The needful shall be done by him within two weeks. Learned counsel for the State of Karnataka undertakes to apprise Mr. Sahai of this order and offer all possible assistance to him to undertake the task assigned by us to enable him to file the status report."

4. Shri R. M. N. Sahai submitted his enquiry report on 5.9.98. Supplementary enquiry report was given by him on 14.1.99. As per the decision taken by Central Empowered Committee on 26.7.02, the updated status report was given by him on 2.8.02.

5. During the hearing held on 26.7.02, Shri RMN Sahai, Court Commissioner explained the important issues dealt with in his Report. The State Government sought time for filing of additional affidavits explaining the stand of the State Government on the Survey of India's report. As the earlier report of the Court Commissioner was given during 1998, he was requested to update the Report, giving present status of the existing encroachments, projects of encroachments removals, action taken on Survey of India's report and other related issues. On the request of the State Government and also the interveners, the hearing was postponed to 5th August, 2002.

The hearing held on 5th August, 2002 was attending to Chief Secretary, Karnataka as a special invitee.

Findings of Commissioner of the Court

The findings of Shri RMN Sahai, Court Commissioner as given in the Executive Summary of his Report dated 5.9.98 is reproduced below:-

"Thatkola Reserved Forest was constituted by an order of the then Government of the Maharaja of Mysore in 1936. The forest has an area of 2313 acres 38 guntas encompassing portions of Six villages, namely Kenjige, Kenjigegudda Coffee Estate, Bidarhalli Thatkola, Hesgal and Phalguni which are in Mudigere Taluk of Chickmagalur District.

The area is located in Western Ghats region and receives high rainfall of about 2500 mm annually. It supports rich tropical moist deciduous forests and a relatively undisturbed patch of forest is a veritable store house of bio-diversity. The commercially important species like Sandal wood, Teak Rose wood, Honne, Mathi, etc., are found the area. It is also a habitat of endangered species of fauna, viz., Tiger, Panther, Bison, Malabar, Civet, King cobra and several other mammals, reptiles, birds and insects. The micro organism present in the forests is yet to be fully explored.

In last twenty years, the forests of the area has come under serious threat because of encroachment of forest land for coffee cultivation, application of insecticides, fungicides and chemical manure and illicit fellings. An area of 604 acres 30 guntas of forest land is reported to be under encroachment. For this 55 cases are already registered by the Chikmagalur Forest Division covering 488 acres 4 guntas. Another 98 cases covering 116 acres 26 guntas are yet to be registered. On analysis it is seen that 73% of the encroached land has been encroached by 18% encroachers while 73% encroachers have encroached 18% of land. Among the encroachers, 40 persons belong to SC/ST who have encroached 32 acres 7 guntas while 1143 people belonging to other communities have encroached 572 acres 23 guntas. Besides Coffee and other cultivation, several encroachers have constructed houses and at times have put strong fence around their plantation on encroached land. 65 cases of illicit felling in the area have also been registered since 1976.

It was observed that the Revenue Department has granted land to six persons in the forest and have levied fine under Sec. 94 of Karnataka Land Revenue Act to another six persons for unauthorised cultivation. Fifty-three Ashraya sites of 30' x 40' has been granted to homeless people in the Forest. A road has also been constructed through reserved forest. Failure of the forest department in preventing this is obvious. All this is leading to serious degradation of the Forest.

It is, therefore, necessary that this trend of Forest degradation is immediately reversed and suitable measures initiated to bring the forest back to its original condition. If this is not done immediately, the Reserved Forest is sure to meet destruction."

The supplementary enquiry report dated 14.1.99 deals with the joint survey done by the team headed by the Joint Director, Land Records, allegation of changing nature of encroachment, survey of the area by Survey of India, one case of eviction of encroachment that has taken place in Thatkola Reserved Forest and action taken by Chikmagalur Forest Division. Copy of the letter dated 7.9.98 written to the Court Commissioner by Shri B.L. Shankar, one of the persons whose case was dealt in his report was also included in the supplementary enquiry report.

Updated Status Report of the Court Commissioner

On the request made by the Central Empowered Committee the area was again visited by Shri Sahai and updated Status Report of Thatkola Reserved Forest was submitted by him on 2.8.02.

The main issues mentioned in the report are:-

- (i) there are 147 cases of encroachments consisting of 611.23 acres in Thatkola Reserved Forest, out of which 556.04 acres is under coffee cultivation. Three per cent of the encroachments are by Scheduled Castes, 8.6% by Scheduled Tribes whereas 88.4% of the encroachments have been done by others. No serious attempt of fresh encroachment was noticed. The encroachers continue to maintain their plantations [in violation of Forest (Conservation) Act, 1980];
- (ii) Fifty-three Ashraya sites have been granted in Heshgal Survey No.39, a school building has been constructed and water supply facility for the colony has been created.
- (iii) Offence case no.55/97-98 was registered against Shri B.L. Shankar, the then Janta Dal President and now Speaker of Karnataka Vidhan Parishad and others for encroachment of forests. In the report, the Joint Director, Land Records, Mysore who had surveyed the area has

reported that a single report as to the nature of encroachment cannot be given without correcting one of the village boundary as the village boundaries of two villages overlap one another. When survey is conducted by taking Kundur village boundary into consideration then the holders of Survey No.3 (Shri B.L. Shankar and others) are not found to have encroached any forest land whereas if survey is conducted by taking KGCEV boundary into consideration they appear to have encroached 32 acres and 3 guntas forest land. The charge-sheet filed in the Court of JMFC Mudigeri on 9.4.99, which was registered under CC No.613/99 has been quashed by Hon'ble High Court in Criminal Revision Petition No.1303/99. No appeal against the High Court orders have been made by the State Government. The Survey of India report confirms the encroachment to an extent of 27.67 acres by Shri B.L. Shankar and others(at serial no.121 of annexure B of the report);

- (iv) As against 147 cases (611.23 acres) registered for encroachment of forest land, in respect of 116 cases (552.99 acres) orders have been passed under Section 64 (A) of Karnataka Forest Act by the Deputy Conservator of Forests/Assistant Conservator of Forests. However, actual eviction has taken place only in one case so far; and
- (v) Deputy Commissioner, Chickamagalur had transferred about 60,000 ha thickly wooded forest area to Forest Department vide his order dated 5.6.62002 in pursuance of Supreme Court orders (dated 12.12.96) and declared it as reserved forest. The order has been stayed for 3 months vide State Government's order dated 3.7.02

Survey of India Report

The survey of Thatkola Reserved Forest was undertaken by Survey of India as per decision taken by the Karnataka Forest Department. Subsequently, Hon'ble Supreme Court of India by their order dated 7.5.99 directed the Survey of India to continue with the survey which it was carrying on in the said area and to submit its report, if possible, within 3 months to the Hon'ble Court. It was also directed that during the conduct of the Survey and till the submission of the report, there shall be no administrative interference.

After completing the survey, Survey of India has filed its report vide affidavit dated 4.4.00 before Hon'ble Supreme Court. As per the Survey of India report:-

- (a) the survey has been done by starting the work from nearest available Survey of India geographical control point and conducting from the nearest identifiable point in the nearest forest boundary;
- (b) as against the recorded area of 2312 acres of 38 guntas, the forest area found during the survey comes to 226.9819 acres. The difference is attributable to (i) use of modern equipments as against old survey done using chains, use of Pheodolite measuring up to one inch, (ii) (earlier compass and course staff were used), (iii) the terrain being hilly and undulating (distances measured with chain were prone to more errors as the slope correctness to distance measure was given by approximation), and (iv) use of sophisticated instruments like digital Planimeter now used for calculating the area; and
- (c) 611.2390 acres of forest area has been found to be under encroachment. Details regarding the village survey number, type of encroachment and names of the encroachers (as indicated by local officers) have been given along with the report.

Stand Taken by the State Government

The State Government of Karnataka has filed affidavits on 4.2.98, 13.5.98, 24.7.98, 10.9.98, 6.10.98, 4.5.99, 23.1.00 and 25.4.00. The present stand of the State Government as given in the affidavit dated 3.8.02 filed before the Central Empowered Committee is that:-

- (a) Survey of India has carried out survey of Thatkola Reserved Forest as per decision taken by the State Forest Department. The survey was started on 27.5.98 to identify the demarcation line, encroachments, etc., and completed by the middle of February 2000. The survey done by the Survey of India is final since it is the apex organisation in survey matters. Therefore, the Government of Karnataka accepts the survey report. As per the report, there are 148 number of encroachments encompassing 611.23 acres (forest land);
- (b) no appeal against the High Court orders dated 15.11.99, vide which proceedings of the JMFC in CC No.613/99 regarding encroachments are against Shri B.L. Shankar and others has been quashed, has been made by the State Government as the encroachments have been confirmed by the report of the Survey of India and it is considered legally possible to set the law in motion again against the encroachers by lodging fresh complaints on the basis of the fresh evidence furnished by the Survey of India. The Forest Department has been requested to initiate penal action accordingly;
- (c) a State level committee under the chairmanship of Chief Secretary, Karnataka has been constituted on 30.7.02 to monitor the compliance and progress of the encroachment eviction measures taken by the Forest Department. District level committees under the chairmanship of Conservator of Forests have also been constituted on 1.8.00. These committees will monitor steps taken to evict the encroachers as per law;
- (d) presently, out of 148 cases (611.23 acres) charge-sheets have been filed for 124 cases (563 acres), orders passed by Assistant Conservator of Forests/Deputy Conservator of Forests in 116 cases (554.19 acres), appeals filed against these orders before Conservator of Forests in 47 cases (428.77 acres) and number of appeals disposed of by Conservator of Forests in 28 cases (324.11 acres). In all the cases where orders have been passed as well as cases in which appeals have been disposed of, without exception the decisions are in favour of the Government;
- (e) In 129 cases, First Information Report have been filed and in 105 cases charge-sheets have been filed in JMFC. Out of these, 2 cases have been disposed of by JMFC – both resulted in eviction. Fourteen of the pending cases in JMFC Court, pertaining to the Thatkola State Forest, have been quashed by District Court on 2.4.00 (against the Forest Department) on the reasoning that provisions of Section 99 of Karnataka Forest Act do not confer powers on the forest officers to investigate without having recourse to relevant provisions of CrPC. Revision petition dated 27.2.02 has been filed before the Hon'ble High Court; and
- (f) Twenty-eight writ petitions have been filed before Karnataka High Court. Forest Department has filed counter affidavits in all the cases. Out of these, 10 cases have been disposed of in favour of Government and remaining are pending.

During the State Government reiterated that it accepts the Survey of India's report as the final report and is committed to remove all encroachments as reported by Court Commissioner and confirmed by the Survey of India report. On the issue of poor progress of eviction of encroachments, it was mentioned by the State Government that now a committee under the chairmanship of Chief Secretary has

been constituted to oversee the progress of encroachment removals. It is expected that the pace of encroachment removals would substantially increase. It was also reiterated that the High Court orders quashing the proceedings of JMFC in some of the cases would not create any legal hurdle in encroachment removals and, therefore, it was decided not to appeal against these orders. However, the State Government pleaded for exempting the encroachments done by SC/ST as it intends to move Government of India seeking approval of regularisation of such encroachments under the Forest (Conservation) Act, 1980. It was also explained by the State Government that irrespective of the reports of the Joint Director, Land Records and other earlier reports, the encroachments which have been confirmed by Survey of India, action would be taken for their removal by treating it as the final report.

Intervention Application No.413

The IA No.413 has been filed by the District Farmers and Coffee Growers Welfare Association, Chickamagalur. The main pleas made in the application is that the encroachments have been done by SC/ST and other weaker sections of the society. They are in possession of this land for more than 100 years. No steps for eviction of encroachers may be taken.

On being specifically asked, the applicants were unable to provide any proof of them being genuine representative of the SC/ST and other weaker sections of the society they claim to represent. In support of their claim, they were asked to provide documents about registrations of the Society, Memorandum of Association, Article of Association, resolution passed by the society for approaching Hon'ble Supreme Court and list of the members. None of these details have been made available by the applicants so far, therefore, no cognizance of the issues raised in the IA may be taken and the IA may be dismissed.

Intervention Application No.437

The IA has been filed by Karnataka State Government for seeking extension of time for final detailed response to the Court Commissioner's Report by 4 weeks from 2nd July 1999 onwards. Since more than 3 years have already passed, no separate order on this application now needed.

Intervention Application No.453

IA No.453 has been filed by Shri B.L. Shankar, one of the persons who is reported to have encroached on the forest land. At the relevant time he was President of the ruling Janta Dal and is presently Speaker of Karnataka Vidhan Parishad. The main issues raised by him are that due to political reasons, the dispute about his having encroached the forest land has been raised. The coffee plantation owned by him is more than 100 years old. The Survey No.3 where his coffee plantations are there overlaps the forest area. There is a difference of about 2 to 3 acres between the notification constituting the area as reserved forest and map of the area subsequently prepared. When survey was being done by Survey of India no notice or opportunity was given to him to explain factual position. No survey of his land (outside forest area) has been done. The First Information Report was filed against him with malafide intentions. The total area owned by him as per the records is 113.22 guntas in Survey No.177, 180 and 3. The area under his possession can be verified now also and if it is found that total area under his possession is more than 113.22 acres balance area can be taken away from him by treating it as encroachment. The Survey of India should be asked to survey his land also. No cognizance of the overlapping of the boundaries and the report given by the Joint Director, Land Survey is being taken.

Intervention Application No. 454

Conclusions

Based on the Court Commissioner's Report & Survey of India Report, State Government's views, affidavits and intervention IAs and the issues raised during the hearings the Central Empowered Committee is of the considered view that:-

- (a) the report given by the Survey of India about boundaries of Thatkola Reserved Forest and the extent of encroachment inside it should be accepted as the final report as Survey of India is the apex survey organisation in the country. The survey has been done by it using the latest equipments in a scientific manner. The authenticity and reliability of the survey report cannot be doubted;
- (b) as reported by the Court Commissioner and confirmed by Survey of India report, 611.23 acres of forest land has been encroached inside Thatkola Reserved Forest. Out of this, 556.04 acres has been encroached for coffee cultivation and 55.19 acres for other purposes;
- (c) the encroachments taken place inside Thatkola Reserved Forest needs to be immediately evicted specially as these encroachments are for commercial purposes;
- (d) adequate steps have not been taken by the State Government for removal of encroachments in the past in spite of appointment of Court Commissioner by Hon'ble Court and deep interest taken in the matter by Hon'ble Supreme Court of India, the encroachments have been allowed to continue on one pretext or another including pendency of joint survey report, Survey of India's report, and pendency of the cases filed in various courts.;
- (e) after removal of encroachments, it is necessary to rehabilitate the encroached area by afforestation and other conservation measures; and
- (f) compensation for environmental losses caused due to encroachments should be recovered from the encroachers specially as these encroachments are for commercial purposes. Similarly, compensation should also be recovered from the State Government if it does not take effective steps immediately for removal of encroachments.

Recommendations

In view of above, the Central Empowered Committee unanimously recommends that:-

- (a) Shri RMN Sahai, Court Commissioner's Report about the forest area under encroachment in Thatkoli Reserved Forest as confirmed by Survey of India Report shall be treated as final and all encroachments reported therein shall be removed forthwith;
- (b) A notice shall be published in the local / vernacular newspapers at least seven days before the actual removal of encroachment is undertaken specifying to the extent feasible, the name of the encroacher, area under encroachment, the compartment number/survey number and the Forest Range from where the encroachments are being removed in compliance of this order;
- (c) Chief Secretary, Karnataka shall be personally responsible to ensure removal of such encroachments. Director General of Police, Karnataka shall be responsible to ensure that police protection and help needed for removal of encroachments is timely provided;
- (d) compensation for environmental losses caused due to encroachments which have taken place in the instant case for commercial purposes, shall be recovered from the encroachers identified by the Court Commissioner @ Rs.10 lakhs per hectare as an exemplary punishment. For any encroachments not removed by the State Government for any reason whatsoever within three months, compensation for continued environment losses shall also be paid by the State Government @ 10,000/- per hectare per month. The money so recovered shall be kept in a separate account and shall be used exclusively for forest protection and conservation with the concurrence of the Central Empowered Committee;
- (e) the Action Taken Report shall be filed by the Chief Secretary, Karnataka before the Central Empowered Committee every month till the encroachments are completely removed and all the compensation payable by the encroachers / State Government are recovered / deposited; and
- (f) the earlier orders made in the matter shall be read, modified wherever necessary to this extent. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

The Hon'ble Court may please consider the above recommendation and pass appropriate orders in the matter.

(M.K. Jiwrajka)
Member Secretary

**RECOMMENDATIONS OF THE
CENTRAL EMPOWERED COMMITTEE**

I.A. No. 670 of 2001
IN
Writ Petition (Civil) No. 202 of 1995

T. N. GodavarmanPetitioner
VERSUS
Union of India and othersRespondents.

And in the matter of :

Shri K. M. Chinnappa,
Trustee, Wildlife First!
248, IV Main Road,
Chamarajpet,
Bangalore – 18

.....Applicant

VERSUS

1. Union of India
through Secretary,
Ministry of Environment & Forests,
Government of India,
Paryavaran Bhawan,
CGO Complex,
Lodi Road, New Delhi.
2. State of Karnataka
through Secretary Forests,
Ministry of Forests,
Ecology and Environment,
Bangalore.
3. Chairman and Managing Director,
Kudremukh Iron Ore Company Limited,
Koramangala, Bangalore – 34 Respondents.

Date of hearing : 7.8.2002

CORAM : 1. Shri P. V. Jaykrishnan Chairman
 2. Shri N. K. Joshi Member
 3. Shri Valmik Thapar Member
 4. Shri Mahendra Vyas Member
 5. Shri M. K. Jiwrajka Member Secretary

On behalf of

Amicus Curiae : Shri Siddhartha Chowdhary, Advocate

Petitioner : Sh. P. K. Manohar, Advocate

For M/o Environment &
 Forests : Sh. A. D. N. Rao, Advocate
 : Sh. R. K. Gupta, AIGF

For the State of
 Karnataka : Sh. S. K. Chakrabarti, PCCF
 Sh. Dipak Sarmah, Secretary Forests
 Sh. Brijesh Kalappa, Advocate

For Kudremukh Iron Ore
 Company Ltd. : Sh. S. Murari, Chairman & Managing
 Director
 Sh. D. N. Bhargava, Controller General,
 Indian Bureau of Mines
 Sh. K. C. Shiva Subramaniam, Advocate
 Sh. S. Sukumaran, Advocate
 Sh. V. S. Talithaya, Senior Manager
 Sh. Ravi Naik, Deputy Manager
 Sh. G. L. Tandon, Former Chairman,
 Coal India Ltd.

OBSERVATIONS AND RECOMMENDATION OF THE COMMITTEE

Notices were issued to the Kudremukh Iron Ore Company Ltd. (hereinafter called the KIOCL), the State of Karnataka, the Ministry of Environment and Forests, the petitioner / applicant, fixing the hearing of the I.A. on 7th August, 2002. In response, all the parties attended the hearing. Further written submissions were filed by the KIOCL and also by the applicant, which are on record.

2. The facts leading to the filing of the present I. A. in brief are that an I. A. No. 548 was filed through learned *Amicus Curiae* against the orders issued by the States of Karnataka and Uttar Pradesh, respectively, for felling and removal of dead, dying, diseased trees and drift wood etc. from National Parks and Sanctuaries declared under the Wild Life (Protection) Act, 1972. The Hon'ble Court on 14.2.2000 passed an order the operational part of which is reproduced below :

“Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses, etc. from any National Park or Game Sanctuary or Forest. If any order to this effect has already been passed by any of the respondent - States, the operation of the same shall stand immediately stayed.

Reply be filed within three weeks.”

Subsequently the said order was modified by the Hon'ble Supreme Court on 28-2-2000, and the word “forest“ appearing after national parks and sanctuaries was deleted.

3. The present I.A. was filed in I.A. No. 548 also through the learned *Amicus Curiae* in which it has been pointed out that in view of the orders dated 12-12-1996 and 14-2-2000, the mining activity being continued by the KIOCL in Kudremukh National Park declared under section 35(1) of the Wild Life (Protection) Act, 1972, is illegal and in violation of the orders of the Hon'ble Supreme Court of India. The main relief's sought in this I. A. briefly are;

- (a) to direct the MoEF to withdraw the illegal “temporary working permission” issued by it and stop mining activities;
- (b) direct KIOCL to stop polluting the Bhadra river due to open cast mining;
- (c) take action against KIOCL for illegal encroachment in the forests and for destruction of forests in the Kudremukh National Park; and
- (d) to stop KIOCL from laying new slurry pipe line in the forests of the National Park.

4. That in response to the said I. A. the Hon'ble Court on 10.5.2001 passed an order the operational part of which is reproduced as under :

" Issue notice returnable in the second week of July, 2001.

Mr. A. D. N. Rao, Advocate accepts notice on behalf of the Union of India. Service be effected on respondent No. 2 through Mr. S. R. Hedge, Advocate and on respondent No. 3 by ordinary process and by registered post.

Union of India will file an affidavit within eight weeks and in the affidavit they will also state the reason as to why the Government of India having once notified the area as a National Park then permit mining activity to be carried out notwithstanding this

Court's order of 12th December, 1996."

5. During the course of before the Committee, Shri A. D. N. Rao, learned counsel for the Ministry of Environment and Forests, Government of India submitted a list of dates showing chronology of the events to the Committee.

SUBMISSIONS BY THE APPLICANT

On Legal Aspects

6. Shri P. K. Manohar, learned counsel for the applicant addressed the Committee mainly on the legal aspect of the case. He submitted that the case of the KIOCL in their pleadings is that the Forest Conservation Act 1980 does not apply to open up areas and a renewal lease does not need clearance under the F.C. Act and in support thereof the company has relied upon State of Bihar Vs. Banshi Ram Modi - 1985 (3) SCC 643 . He submitted that the legal basis of the argument of the Company is flawed as Banshi Ram Modi's case has been expressly overruled and is no longer a good law in light of subsequent rulings in Ambica Quarry Works Vs. State of Gujarat & Ors. case - 1987 (1) SCC 213 and the Order dated 12-12-1996 in T. N. Godavarman Thirumulpad Vs. Union of India & Ors. - 1997 (2) SCC 267.
7. The second point addressed by the applicant's counsel is that the mining leases cannot be treated as a right in land for the purpose of settlement of rights under provisions of sections 19 to 25 of the Wild Life (Protection) Act, 1972. He relied upon the Judgment of the Supreme Court in Tarun Bharat Sangh Vs. Union of India and Ors. - 1992 Supp. (2) SCC 448, wherein the Hon'ble Supreme Court has held that mining leases do not confer any right on land.
8. The third contention of Shri P. K. Manohar, Advocate on behalf of the applicant is that in the event of a clash between economic interest and the environment the former should give way to the latter particularly in the light to the fact that the Kudremukh National Park lies in one of the 18 "Hot spots" regions of the World and lies in the heart of the Western Ghats having a very delicate and sensitive ecosystem and in support reliance was placed on the judgment of the Hon'ble Supreme Court in Rural Litigation and Entitlement Kendra Vs. State of U.P. - 1989 Supp. (1) SCC 504. He further submits that the F.C. Act does not authorise issuance of temporary working permits for more than 1 year. He sums up his argument by saying that though the mining is liable to be stopped forthwith since the Amicus Curiae, the Central government in its affidavit of Shri S. C. Sharma and the State of Karnataka feel a period of 5 year would be just and fair, he submits that the KIOCL may be directed to wind up its operation within 5 years.
9. The applicant has also submitted that since the KIOCL had no right over the land which was already a reserved forest where all the rights had already been settled, the subsequent lease is not a right on the basis of which any claimed could have been entertained by the Collector under section 22 of the Wild Life (Protection) Act, 1972, consequently, no such area could be excluded under section 24 of the said Act while issuing the second notification under section 35(4) of the said Act.

Availability of weathered secondary

10. As per KIOL's 23rd Annual report for the year 1998-99 it is apparent that the

respondent company does not even have the technology and the back up plant and machinery to grind the rock hard primary ore which is found in greater depths as compared to the weathered secondary ore which is soft and brittle and found on the surface. According to the companies own admission the weathered ore, which as on 1.1.2000 is estimated at 119 million tons and the current extraction @ 22.5 million tons per annum, it will not last beyond the year 5 years. Therefore the mineable weathered ore will last for 5 years from the year 199 only up to the year 2004. However, as regards the position of the primary ore is concerned the relevant paragraph no. 19.9. at page 16 of the 23rd Annual Report of the company is reproduced as under :

" Primary Ore

Section 19.9

Currently, mining is going on in the weathered ore formation only. By geological occurrence, Primary Ore exists below the weathered ore. The quantity of primary ore is estimated to be 342 million tons. In order to extend the mine life, the company is planning to exploit the primary ore. In order to establish the techno-economic feasibility of mining and beneficiating the primary ore, the company carries out an analysis of the primary ore. The ore samples were also sent to laboratories at USA and Canada for metallurgical and grindability tests. Further tests are being carried out to establish the techno-economic viability of extraction of primary ore. Once this is established, the life of the current mine will get extended."

Violations by KIOCL

11. The applicant has filed rejoinder statements, additional statements before the Hon'ble Supreme Court and written submission along with documents before this committee stating that although KIOCL claims to be an environment friendly company, its track record has been extremely poor in view of the following serious violations for which it has been booked and fined on several occasions:
- (i) for illegally raising height of Lakhya Tailings dam resulting in submergence 3.4 sq. kms. of pristine shola valley inside the National Park;
 - (ii) for constructing 40 kms of roads in side the National Park;
 - (iii) constructing an earthen bund in Lakhya Dam outside leased boundary by breaking open fresh forest land;
 - (iv) damaging forest while laying fresh iron ore slurry pipeline for which it paid fine of Rs. 58,107/-;
 - (v) breaking fresh forest land for construction of sheds while laying fresh pipeline and the offence was compounded by paying Rs. 1,41,893/-;
 - (vi) fined of Rs. 10 lakhs imposed for extensive damage caused due to leakage of about 4,000 tonnes of iron ore slurry in pristine affecting 2 sq. kms of pristine forests in the National Park and the pipeline had leaked 5 times within three years.
 - (vii) In the additional note filed by the applicant, it has been pointed out that in March, 2002 fresh areas of forest land has been cleared and broken up and in the process huge amounts of loose soil and boulders have been dumped into Bhadra river, severely clogging its natural flow. This has been supported by photographs and also extensively covered by the media and the Forest Department of Karnataka has also booked a case against KIOCL on 20th March, 2002 for this violation.

- (viii) The applicant has filed a recent report of the National Remote Sensing Agency commissioned by the Deputy Conservator of Forests, Kudremukh titled "Kudremukh Iron Ore Mining change Assessment 1999-2002" dated 12th April, 2002 indicates through the analysis of the satellite imagery that mining has expanded by about 56.28 ha. resulting in opening up of unbroken forest land outside leased area of 1,452 ha. during the period 1999-2002 in violation of "Temporary Working Permission" issued under the Forest Conservation Act, 1980.

Comments on NEERI Report

- (ix) The applicant has also pointed out serious flaws in the NEERI report. In the name of plantations, trees of exotic species have been planted by the KIOCL in one of the finest evergreen shola forests thereby causing more damage to the sensitive ecosystem. The studies of especially of the NEERI did not consider serious erosion problems due to open cast mining in high rainfall area and consequent heavy siltation and pollution of the Bhadra river which is the direct impact of mining.

Recent studies of silt loads in Bhadra River

- (x) That the KIOCL has claimed that there is almost negligible amount of silt in the Bhadra river and the Reservoir downstream due to its mining activity whereas the recent analysis of previous reports and Rapid Impact Studies conducted by the hydrologist and an expert in Reservoir Sedimentation Dr. Jagdish Krishnaswamy, reveals starting and extremely disturbing trends in siltload flowing in Bhadra during the current monsoon. The report stated "The estimated contribution of this small sub-catchment (the mining area, which is less than 6 % of the total Bhadra Reservoir catchment) to the total load entering the reservoir in 1985 and 1986 is a staggering 53% and 67% respectively." The steady silt wash from the mining area into Bhadra Reservoir has reduced the storage capacity and the designed life span of the Reservoir. The country will be ultimately loosing the huge irrigation potential of Bhadra Reservoir which is currently irrigating a vast area of 1,05,570 ha. Of agricultural land with an agricultural output of Rs. 727 crores per year, which is almost nine times the short term profits of Rs. 69 crores earned from mining by KIOCL per year.
- (xi) A preliminary sediment sampling at the end of the monsoon in 2001 which showed significant higher sediment concentration downstream even during low rainfall periods, a fully instrumented sediment sampling and stream gauging was undertaken in the monsoon of 2002. This is the first study that envisages sediment sample collection in the wet-season since neither NEERI nor the studies conducted by the Indian Institute of Science had addressed this issue. The study is still in progress and will continue until the end of the monsoon of 2002.

- (xii) The data collected clearly indicates that the sediment loading of the Bhadra river is considerably enhanced by its passage through the mining area. The mean and maximum sediment concentration at the downstream site after the mining area are 189 and 3308 mg/l, approximately an order of magnitude or more higher than the corresponding figures for the upstream site which are 23 and 175 mg/l respectively. There are many samples exceeding 500 mg/l at the downstream site. These are very high sediment concentrations indicative of the serious negative effects of mining.
- (xiii) The available data on sediment loading from the 1980s, supplemented observations by governmental agencies and the more recently initiated sediment sampling in August 2001 suggests very strongly that:
 - (a) the mining operations have already led to very high sediment discharges in the Bhadra river and led to enhanced siltation of the Bhadra reservoir; and
 - (b) the mining operations continue to impact the water quality of the Bhadra river. The impacts of KIOCL operations are likely to be felt throughout the Bhadra basin and extend far beyond the devastation within the Kudremukh National Park.

SUBMISSIONS OF THE KIOCL

Legal aspects

12. In its Counter Affidavit dated 6th July, 2001, the KIOCL has asserted that it is a Government of India undertaking and its mining activities are lawfully done on obtaining the requisite permissions / licences, sanctions etc. as required under law. It has submitted that it has taken maximum care to ensure that environment, ecology, wildlife etc. are not affected due to the mining activity and is willing to carry out all such directions which the Hon'ble Court if the allows it to continue the mining activities. That it is continuing mining activity on the basis of two "Temporary Working Permissions" granted on 2-7-1999 and 29-7-2000 by the Government of India as per the guidelines framed under the Forest (Conservation) Act, 1980, even after the original mining lease had expired on 24-7-1999.
13. The thrust of the KIOCL argument is that the requirement of the prior approval of the Central Government under the F. C. Act is only in case where fresh area is to be broken up or cleared. Since, in the present case the area under mining is already broken up for the purpose of open cast mining in 2,834.21 ha. of which 1,452.74 were forest land. Therefore, in continuing to mine iron from the already broken up area approval under the F. C. Act from the Central Government would not be required and it would be required only with regard to 92.86 of forest land which is required by KIOCL for mineralized zone, slurry pipes and access to facilities. In its submissions made before this Committee even this permission is not required in view of the above mentioned decisions. Further reliance has been placed upon the Narmada Sarovar case reported in (2000)10 SCC 664.
14. In support of its arguments reliance has been placed on the Judgment of the Hon'ble Supreme Court in State of Bihar Vs. Banshi Ram Modi & Ors.

reported in (1985) 3 SCC 643, which according to the counter affidavit directly deals with similar situation which the KIOCL finds itself, had arisen in appeal before the Hon'ble Supreme Court. The Court in that matter had held that in an area which has already been dug up and for purposes of mining mica could remove felspar and quartz, which was permitted by the State Government, and the provisions of section 2 of the F.C. Act in such a case is not violated. Referring to the Ambica Quarry Works the counter affidavits states that the ratio of the Banshi Ram Modi's judgment has been accepted in the said case and they have been distinguished on facts, hence the decision in Ambica Quarry in no way affects the case of the KIOCL. The applicability of Banshi Ram Modi's case has been reiterated for the reason that no fresh area is being cleared or broken and the mining is continuing by the KIOCL in the already broken up area.

15. In its written and oral submissions made before the Committee, it has been stated that in view of the first notification issued by the State of Karnataka under section 35(1) the leased area is not a National Park as it is only a draft notification and the final notification for declaration of the National Park has been made only on 18-6-2001. It has also been stated that the original mining lease dated 25-6-1969 granted in favour of KIOC itself contemplates renewal for 30 years. Since the Mines and Minerals Development Regulation Act, 1957 has been subsequently amended limiting the maximum period of renewal up to 20 years, therefore KIOCL applied for renewal for 20 years. It is further stated that as per Rule 24(B) of the Mineral Concessions Rules, 1960 KIOCL is entitled to renewal for 20 years. It has been pointed out that the entire area of 4,605 hectares is not a forest land as a part of it has been notified under Section 349 of the Karnataka Municipalities Act, 1964 declaring it as a Notified Area and the Kudremukh Notified Area Committee is in charge of administration of these areas.

Commitment to Foreign Buyers

16. For every 3 tonnes of ore mined, one tonne is recovered as iron ore concentrate enriched form iron content is 33% to 67 %, the remaining 2 tonnes of gangue material is dumped as tailings KIOCL has entered into agreements with supply of iron ore and pellets to buyers from Japan, Iran, China etc. on long term basis. The annual value of the supply is lies between 17.45 crore to 356.57 crores. The contracts are valid up to 2006.

Iron Ore Availability

17. As per the estimates made by the KIOCL 361.76 million tonne Oxidised core were available in the project area out of which 266.36 million tonne have so far been mined and 94.50 million tonne ore is available. Presently average consumption of oxidised ore is 16.0 million tonnes per annum, the oxidised ore would be sufficient for six years.
18. In addition 342 million tonnes primary ore is also available in the project area. After the oxidised ore is exhausted, mining of primary ore is will be undertaking for which necessary technical know how is available with the company. At marginal additional cost mining of primary ore can be under taken. The reserves would be sufficient for 21 years. Thus the existing reserves of oxidised ore and primary ore are sufficient for continuing mining for next 27 years.

An IS 14001 Company

19. It has been submitted KIOCL being an ISO 9002 and IS 14001 Company, which are issued only when the Company meets strict standards of environment management and the environment as per the said certificates has been defined as “ Surroundings in which an organisation operates, including air, water, land, natural resources, flora, fauna, humans and their interrelations”. KIOCL has also been issued the requisite consent under the applicable laws relating to prevention of pollution of water, air and this would categorically show that there is no pollution of water as alleged by the applicant. It has been stated that the KIOCL has on its own initiative have been taking care of environmental and ecological aspects even before the F.C. Act, 1980 or the Environment (Protection) Act, 1986 were enacted. Vast areas have been afforested and pollution control measures have been taken on which Crores of rupees have been spent by the company.
20. The KIOCL has referred to the Australian experience at Bridge Hill Ridge which was subjected to mineral sand mining, after 18 years of stopping of mining operations and due to massive eco-restoration effort, the rehabilitated mined area has become an integral part of the Myall Lakes National Park. The area receives 125 mm rainfall and suffers from high saline levels in sand and inadequacy of topsoil and low moisture levels in the reformed dunes. The mined sand dunes were contoured to the original topography. In that case the topsoil was carefully recovered prior to mining was returned directly to the newly formed tailings after which the planting of vegetation was undertaken.
21. The KIOCL has filed the following voluminous reports of various institute and organisations in support of their submissions:
- (a) by NEERI of November 2001, titled “Comprehensive Environment Impact Assessment of Kudremukh Iron Ore Mines”; (see page no. 2.113 (para 2.4.4.1)
 - (b) by the Bombay Natural History Society, December, 1998 titled “Representative Sample filed Survey of Flora and Fauna in the Kudremukh Mine Area”;
 - (c) by the Department of Applied Botany, Mangalore University, October, 1996 titled “Studies on Conservation of Plant Biodiversity and Eco-restoration of Abandoned Mines of Kudremukh Iron Ore Company Ltd.” ;
 - (d) by KIOCL titled Vision 2001- “A Road to Environment Management” with Chapters on Environmental Management, Action Plan, Glimpse of Afforestation.
 - (e) by KIOCL titled “Compliance Report on Environment Clearance of Kudremukh Iron Ore Project”
 - (f) by Forestry & Ecological Division, National Remote Sensing Agency, Hyderabad titled “Ecological Monitoring of Kudremukh Iron Ore Mining Area Using Multiple Satellite Data” June, 1997;
 - (g) by KIOCL a “Master Plan for Forestry and Ecology at Kudremukh and Mangalore” prepared by Shri Y.M.L. Yadav, FS (Retd.)

Certificate

- (h) Certificates - ISO 14001: 1996 KIOCL conforms to the

Environmental Management System Standards

- (g) Management Systems Certificate - Det Norske Veritas (DNV) ES ISO 9002: 1994

Requirement of additional 374 ha. forest land for Safety Zone

22. The KIOCL in its submissions to the Committee has requested for additional area of 374 ha. which is required for Safety Zone to mine 350 million tones of primary ore for 20 years in addition to presently mined area of 1,452.74 ha.

AFFIDAVITS FILED BY MOEF

23. The MoEF had filed its first affidavit dated 11-7-2001 wherein it has been stated that the issuance of "Temporary Working permissions" over the broken up area up to a period of one year to the KIOCL is permissible as per the guidelines framed under the F. A. Act,1980. It has been conceded that guideline no. 4.17 provides for granting only one year "Temporary Working Permission" and the second one year permission has been granted to KIOCL only after imposing certain conditions and by taking a pragmatic and flexible view in public interest and under special circumstances. This was done in view of the assurance given by the State of Karnataka that while issuing the final notification under section 35(4), the area under mining would be excluded from the final notification of the Kudremukh National Park.

Mining operations by KIOCL

24. Subsequently, Shri S.C. Sharma, Additional Director General (Wildlife) in his additional affidavit dated 27-7-2001, clarified the stand of the MoEF, after considering the counter affidavit filed by the KIOCL, the rejoinder - statement of the petitioner/applicant and other relevant information. According to this additional affidavit the KIOCL was to allowed to mine in the already broken up area for a period of 5 years subject to satisfactory implementation of the conditions to be stipulated which included reclamation of mined area, air and water pollution control measure, strengthening Lakhya dam, planting indigenous species etc. and establishing suitable monitoring mechanism for ensuring implementation of the conditions imposed.

Areas excluded from the National Park

25. The additional affidavit of the MoEF questioned the exclusion of the 3,703.55 Ha, which includes 3,203.55 ha. leased to KIOCL and 55 ha submerged area of Lakhya dam, from the National Park while issuing the second notification under section 35(4) of the Wild Life (Protection) Act, 1972. The MoEF is of the view that any forest area including any area which is treated as forest as per the Hon'ble Supreme Court's order dated 12-12-1996 in respect of which the first notification has been issued under Section 18 or 35 of the said Act, shall not be excluded while issuing the final notification, except in exceptional circumstances. In the present case the area excluded was already a reserved forest where all the rights have been settled before it as included in the first notification, no rights could have accrued thereafter. Since the excluded area is deep inside the National Park and is integral part of the ecosystem, it is desirable to include this area in the National Park. In view of this stand the State of Karnataka as requested to reconsider the issue and include the excluded area in the National Park.

Clarification of the order of 14-2-2000 in I. A. No. 548

26. The additional affidavit refers to the Hon'ble Supreme Court's order dated 14-2-2000 in I.A. No. 548 prohibiting removal of dead, dying trees, drift wood and grasses etc, from any national park or sanctuaries. The MoEF is also of the view that any activity which alters, destroys or deprives the wildlife or its habitat is also prohibited by Section 29 of the Wild Life (Protection) Act, 1972.

Issue of transparent guidelines

27. The MoEF in this additional affidavit has also informed the Hon'ble Court to formulate comprehensive and transparent guidelines to deal with projects of national importance which involve diversion of forest land falling within any areas notified under section 18, 26-A and 35 of the Wild Life (Protection) Act, 1972 is to be considered under exceptional circumstances. These guidelines would spell out the procedure to be adopted, compensation related issues, alternatives feasible in view of advanced technologies, eligibility criteria, monitoring mechanism etc. These guidelines would be based on well considered principles to do away with ad hoc and arbitrary manner of dealing with such issues.

Third Affidavit of MoEF

28. Subsequently, the MoEF filed the third affidavit (additional) affidavit dated 18-10-2001 modifying its earlier stand, after considering the request of the KIOCL to mine primary ore and careful examining the pros and cons, expressed the Government of India's view of approving the renewal of mining lease in favour of KIOCL over the already broken up area of 1,472.74 ha. and additional 92.86 ha. of unbroken area required for safety reasons for a period of 20 years.

Recommendation of the Forest Advisory Committee under F. C. Act 1980

29. The forest Advisory Committee constituted under section 3 of the F.C. Act on 11-7-2001 examined the renewal proposal in respect of KIOCL's mining lease for a period of 20 years based on the information furnished by the KIOCL about the availability of the secondary weathered ore in the already broken up area. It recommended that the mining should be allowed for a period of 4 years i.e. up to the year 2005 by which time the weathered secondary ore available in the already broken up area would be exhausted. The formal decision on the recommendation of this Committee was deferred by the MoEF in view of the matter being heard by the Hon'ble Supreme Court.

AFFIDAVITS OF THE STATE OF KARNATAKA

30. In its statement of objects the State of Karnataka has stated that the of one year "Temporary Working Permission" has been granted after following the due process of law. It has been stated that the decision to exclude the already broken up area from the second notification constituting the Kudremukh National Park under section 35(4) of the Wild Life (Protection) Act, 1972 is based on the report of the Assistant Collector who is the Settlement Officer appointed under the said Act. It states that no fresh area has been used for the construction of roads, for laying the slurry pipe line which had burst earlier on a number of occasions resulting in very serious environmental problems and damages were recovered from the KIOCL. It also mentions that KIOCL was fined for various forest offences and violations and fines were imposed and recovered from it on several occasions.

31. In compliance to the directions issued by the Hon'ble Supreme Court to file its response to the submissions made by the learned Amicus Curiae as well as on the additional affidavit filed by the MoEF on the question of limiting the mining activity by the KIOCL to the already broken up area for a period of 5 years. The State was also required to reconsider the final notification by which resulted in the exclusion of certain area from the first notification of the Kudremukh National Park. It has been stated that in view of the Government of India's stand that mining activity in a National Park would not be consistent with the provisions of the Wild Life (Protection) Act, 1972, therefore, the State was advised to exclude the mined area with a view to protect the National Park from the mining activity. This according the State of Karnataka could not be characterized as a surreptitious reduction of the notified area of the Park. It also stated that once the mining activity is brought to a complete halt, there would be difficulty or impediment to include the buffer zone as a part of the National Park. But including the area under mining activity within the boundary of the National Park would be inconsistent with the provisions of the Wild Life (Protection) Act, 1972.
32. The state is aware that the area falling under the National Park and its environs are identified as one of the 18 "hotspots" of global biodiversity and the tropical wet evergreen shola forests and grass lands is one of the very rare kind in the World. It has also not been denied that mining activity does effect the environment. On the question whether the economic benefits to be derived from the exclusion of the aforesaid area would be commensurate with the ecological costs is the larger question and in absence any mechanism to quantify it, no definite could not be given.

State Governments Decision to allow mining for 5 Years

33. The State of Karnataka has decided that mining cannot go on indefinitely in the area and the KIOCL may be permitted to continue mining for a period of 5 years only in the broken up area with stringent conditions including strong monitoring mechanism, appropriate programmes for reclamation, pollution control, safety of Lakhya dam, and use of indigenous species of flora for eco-restoration and provision of additional funds for a continuous implementation of the above. The affidavit concludes by stating that State of Karnataka would leave it to the wisdom of the Hon'ble Court to find appropriate balance of the vexed issues are involved and the competing needs that are to be met in the national interest and that of the future generations.

REPORT OF INDIAN INSTITUTE OF SCIENCE Fragmentation and loss of habitat due to mining

34. The applicant sates that the report of the Indian Institute of Science in its report titled " Impact of Iron Ore Mining on the Flora and Fauna of Kudremukh National Park and Environs - A Rapid Assessment" published in January 2001 points out that habitat fragmentation has been identified as the single largest threat to biodiversity and biological integrity. Road building and laying of pipe lines as a result of the mining activity has further fragmented the forest which was earlier a single intact block of rain forest. It further states that open cast mining, by its very nature is a very destructive activity, that causes virtually irreparable damage over the time period of decades or even centuries to a natural habitat.
35. It states that the overall impacts of mining and associated activities on the ecology of Kudremukh National Park can be summarised mainly as direct loss

of habitat and fragmentation of an important tract of tropical rainforest/ grassland in the Western Ghats. Apart from the direct loss of habitat for a variety of plants and animals through open cast mining, the impact on the biodiversity of the Kudremukh region has to be considered through fragmentation effects. While Malleswara township and the mining area have made a deep intrusion into larger ecological region of Kudremukh, the associated effects of facilities such as roads, power transmission lines and slurry pipeline are visible. The report also questions the safety of the Lakhya Tailing dam which very nearly caused a disaster in 1992 when human settlements 45 kms downstream along Bhadra river had to be evacuated in emergency.

Montane Grassland - shola forest of Kudremukh a unique ecosystem

36. The report also reveals that the montane grasslands of the Western Ghats as also of the Kudremukh region are a natural climatic climax which have their unique complement of plant and animal life and need to be preserved. These in the areas adjoining the broken up areas up to 2000 acres have been planted with exotic species of trees such as the Eucalyptus and Acacia auriculiformes as compensatory afforestation, whereas large broken up area continue to remain in the same state where no effort to afforestation effort been made by KIOCL. The exotic species are hardy and resistant to climatic factors, which will gradually dominate over natural grasslands and perhaps even over the shola forest species.

Rich and incomparable biodiversity

37. The report states that the Kudremukh National Park has high levels of plant and animal diversity, being one of the richest of similar locations in the Western Ghats. The evergreen forests of Kudremukh have high levels of flowering plants (particularly woody) diversity comparable to or exceeding several other similarly-located sites in the Western Ghats, including the well known Silent Valley in Kerala. Besides, it has the largest breeding population of the Lion-tailed Macaque, highly endangered primate that is endemic to Western Ghats. The Park harbours 392 species of flowering plants, 42 species of mammals, 169 species of birds, 34 species of amphibians 54 species of reptiles, 149 species of butterflies of which 13 are endemic to the area, many among them are highly endangered and listed in Schedule I of the Wild Life (Protection) Act, 1972.

SUGGESTIONS GIVEN BY LEARNED AMICUS CURIAE

38. During the course of hearing the learned Amicus Curiae, Shri Harish Salve, Senior Advocate and Solicitor General for India made suggestions which included:
- (a) examination of the legality of the exclusion of 3,703.55 ha. forest land from the National Park by the State of Karnataka by issue of final notification under section 35(4) of the Wild Life (Protection) Act, 1972 , sought a report from the MoEF on :
 - (i) indicating the state of the flora and fauna and the biodiversity in the area;
 - (ii) examine whether the decision to exclude the aforesaid area is consistent with the National Forest Policy, the objects of preservation of bio-diversity as well as the provisions of the Wild Life (Protection) Act, 1972;
 - (iii) whether economic benefits to be derived from the

exclusion of the aforesaid areas are commensurate with the ecological costs thereof.

- (b) seek a clarification of the order of 14-2-2000 of the Hon'ble Supreme Court which prohibited removal of dead dying, diseased trees and drift wood and grasses from National Parks and Sanctuaries. Further, as per the mandate of the Wild Life (Protection) Act, 1972 there should be no felling of trees and also mining in such areas;
- (c) The prohibitory provisions of the Wild Life (Protection) Act, 1972 becomes applicable the moment the first notification is issued under Sections 18 and 35 of the Act, therefore, it is clarified that no non-forestry activity including mining shall also be permitted in any forest area included within the boundaries delineated in either the first notification or final notification) of national Park or sanctuary.
- (d) To prevent exclusion areas after the first notification or denotification of areas which have been finally notified has lead to controversy, therefore, it would be appropriate for the MoEF to lay down the principles on which areas are denotified or omitted from final notifications and also framing of transparent guidelines on which sanctions/permissions would be granted for projects of national importance under exceptional circumstances in such eco-sensitive areas.
- (e) In view of the affidavit dated 26-7-2001 filed by the MoEF, no blanket approval can be granted to KIOCL for continuing their mining operations. As per the suggestion of the MoEF at best they can be permitted to wrap up their operations in the already broken up area within a period of 5 years only on fulfilling the following conditions:
 - (i) MoEF should in the first instance prepare a plan for reclamation of the mined areas and a proper eco-restoration plan in the project impacted area;
 - (ii) MoEF should prepare a plan for compensatory afforestation over equivalent non-forest area as well as the double the degraded forest area under mining lease;
 - (iii) MoEF shall also survey the area and propose such other measure such as strengthening the Lakhya dam;
 - (iv) These plans prepared by the MoEF shall indicate the approximate cost and select the agency for executing these plans; and
 - (v) KIOCL shall undertake to make available funds necessary for implementing the aforesaid plans which shall be done by an agency selected by the MoEF itself which should work under its supervision;

Upon KIOCL filing an undertaking to comply with aforesaid directions including making available funds, they may be permitted to continue their operations in the already broken up mining areas for a period of 5 years, making it clear that no further extension of this period shall be granted.

39. Meanwhile the in Sept. 2001 the MoEF grants a second one year "Temporary Working Permission" w.e.f. 25-10-2001 to continue mining subject to the decision of the Hon'ble Court in the mater, and also files a third affidavit informing the Hon'ble Court the decision of the Central Government to consider allowing KIOCL to renew mining lease for 20 years. In October, 2001 the State of Karnataka files its second affidavit informing the Hon'ble Court

State Cabinet's decision to grant 5 year lease to KIOCL only in the already broken up area.

CONCLUSIONS AND RECOMMENDATIONS

After hearing all the concerned parties, carefully examining affidavits, reports, documents and viewing the films on compact disks, and after considering the suggestion made by the learned Amicus Curiae before the Hon'ble Supreme Court, the following are the unanimous conclusions and recommendations of the Committee:

On law

1. On expiry of its lease on 25-7-1999, approval under the F.C. Act is required to be obtained from the MoEF by the KIOCL even for seeking renewal of lease for the already broken up area. The decision in the case of Banshi Ram Modi has been expressly over ruled and is no longer a good law in the light of the rulings in *Ambica Quarry Works V. State of Gujarat*, 1987 (1) SCC 213 and by order dated 12-12-1996 in *T. N. Godavarman Thirumalpad V. Union of India and Ors.*, 1997 (2) SCC 267.
2. The mining leases cannot be treated as a right in land for the purpose of settlement of rights under provisions of sections 19 to 25 of the Wild Life (Protection) Act, 1972, in view of the Judgment of the Hon'ble Supreme Court in *Tarun Bharat Sangh Vs. Union of India and Ors.* - 1992 Supp. (2) SCC 448, wherein it has held that mining leases do not confer any right on land.
3. Since the area being mined by the KIOCL formed part of the declared reserved forest where all the rights were already settled, no new rights could accrue to KIOCL over the said forest land. In absence of any right, the Collector's action to allow the claim of the KIOCL under section 22 of the Wild Life (Protection) Act, 1972 while settling / acquiring the rights in Kudremukh National Park, was without jurisdiction.
4. In absence of any right, the admission of such a right by the Collector under the provisions of section 24 (2) and the subsequent exclusion of such a land under 24(2) (a) which formed part of the area first notified issued under section 35(1) of the Wild Life (Protection) Act, 1972, was illegal and without any jurisdiction.
5. The reserved forests which were included in the first notification have been excluded from the Kudremukh National Park at the time of issuing the final notification under section 35(4) of the said Act was illegal and bad in law. Therefore, the second notification issued under section 35(4) under Wild Life (Protection) Act, 1972 by the Government of Karnataka is bad in law and deserves to be quashed, to that extent. Since the area excluded while issuing the second notification was illegal, the same will have to be included in the Kudremukh National Park, while issuing a fresh notification under section 35(4) of the Wild Life (Protection) Act, 1972.
6. The issue of second "Temporary Working Permission" by the MoEF to the KIOCL is not contemplated by the guidelines framed under the Forest (Conservation) Act, 1980, and was in violation of the provision of the said Act.
7. The Central Government has no powers to enlarge or review any proposal made by the State Government for non-forestry use of any forest land. Since the State Government has now sought /decided to restrict the mining for 5

years, the Central Government has no powers under the Forest (Conservation) Act, 1980 to allow mining for more than five years. It has powers only to either approve the proposal or reject the proposal.

8. The order of 14-2-2000 in I.A. No. 548 prohibiting removal of dead, dying diseased trees, drift wood grasses etc. as modified on 28-2-2000, from any area declared as national park or a sanctuary, would also cover mining activity in all such areas. The mining activity continued by the KIOCL inside Kudremukh National Park was in violation of the orders dated 12-12-96 and 14-2-2000 of the Hon'ble Supreme Court of India.

Recommendation on ecological and other consideration

9. After carefully considering all the views and suggestions, the exceedingly rich biodiversity of the area and investment made by the KIOCL, suggestion made by the learned Amicus Curiae, the Committee is of the view that the KIOCL be asked to wind up its operations within a period of five years or on the exhaustion of the oxidized weathered secondary ore, which ever is earlier, in the already broken up area. It is clarified that the period of 5 years would commence from 25-7-1999, when its lease had expired.
10. The winding up period of five years shall be subject to the following conditions:
 - (i) the MoEF should prepare or get a rehabilitation and reclamation and a proper eco-restoration plan prepared for the mined area and project impact area through appropriate agency at the cost of KIOCL;
 - (ii) KIOCL shall undertake to make available funds necessary for implementing for the aforesaid plans. The plans would be implemented by the agencies selected by the MoEF and under the supervision of the MoEF;
 - (iii) a monetary compensation of RS. 25 crores @ Rs. 5 crores per year will have to be deposited by KIOCL with MoEF in a separate bank account which would be utilised for the purposes of research, monitoring and strengthening protection of the Kudremukh National Park and for other protected areas in the State of Karnataka;
 - (iv) a Monitoring Committee shall be constituted by the MoEF comprising representative of MoEF, representative of the State of Karnataka, two NGO experts preferably from Karnataka, which shall monitor the implementation of the rehabilitation plans; and
 - (v) after the winding up operations are complete, the KIOCL will transfer all the buildings and other infrastructure to the Forest Department of the State of Karnataka at book value.
11. Transparent guidelines for dealing with development projects in protected areas as recommended by Learned Amicus Curiae and agreed to by the MoEF in its affidavit filed by Shri S. C. Sharma, Additional Director General of Forests shall be notified within 30 days with the concurrence of the Central Empowered Committee.

Dissenting Note of Shri Valmik Thapar

12. Shri Valmik Thapar, one of the members of the Committee has given a dissenting note which is reproduced as under :

“ Enough exploitation has been done in Kudremukh since the lease expired in 1999. I have seen the plunder and the horrors of this entire area. Kudremukh is more important than the Taj Mahal. Would anyone decide to mine the compound of the Taj Mahal ?

The exploitation of Kudremukh for iron ore today follows no principles in law. Valuable rain forest can not be recreated. It has greater value to human life than iron ore. I therefore, can not agree with my colleagues, I take a dissenting stand while I agree with the principles on the basis of which the recommendations have been made by my colleagues – I am of the following opinion :

- (i) All mining operations must stop immediately,
- (ii) A five year period starting on 25th July,1999 must be treated as the “Restoration and Winding up period” so that the Mining Company can restore all mined lands, plant indigenous species, protect the region and give back to one of the worlds finest
- (iii) forests what has been taken from it. All costs will be met by the project proponent.

The law of the land supports the National Park and not the continuance of mining. We must follow the law of the land especially since the value of the area is a million times more than the value of the ore.”

The Hon'ble Supreme Court may please consider these recommendations and please pass appropriate orders on the matter.

(M. K. Jiwrajka)
Member Secretary