

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

Original Application No. 25/2014/EZ

&

M. A. No. 17/2014/EZ

Rohit Choudhury

Vs

Union of India & Ors.

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicant** : **Mr. Sankar Prasad Pani, Advocate**
Respondent No. 1 : **Mr. Gora Chand Roy Choudhury, Advocate**
Respondent Nos. 2 to 4 : **None appeared**
Respondent No. 5 : **Mr. Debajit Kr. Das , Advocate**
Mr. Biswajit Goswami, Advocate
Respondent No. 6 : **Mr. Anil Sharma, Advocate**
Mr. Sukanta Chakraborty, Advocate
Mr. Sakabda Roy, Advocate

Date & Remarks	Orders of the Tribunal
Item No. 2 9 th January 2015	<p style="text-align: center;"><u>M.A. No. 17/2014/EZ</u></p> <p>Heard the learned advocate appearing for the applicant and the learned advocates appearing for the respondent nos. 1, 5 and 6, MoEF, Department of Water Resources, Govt of Assam & Bodoland Territorial Council respectively.</p> <p>This is a Miscellaneous Application praying for an order granting stay on all activities of the project “Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri” situated within the Manas National Park and Manas Tiger Reserve. The land in question is coming under the purview of Forest(Conservation) Act 1980. Section 2 sub section (ii) and (iv) of FC Act 1980 is reproduced as under:</p> <p style="text-align: center;">“ 2. Restriction on the dereservation of forests or use of forest land for non forest purpose-</p> <p>Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-</p>

xxx xxx xxx xxx xxx

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

xxxx xxxx xxxxx xxxxx xxxx

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

It is further provided in the said statute that any other purpose
other than reforestation is permissible but does not include any work
relating or ancillary to conservation, development and management of
forests and wild life, namely, the establishment of check post, fire
lines, wireless communication and construction of fencing, bridges and
culverts, waterholes etc.

It is alleged in the original application that the respondent no. 5
has started execution of work of **“Training of river Beki on L/B and
activation of river Manas and Hakua at Mathanguri.”** This project was
referred for necessary approval from the Planning Commission and
Water Commission. It appears from the Annexure A-11 at page -37 of
the original application relating to detail estimate projected by the
respondent no. 5 under item no. 4 that the work cost includes
estimate for cutting and clearing of light jungles and trees up to 50cm
girth including uprooting roots and stumps and removing them from
the site of work.

From the Annexure- A9 at page 34 of original application, it
appears that Wild Life Division under Ministry of Environment and
Forest had informed the applicant of this application and M.A. that no
proposal was received by the Wild Life Division of the Ministry from
Govt. of Assam for diversion work of Manas river at Mathanguri,
Manas National Park and Tiger Reserve in Assam and that no site
inspection was done by the Ministry to that effect and no
correspondence/letter was received in the Wildlife Division of the
Ministry from Govt. of Assam. Letter reads as follows:-

**“ To
Shri. Rohit Choudhury
N-71, Lower Ground Floor
Greater Kailash Part-I
New Delhi - 48.**

Sub: Online application under the provisions of the RTI Act 2005 – reg.

Sir,

Kindly refer to your online application Reg. No. MOEAF/R/2014/60370 dated 13.05.2014 received by the undersigned on 22.05.2014 seeking information under RTI Act, 2005. In this context, the following are mentioned:

- (1) No proposal has been received in the Wildlife Division of the Ministry from Government of Assam for diversion work of Manas River at Mathanguri, Manas National Park & Tiger Reserve in Assam.
- (2) No any site inspection has been done by the officials of the Wildlife Division of the Ministry in this regards.
- (3) No any correspondence/letter etc. have been received in the Wildlife Division of the Ministry from Government of Assam in this regard.

In case you are not satisfied with this reply, you may file an appeal before the First Appellate Authority, Dr. S. K. Khanduri, Inspector General of Forests (WL), Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 within a period of one month.

Yours faithfully,

Sd/-

(Dr. Vivek Saxena)

Deputy Inspector General(WL)”


In the reply as filed by the respondent no. 5 who had undertaken the work of diversion by cutting the trees and plants in the forest land has not denied the contention made in this letter annexed in the original application. In the reply there is no whisper that the approval of the central government was taken in writing from the competent authority being the delegatee of the central government in terms of the statutory provision of section 2 of the Forest (Conservation) Act 1980. Further there is no whisper in the reply that in terms of the judgement passed by Supreme Court in the case of I.A. No. 548 in CWP No. 202/1995, permission/approval of the National Board of Wildlife was taken. In Section 2 of the said Forest

Act 1980 regarding conservation of forest, since the provision starts with a non-obstante clause, it is mandatory upon the respondent no. 4 to proceed with the work as already started thereof on obtaining the prior approval of the Central Government and the National Board of Wildlife. It is significant that under section 2 the word 'approval' is prefixed with the word 'prior'. Thus any post facto approval is not permissible and no work would proceed without having any approval prior to the proceeding with the job. The distinction of two words 'prior approval' and 'post approval' has been discussed in the following judgements:-


(i) 2010(3) SCC 616 in the case of **Ashok Kumar Das and Ors. Vs. University of Burdwan and Ors.**, wherein two judgments of the Apex Court as delivered earlier were relied upon viz. **U.P. Avas Evam Vikas Parishad & Anr. Vs. Friends Co-operative Housing Society Limited & Anr.**, reported in 1995 (Supp) 3 SCC 456 and **High Court of Judicature for Rajasthan Vs. P.P. Singh** reported in 2003(4)SCC 239 and in the case of **Ashok Kumar Das (supra)** in paragraph 12 and 13 the court defined difference of the meaning of the words 'approval', 'prior approval', and 'permission' by holding that word 'approval' is in contradiction to 'prior approval' and 'permission'. It is further held that 'approval' can be post facto and action taken before 'approval' stands invalidated only if 'ex-post facto' approval is not granted by competent authority.

(ii) In **U.P. Avas Vikas (supra)**, the Apex Court relied upon the case of **LIC Vs. Escorts Ltd.**, 1986 (1) SCC 264 where distinction of the meaning of the word viz. "permission", 'special permission' with previous 'approval' or 'prior approval' were discussed in paragraph 63. The relevant portion reads as under:-

"63. We have already extracted Section 29(1) and we notice that the expression used is :general or special permission of the Reserve Bank of India" and that the expression is not qualified by the word "previous" or "prior". While we are conscious that the word "prior" or "previous may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading



any such implication into Section 29(1). On the other hand, the indications are all to the contrary. We find, on a perusal of the several, different sections of the very Act, that the Parliament has not been unmindful of the need to clearly express its intention by using the expression “previous permission” whenever it was thought that “previous permission” was necessary. In Sections 27(1) and 30, we find that the expression “permission” is qualified by the word ‘previous’ and in Sections 8(1), 8(2) and 31, the expression ‘general or special permission’ is qualified by the word “previous”, whereas in Sections 13(2), 19(1), 19(4), 20, 21(3), 24, 25, 28(1) and 29, the expressions ‘permission’ and ‘general or special permission’ remain unqualified. The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word ‘previous’ in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act, as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and design of the Act is directed towards that end. Originally the Foreign Exchange Regulation Act, 1947 was enacted as a temporary measure, but it was placed permanently on the Statute Book by the Amendment Act of 1957. The Statement of



Objects and Reasons of the 1957 Amendment Act expressly stated, “India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest”. In 1973, the old Act was repealed and replaced by the Foreign Exchange Regulation Act, 1973, the long title of which reads: “An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of foreign exchange resources of the country and the proper utilization thereof in the interest of the economic development of the country.” We have already referred to Section 76 which emphasises that every permission or licence granted by the Central Government or the Reserve Bank of India should be animated by a desire to conserve the foreign exchange resources of the country. The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting ‘permission’ to mean ‘permission’, previous or subsequent, and we find no justification whatsoever for limiting the expression ‘permission’ to ‘previous permission’ only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies.”

(iii) In **P.P. Singh (supra)** in paragraph 40 the issue was discussed as follows:-

“40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See U.P. Avas Evam Vikas Parishad Vs. Friends Coop. Housing Society Ltd). In the instant case both the aforementioned requirements have been fulfilled.”

(iv) The meaning of the word “with the approval”, “prior approval”, implicit ‘approval’ and implied ‘approval’ were discussed with reference to the provision stipulated in Mines and Minerals (Development and Regulation) Act, 1957 in the case of **Monnet Ispat and Energy Limited Vs. Union of India and Ors.** reported in 2012(11) SCC 1.

In present case there is no prior approval by the Central Government to proceed with the work of the project, as such, question of post -facto approval is not at all an issue.

Having regard to statutory provision as couched under section 2, more particularly having regard to the words “notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government” it becomes a mandatory provision which requires to be obeyed and in instant case, admittedly respondent no. 5 has not followed it. Hence the job as has been undertaken by them is illegal as per section 2 of the aforesaid act.

Having regard to such, we allow this M.A. passing an order of injunction restraining the concerned respondents including respondent no. 5 not to proceed with the work of “Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri” situated within the Manas National Park and Manas Tiger Reserve in any manner whatsoever. Chief Secretary of Assam is directed to take steps in the matter and to ask all its subordinate officers to make necessary compliance of the order, and all endeavours for compliance, submit the report accordingly on that issue on the next day.

M.A. No. 17/2014/EZ is thus allowed.

MoEF, despite our direction, have not filed any reply till date. However, Mr. Gora Chand Roy Choudhury, learned advocate appearing on behalf of MoEF has submitted before us that he has no instruction in the matter. It is very unfortunate state of affairs that MoEF is not responding to order of tribunal and delaying the process of law. MoEF is directed to file reply as a last chance failing which appropriate order will be passed. The other respondents are at liberty to file their respective replies of the Original Application within 3 weeks from this date. Rejoinder if any be filed within one week thereafter. Respondent no. 5 is directed to submit adequate number of copies to the registry in course of the day.

Matter will appear for hearing on 13th February 2015.

.....
Justice Pratap Kumar Ray, JM

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

