

CENTRAL EMPOWERED COMMITTEE

(Constituted by the Hon'ble Supreme Court of India in
Writ Petition No. 202/95 and 171/96)

Gate No. 31, Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi-110003 Tel: 32944904-5-7

F. No. 1-19/CEC/SC/2007/Pt. XV

To

Dated: 17.10.2007

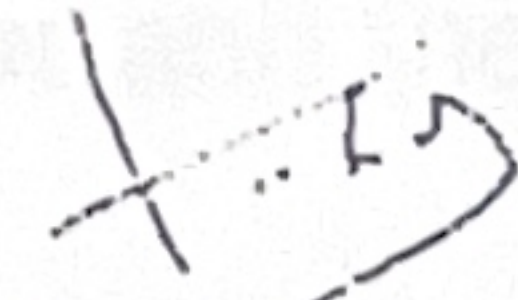
The Registrar
Supreme Court of India
(Section: PIL)
New Delhi

Sub: Report of the CEC in Writ Petition (C) No. 469 of 2005 filed by the Sarthak and others regarding the alleged illegal possession and the use of the forest land for the non-forestry purposes by M/s Bharat Aluminium Company Ltd. (BALCO) in District Korba, Chhattisgarh (erstwhile Madhya Pradesh).

Sir,

The Report of the CEC in Writ Petition (C) No. 469 of 2005 filed by the Sarthak and others regarding the alleged illegal possession and the use of the forest land for the non-forestry purposes by M/s Bharat Aluminium Company Ltd. (BALCO) in District Korba, Chhattisgarh (erstwhile Madhya Pradesh) is enclosed (six copies). It is requested that the report may please be placed before the Hon'ble Court.

Yours faithfully,


(M.K. Jiwrajka)
Member Secretary

Copy to:

- (i) Harish N. Salve, Amicus Curiae in W.P. (C) No. 202/1995
- (ii) Sh. Udai Lalit, Amicus Curiae in W.P. (C) No. 202/1995
- (iii) Secretary to Government of India, MoEF
- (iv) Chief Secretary, Government of Chhattisgarh, Raipur
- (v) Principal Chief Conservator of Forests, Chhattisgarh Forest Department, Raipur
- (vi) Standing Counsel for the MoEF
- (vii) Standing Counsel of the State of Chhattisgarh
- (viii) Petitioners / Respondents

CENTRAL EMPOWERED COMMITTEE

REPORT OF THE CEC IN WRIT PETITION (C) NO. 469 OF 2005 FILED BY THE SARTHAK AND OTHERS REGARDING THE ALLEGED ILLEGAL POSSESSION AND THE USE OF THE FOREST LAND FOR THE NON-FORESTRY PURPOSES BY M/S BHARAT ALUMINIUM COMPANY LTD. (BALCO) IN DISTRICT KORBA, CHHATTISGARH (ERSTWHILE MADHYA PRADESH)

Writ Petition (C) No. 469 of 2005 has been filed by the Sarthak, an NGO against M/s BALCO and two others alleging (a) unauthorized occupation of the Government land; (b) illegal use of the forest land for the various non-forestry use such as the construction of the captive power plant and the aluminium smelter plant without any sanction or validity; and (c) cutting and felling of thousands of trees by M/s BALCO.

2. This report is being filed by the CEC pursuant to this Hon'ble Court's order dated 09.3.2007 after examining the matter during the meetings held before the CEC on 21.6.07 and 10.7.07 with the representative of the MoEF, the State of Chhattisgarh, M/s BALCO and the applicants.

BACKGROUND

3. M/s BALCO was earlier a Government of India company when it set up the aluminium project in District Korba (formerly

premium and the lease rent demanded by the State Government is pending before the Hon'ble High Court, it may be appropriate that follow up action in this regard is taken by all concerned after the matter is decided by the Hon'ble High Court.

17. Pursuant to this Hon'ble Court's order dated 12.12.1996, for the purpose of the Section-2 of the FC Act "forest" includes any area recorded as 'forest' in the Government records. In the present case, about 1,751 acre of the land in possession of M/s BALCO is recorded in the revenue records as "*bade jhad ka jungle / chote jhad ka jungle*" – commonly known as "Revenue Forest", and therefore is 'forest' for the purpose of Section-2 of the FC Act. Out of the above, in respect of 947.95 acre of forest land, the compensation for the standing trees etc. was paid by M/s BALCO during 1971 as per the assessment made by the Forest Department and removal of tree growth and its non-forest use has been effected prior to 25.10.1980 when the FC Act came into force. Irrespective of the difference in perception of the State of Chhattisgarh and M/s BALCO about (a) the validity of the possession of the land, (b) allotment of the land, and (c) the amount payable for such allotment, there can be no doubt that for the balance 803 acre of revenue forest in the possession of M/s BALCO, approval under Section-2 of the

FC Act is mandatory for the non-forest use as well for its allotment / leasing. It is seen that as per M/s BALCO's own admission, out of about 1,751 acre of the revenue forest land, it has made payment towards compensation for 947.95 acre of revenue forest. For the balance revenue forest area of 803 acre, no payment towards compensation has been made.

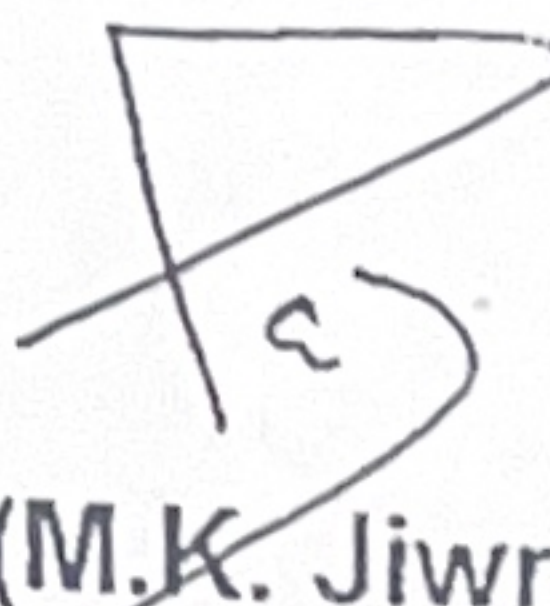
18. In view of the above, it is recommended that M/s BALCO may be directed to seek ex-post facto approval under Section - 2 of the FC Act for the allotment and the non-forestry use of the revenue forest land in its possession. The application may be decided on merit in a time bound manner by the State Government and the MoEF. Though the ex-post facto approval under the FC Act may be sought and considered for the entire 1,751 acre of revenue forest in the possession of M/s BALCO, the payment of Compensatory Afforestation, NPV, etc. may be restricted to the area of 803 acre of revenue forest in the possession of the company and for which no compensation for the standing trees etc. were paid by it prior to the enactment of the FC Act.

19. As regards the allegation regarding the large scale felling of trees by M/s BALCO, it is seen that no documentary or other evidence has been made available in the present case. The CEC, therefore, at this belated stage, is not in a position to



come to any finding in this regard. It is however submitted that if the above recommendation is accepted and the follow up action is taken, the issue of the non-forestry use of the forest land and the corresponding felling of trees in violation of the provisions of the FC Act will be taken care of.

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


(M.K. Jiwrajka)
Member Secretary

Dated: 17th October, 2007