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SUPREME COURT
NEW DELHI 110 001**

Ref: FTS-3335/MLJ dt. 20.7.2010

In order to answer this query it becomes necessary to set out the circumstances in which it became necessary in the first instance for Vedanta Aluminium Limited to approach the Hon'ble Supreme Court.

An application was filed before the Supreme Court and was pending since 6 March 2004. (See para 1 of the order dated 23 November 2007, reported in (2008) 2 SCC 222).

Though the order recites that the application seeks clearance of the proposal for the use of 723.343 hectares of land in Lanjigarh Tehsil of Kalahandi District for setting up of a Alumina Refinery, the proposal involved diversion of 58.943 hectares of forest land which was really part of a wild life habitat.

By an order dated 14 February 2000 passed in T.N. Godavarman's case, the Court whilst considering an application for a ban against the removal of fallen trees or removal of diseased or dry standing trees from areas notified under Section 18 or 35 of the Wildlife Protection Act, 1972, passed the following order:

“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 Part of 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.”

By a subsequent order dated 16 December 2002, the Supreme Court passed a further order to the following effect:

“(1) Mining may be permitted in Forest Areas where specific prior approval under Section 2 of the Forest (Conservation) Act, 1980 has been accorded by the Ministry of Environment and Forest, Government of India. However, in view of this Court's order dated 14.2.2000 passed in I.A.No. 548 no mining activity is permitted within areas which are notified as Sanctuary, National Park under Sections 18, 35 of the Wild Life (Protection) Act, 1972 or any Sanctuary, National Part or Game Reserve declared under any other Act or Rules made thereunder even if prior approval have been obtained from the MOEF under the F.C. Act in such an area.”

Therefore, it would appear that when the application was filed by Vedanta in 2004 it was necessitated because 58.943 hectares were reserved forest land and there were implications with regard to wild life under the Wildlife Protection Act, 1972.

In 2004 the Supreme Court had not passed any orders in relation to clearances granted under the Forest (Conservation) Act, 1980. An interim order was passed in April 2007 only because of difference of opinion with regard to the constitution of the Forest Advisory Committee. This led to the Supreme Court passing an order by which no such clearance granted by the Forest Advisory Committee could be given effect to unless approved by the Court.

It is significant that when the matter was heard at length on 26 October 2007, the order which had been passed in April 2007 was in force, but as is noted by the Supreme Court in the order dated 23 November 2007, at that stage the MoEF had given “environment clearance.” It had not granted clearances under the Forest Conservation Act.

At this stage, it is important to note para 8 of the order dated 23 November 2007 which reads as follows:

“8. At this stage, we may observe that M/s VAL has obtained all necessary clearances. It now seeks clearance of the Project from this Court before it is placed before the Central Government.”

In effect, therefore, the application was considered at length not with specific reference to the earlier orders passed by the Supreme Court on 14.2.2000 and 16.12.2008. It proceeds on the basis of the principle of sustainable development. The Supreme Court went into the larger issue of diversion of forest land generally. In the order dated 23 November 2007 reference is made 723.343 hectares of land including 58.943 hectares of “reserved forest land.” (The order dated 8 August 2008 grants clearance in relation to 660.749 hectares.)

In my opinion, para 8 of the order dated 23.11.2007 is significant because the Supreme Court recognizes that Vedanta was seeking clearance from the Court even before its proposal was placed before the Central Government.

There was never any question that the clearance from the Supreme Court was meant to obviate the necessity of obtaining clearance from the Central Government or of the Central Government not discharging its responsibility and obligation under the Forest Conservation Act, 1980. On the contrary, the Supreme Court recognizes that this would be followed by an application to the Central Government. The words in para 9 of the order dated 8 August 2008 are significant.

“9 For the above reasons and in the light of the Affidavits filed by SIIL, OMCL and State of Orissa, accepting the **Rehabilitation Package**, suggested in our Order 23.11.07, we hereby grant clearance - to the forest diversion proposal for diversion of 660.749 ha of forest land to undertaken bauxite mining on the Niyamgiri Hills in Lanjigarh. The next step would be for MoEF to grant its approval in accordance with law.”

The Court requires MoEF to grant its approval “in accordance with law.” “In accordance with law” must mean the provisions of the Forest Conservation Act. The Court did not direct the MoEF to issue forest clearance in accordance with its own order. I have no doubt that the effect of the order dated 8 August 2008 is not that the MoEF cannot discharge its statutory obligation under the Forest Conservation Act.

In the premises, my answers to the queries are as follows:

Q.1 Whether the term “in accordance with law” as contained in ¶13 of the Judgment dated 08.08.2008 above would operate to disallow the Ministry from applying its own mind and deciding the matter on its merits?

Ans. No.

Q.2 Whether the decision of the Supreme Court to grant forest clearance is final and binding or is it subject to approval and ratification by the MoEF?

Ans. No. The Moef is bound to apply its own mind and grant independent clearance to the Project. Needless to say, if approval is to be granted then all the terms stipulated by the Supreme Court have to be incorporated. However, that question would not arise if it is decided that the approval is not to be granted, for cogent and valid reasons.

Goolam E Vahanvati

Goolam E Vahanvati
Attorney General for India
20 July 2010

Shri D R Meena
Law Secretary