BEFORE THE NATIONAL GREEN TRIBUNAL
NEW DELHI
(PRINCIPAL BENCH)

APPEAL NO. 7/2012

1. **Vimal Bhai**
   Convener, Matu Jansangthan
   D-334/10 Ganesh Nagar,
   Pandav Nagar Complex, Delhi – 110092

2. **Bharat Jhunjhunwala**
   Lakshmoli, PO Maletha, Via Kirti Nagar,
   District Tehri,
   Uttrakhand – 249161

…Appellants

Versus

1. **Union of India**
   Through the Secretary
   Ministry of Environment and Forests
   Government of India
   Paryavaran Bhawan, C.G.O. Complex,
   Lodhi Road, New Delhi – 110003

2. **State of Uttrakhand**
   Through the Principal Secretary (Forests)
   Civil Secretariat, Dehradun – 248001,
   Uttrakhand

3. **GMR Energy Limited**
   Through Managing Director
   Mira Corporate Suites
   Block D, Second Floor,
   Plot 1 & 2, Ishwar Nagar,
   New Delhi – 110065

….Respondents

Counsel for Appellants:
Shri Ritwick Dutta, Advocate along with
Shri Rahul Chaudhary, Advocate

Counsel for Respondents:
Ms. Neelam Rathore, Advocate for R. 1 (MoEF)
Mr. Abhishek Atrey, Advocate for R. 2 (State of Uttarakhand)
Mr. A.D.N. Rao, Advocate for R. 3 (GMR (Badrinath) Hydro Power Generation Pvt. Ltd.

JUDGEMENT

PRESENT:

Justice A.S. Naidu (Acting Chairperson)
Dr. G.K. Pandey (Expert Member)

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Dated 07th November, 2012

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Shri Vimal Bhai claiming to be the convener of a social organization called Matu Jansanghthan and a social activist working for decades on environment and social issues in the middle of Himalaya region has approached this Tribunal, along with another, invoking jurisdiction under Section 16 (e) of the National Green Tribunal Act, 2010 (hereinafter called as **NGT Act**), and seeks to assail the communication dated 8th November,

2011 issued by the Government of India, Ministry of Environment and Forests (MoEF) according, Stage-I approval under Section 2 of the Forest Conservation Act, 1980 (hereinafter called as **FC Act**) for diversion of 60.513 hac. of forest land in favour of GMR Energy Limited for construction of Alaknanda Badrinath Hydro–Electric Project in Chamoli District of Uttrakhand, subject to fulfilling of certain conditions of environmental safeguards. The said letter (Annexure A – 1) was addressed to the Principal Secretary (Forests) Government of Uttrakhand, Dehradun. According to the Appellants, the Stage–I Forest Clearance granted by the MoEF is palpable, illegal and suffers from following infirmities:-

(i) The approval was granted without taking into consideration the recommendations of the Forest Advisory Committee (FAC). It is averred that the Forest Advisory Committee after considering all the facts and circumstances had came to the conclusion that prior approval under Section 2 of the FC Act, 1980 should not be accorded in favour of the project for use of forest lands for non-forest purpose.

(ii) Relying upon the report submitted by the Wildlife Institute of India (WII), it is averred that the diversion of forest land in the proposed site, would lead to severe fragmentation and degradation of the important wildlife habitats as well as habitats of RET species. The WII report it is stated reveals that the project in question is located in the buffer zone of the Nanda Devi Biosphere Reserve and the same will seriously hamper the movement of RET species like Snow Leopard and Brown Bear existing in the vicinity. The project shall also pose adverse effect on the ecology and bio-diversity and would cause irreparable and irreversible impact on the environment.

2. It appears that Appellants are aggrieved by the fact that the MoEF relied upon an interim report submitted by H.N.B. Garhwal, University, which was prepared at the instance of the project proponent so as to suit its purpose. It is averred that the said report was prepared by the expenses paid by the company and was in the nature of a critic to the report submitted by the WII.

3. In course of hearing a further affidavit was filed indicating that in the meanwhile the WII has submitted its final report

recommending therein for exclusion of the forest lands from the project mainly on the ground that the same are located within Alaknanda III sub-basin and the habitats of more than 250 birds including Indian white-backed vulture would be affected. Further, case of the Appellant is that the report prepared by the EIA Consultant Group of HNB Garhwal University and the report of IIT was not sent to the Forest Advisory Committee by the MoEF, thereby causing a dent in the decision making process. In short, according to the Appellants the decision to grant Forest Clearance without seeking any opinion from the Forest Advisory Committee is a clear case of bias and exhibits arbitrariness on the part of the MoEF.

4. After receiving notice, Respondents filed their replies, strongly repudiating the allegations made in the Memorandum of Appeal. In the respective replies the Respondent took the stand that the provision of the FC Act and Rules framed thereunder were sacrosanctly followed by the MoEF and submissions made to the contrary are unfounded. According to the Respondent the MoEF is the final authority to grant or refuse approval. The Forest Advisory Committee, as the name itself indicates, is required to

advise the MoEF, which may be agreed or disagreed by the latter. It is submitted that the report submitted by WII was only an interim report. The said report as well as the subsequent report submitted by WII has not been accepted by the MoEF as yet, and as such it has not attained finality. Respondents further submits that the decision was taken by the MoEF after due consideration of the prevalent circumstances and topography, thus the allegations made contrary are without any basis, and deserves no consideration.

5. The last but not the least contentions raised by the Respondents, is that the present Appeal is not maintainable under Section 16 (e) of the NGT Act and on that ground alone the same should be dismissed. A prayer is also made to consider the question of maintainability of the Appeal at the first instance, before going to the merits.

6. Heard Learned Counsel for the parties at length. As we propose to dispose of this case on the question of maintainability we refrain from entering into the merits of controversies raised by

different parties, and leave it open for the parties to raise the same if contingency arises.

Before entering into the arena of controversy, it would be proper to discuss relevant provisions of law on the point. Realising that rampant and indiscriminate deforestation, was the cause for ecological imbalances and the same would lead to environmental deterioration, the Legislature in order to check further deforestation promulgated FC Act, 1980. Section 2 of the said Act imposes restrictions on diversion of forest and restricts use of forest land for non-forest purposes. The said Section reads as follows:

Section 2: *"Restriction on the de-reservation of forests or use forest land for non-forest purpose.*

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-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in

force in that State) or any portion thereof, shall cease to be reserved;

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

(iii) that any forest-land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(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 reafforestation.

Explanation – For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plant;

(b) any purpose other then reafforstation;

but does not include any work relating or ancillary to conservation, development and management of forests and

wildlife, namely, the establishment of check-posts, fire lines, wireless communications and constructions of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes".

It is evident that the FC Act, 1980, imposes a strict restriction upon deforestation and use of Forest lands for non-forest activities. It mandates that no State Government shall accord permission for use of any forest land for non-forest purpose without obtaining prior permission of the Central Government.

7. In the event a Project Proponent desires to use any forest lands for non-forest purpose, he has to file an application before the concerned State Government.

The said proposals are disposed of as under:-

(i) All proposals involving diversion/de-reservation of forest land up to 40 hectares, and proposals for clearing of naturally grown tress in forest area or portion thereof shall be sent by the concerned

State/UT Government to the concerned Regional Officer of MoEF.

(ii) *Chief Conservator of Forests of the concerned Regional office shall be competent to finally dispose of all proposals (including decision regarding violation of Act) involving diversion / de-reservation for forest land up to 5 hectare, except in respect of proposals for regularization of encroachments and mining (including renewal of mining leases). Similarly, proposals involving clearing of naturally grown trees in forest area or portion thereof for reforestation shall also be finally disposed of by the Chief Conservator of Forests of the concerned Regional Office, subject to guidelines / instructions issued in this regard (refer to para 1.8) and any other instructions issued from time to time.*

(iii) *In the absence of Chief Conservator of Forests, these powers shall be exercised by the concerned Conservator of Forests of the Regional Office in case*

the post of Chief Conservator of Forests is vacant due to transfer, long leave, etc.

(iv) A list of cases finally disposed of and a list of cases rejected along with reasons thereof for rejection would be required to be sent every month to the MoEF by the Regional Office.

(v) (a) In respect of proposals involving diversion of forest area above 5 hectares and up to 40 hectares and all proposals for regularization of encroachments and mining up to 40 ha., the proposals shall be examined by the Regional Chief Conservator of Forests/ Conservator of Forests in consultation with the Advisory Group consisting of representatives of the State Government from Revenue Department, Forest Department, Planning and / or Finance Department and concerned Department whose proposal is being examined. The views of the Advisory Group shall be recorded by the

Regional Chief Conservator of Forests and along with the same, the proposal shall be sent to Secretary, MoEF for consideration and final decisions. It is to be clarified that views of this Advisory Group in no way shall be binding while deciding the proposal. The meeting of the Advisory Group may be held at the State Capital. The proposal will not be deferred for want of quorum.

(b) *The meeting of the State Advisory Group (SAG) will normally be held once in a month at concerned State Capital. The Regional Chief Conservator of Forests shall act as Chairman of the Advisory Group and Nodal Officer may be nominated to work as Member Secretary of the State Advisory Group.*

(c) *State Government may take immediate steps to nominate representatives of the State Government not below the rank of Joint Secretary for the Advisory Group. Nodal Officer*

may be nominated to work as Member Secretary of the State Advisory Group.

(d) *The details of the officers along with addresses, telephone number, etc. may be directly communicated to the concerned Regional Chief Conservator of Forests under intimation to this Ministry to facilitate early processing of the proposals by the Advisory Group.*

Forestry clearance will be given in two Stages. In 1st Stage, proposal shall be agreed to in-principle in which usually the conditions relating to transfer, mutation and declaration as RF/ PF under the Indian Forest Act, 1927 of equivalent non-forest land for compensatory afforestation and funds for raising compensatory afforestation thereof are stipulated and after receipt of compliance report from the State Government in respect of the stipulated conditions, formal approval under the Act shall issued."

The decision for granting approval by the Central Government are taken in exercise of the powers conferred under Section 2 of the FC Act.

8. Section 2 (A) of the NGT Act stipulates that if any person aggrieved, by an order or decision of the State Government or other authority made under Section 2, on or after the commencement of the NGT Act, 2010 (19 of 2010), has an option to file an appeal before the National Green Tribunal established under Section 3 of the NGT Act, 2010 (19 of 2010), in accordance with the provisions of that Act".

9. The parameteria provision to Section 2 (A) of FC Act is Section 16 (e) of the NGT Act. The said section stipulates that any person aggrieved by an order or decision, made, on or after the commencement of NGT Act, 2010 by the **State Government or other authorities** under Section 2 of the FC Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is **communicated to him** prefer an appeal to the Tribunal.

The sole contention raised by the Respondents in the case in hand is that the impugned order dated 08th November, 2011 having not being passed by the State Government nor by any authority cannot be assailed in this Appeal.

10. Perusal of the impugned order reveals that after careful consideration of the proposal of the State Government of Uttrakhand, the Central Government by order dated 08th November, 2011, accorded in-principle Stage-I approval under the FC Act, 1980 for diversion for 60.513 hac. of forest land in favour of GMR Energy Limited, for construction of Alaknanda Badrinath Hydro-Electric Project at Chamoli District of Uttrakhand subject to fulfillment of other conditions stipulated in the order.

In the aforesaid scenario of facts the mute question which arises for consideration is, as to whether an Appeal lies against the order of the MoEF granting Stage – I Forest Clearance, under Section 2 (A) of FC Act or Section 16 (e) of the NGT Act.

11. Mr. A.D.N. Rao, learned Counsel appearing for Respondent No. 3 drew attention of this Tribunal to Section 2 (A) of the FC Act, 1980 as well as Section 16 (e) of the NGT Act, 2010 and

submitted that an Appeal is prescribed under those two Acts only against an order or decision passed by the State Government or other authority. Expanding his arguments Mr. Rao submitted that under the provision of the aforesaid two Acts, a person aggrieved by the order passed under Section 2 of FC Act by the State Government or any other authority can file an Appeal. Further according to Mr. Rao neither Section 16 (e) of the NGT Act, 2010, nor Section 2(A) of the FC Act, 1980 provide for or contemplates an Appeal against an order passed by the Central Government. The Legislature on its wisdom having consciously and specifically omitted the word "Central Government" in both the Sections i.e. Section 2 (A) of FC Act and 16 (e) of NGT Act, 2010, and such intention of the Legislature being clear and unambiguous, no contrary view can be taken by this Tribunal which is a creature under the Statute.

12. A cogent reading of NGT Act as well as FC Act, reveals that the word "Central Government", "State Government" and "other authority" has been distinctly used in different Sections. Thus the words Central Government cannot include within the words '**Authority'.** Relying upon G.S.R. 94 (e) dated 3.2.2004, Mr. Rao

submitted that sub-rule 2 clauses (c) (d) under Rule 6(III) of G.S.R. contemplates that '**or the other authority"** should be substituted by words '**or the Union Territory Administration**' as and where required. In the light of the above Rule, it is submitted that the word '**other authority'** used in Section 16 (e) of the NGT Act, and Section 2 (A) of the FC Act, 1980 can be referred or substituted by words "Union Territory Administration". In short according to Mr. Rao both Sections 16(e) of the NGT Act and FC Act, 1980 provide for an Appeal to the Tribunal only against an order passed by the State Government or Union Territory Administration and thus no Appeal is contemplated by the Legislature against any order passed by the Central Government or MoEF. The order impugned, having not been passed either by the State Government or the Union Territory Administration, the same cannot be assailed by filing an Appeal before this Tribunal, and this Appeal is liable to be dismissed as not maintainable, on that ground alone.

13. Provisions of Indian Forest Act and FC Act, 1980 read together leads an irresistible conclusion that the permission for carrying out any of the activities mentioned in Sections 5 and 26

of the Indian Forest Act can be granted by the State Government only upon the formulation of Rules contemplated under Section 32 of the Indian Forest Act. Though the activities mentioned in Section 2 of the FC Act, 1980 can be carried only after obtaining prior permission of the Central Government, the authority for granting such permission still continues to be the State Government and not the Central Government. That apart a cause of action accrues upon an aggrieved party only when the necessary orders to transfer forest lands are issued by the State Government and not before that, Thus, according to Mr. Rao an Appeal under Section 2(A) of the FC or Section 16 (e) of NGT Act can be filed before this Tribunal only against an order passed by the State Government and not against the order granting in-principal approval, which is commonly called as Stage – I approval, granted by the Central Government or Stage – II approval granted after compliance of the conditions imposed in Stage – I approval. In other words the Central Government is only a sanctioning authority, whereas the actual power to accord approval for conversion of Forest lands for non-forest purpose still lies with the respective State Government.

14. Ms. Neelam Rathore, learned Counsel appearing for the MoEF supported the stand taken by Respondent No. 3. According to her the provisions of Section 2 of the FC Act makes it clear that the role of the Central Government is limited only to granting a prior approval/permission. The Legislature has clearly defined the role of the Central Government and as there is no provision to assail any order passed by the Central Government by filing an Appeal before this Tribunal, the present Appeal cannot be entertained. In other words, according to Ms. Rathore, Section 2 (A) of the FC Act cannot be interpreted to include "Central Government" within its ambit and scope, and that the words other authorities do not engulf the Central Government within its scope and ambit. Section 16 of the NGT Act more particularly Section 16 (e) also envisages and grants opportunity to any person aggrieved by an order passed under Section 2 of the FC Act by the State Government or other authorities, to file an Appeal before this Tribunal. The said Section excludes the sanctions/approvals granted by the Central Government from the purview of Appeal. The approval of the Central Government under Section 2 of the

FC Act, 1980 is precursor to passing of an order by the State Government or other Authority and if a person is aggrieved by the said latter order, he can approach this Tribunal either under Section 16 (e) of the NGT Act or Section 2 (A) of the FC Act, 1980.

15. Repudiating the contentions raised by the MoEF and Respondent No. 3, Mr. Ritwick Dutta, learned Counsel appearing for the Appellant submitted that under the provisions of FC Act the only decision making authority is the Central Government. Bereft of an order of approval passed by the Central Government, granting forest clearance, no diversion of forest land can be made. It is submitted by Mr. Dutta, that the powers of the State Government is limited to submission of proposals only, whereas the, decision making power for granting forest clearance completely lies with the Central Government and therefore the State Government or other authority cannot be called as the decision making body within the meaning of Section 2 of the FC Act and an Appeal under Section 2 (A) can only be filed against the decision of the Central Government permitting diversion of forest land, the intention of the Legislature cannot be otherwise.

16. Further, according to Mr. Dutta the Courts have the power to iron out the creases and to remove ambiguity and give full effect to the intention of the Legislature. In support of such submission he relied upon the decision of the Supreme Court in the case of **Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 27**. In the said decision the Hon'ble Supreme Court observed as follows:

> *"The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a Statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective for the consequences. Those words must be expounded in their natural ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to*

adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconditional."

17. In the case in hand, the Legislature has used the phrase "State Government and any other authority" in Section 16 (e) of NGT Act and Section 2 (A) of the FC Act, for the purpose of providing an Appeal against the diversion of forest land for non forest uses. According to Mr. Dutta since the decision to divert forest land has to be taken by the Central Government, on the basis of the recommendation of the Forest Advisory Committee, the purpose of the said Section would become nugatory if the appeal is confined only to the orders passed by the State Government which are more less ministerial in nature and are consequential to the orders passed by Central Government.

Further, the State Government has the power only to make a proposal to the Central Government for diversion of forest land and cannot take a decision under Section 2 of the FC Act, the permission granted or clearance accorded by the Central Government would be binding upon the State Government, thus, the decision that has to be assailed is that of the Central Government and not of the State Government. In other words according to Mr. Dutta the State Government is only a recommending authority whereas the Central Government is the authority vested with the power to accord approval, as such if the final order granting approval by the Central Government is not assailed the purpose of the Act would be frustrated.

18. The NGT Act, according to Mr. Dutta was constituted to provide a full-fledged redressal to a person who is aggrieved by any act, commission or omission of the authorities by which the environment is effected. Diversion of forest land for non forest uses has severe effect on the ecology/bio-diversity and the environment, therefore, the Legislature has provided the remedy of an Appeal against an order passed under Section 2 of the FC Act,

dealing with diversion of forest land. Since the Central Government is the primary decision making authority, under no stretch of imagination it can be argued that against the decision taken by the Central Government no Appeal lies.Such an argument according to Mr. Dutta would not only be contrary to the letter and spirit of the NGT Act and FC Act, but also contrary to the interest of general public. Such a narrow construction would also render the decision or orders passed by the Central Government, virtually non assailable thereby vesting an unbridled power upon the said Respondent.

19. We have heard learned Counsel for parties at length.We have also perused different provisions of NGT Act and FC Act meticulously. We have considered the pleading of the parties consciously. It is well settled law that while interpreting a Statute effort should be made to give effect to each and every word used by the Legislature. It should be always presumed that the Legislature inserted every word in the Statute for a purpose and legislative intention is that every part of the Statute should have a meaningful effect. A construction which attributes redundancy to the Legislation should not be expected, except for compelling

reasons such as obvious drafting errors **(see State of U.P. and others Vs. Vijay Anand Maharaj : AIR 1963 SC 946)**

20. In the case of **P.K. Unni v. Nirmala Industries and Ors. (1990) 2 SCC 378**, the Hon'ble Supreme Court held:-

> "*Where the language of the Statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the Legislature. In doing so "a judge must not alter the material of which the Act is woven, but he can and should iron out the creases".*

On the touchstone of the legal position enunciated above and admitted facts, we proposed to answer the question posed, i.e. whether an Appeal lies against the impugned order passed by the MoEF granting in principle Stage – I Forest Clearance.

Right of appeal is statutory, and no one inherits it. When conferred by statute it becomes a vested right. In this regard there is essential distinction between right of appeal and right to suit. Where there is inherent right in every person to file a suit and

for its maintainability it requires no authority of law, appeal requires so.

21. Section 2(A) of the FC Act as well as Section 16(e) of the NGT Act clearly stipulates that an order or decision made by the **State Government** or **other authority** passed under Section 2 of the FC Act 1980 can be assailed by filing an Appeal before this Tribunal.

Section 2 of the FC Act, 1980 deals with restrictions or de-reservation of forest or use of forest land for non-forestry purpose. The said section starts with a non-obstante clause and stipulates that notwithstanding anything contained in any other law no State Government or other authority shall pass, except with the prior approval of the Central Government, any order directing de-reservation of any forest land for any non forest purpose, lease out any forest land to a person or authority, corporation, agency etc. and/or permit deforestation of any forest land for the purpose of using it for cultivation of tea, coffee, spices, rubber etc. or for any other purpose other than reafforestation. The said Section therefore curtails the power of the State Government from leasing

out or otherwise permitting use of forest land for non forest purpose, without obtaining prior permission of the Central Government.

22. The questions now arises as to whether the approval granted by the Central Government under Section 2 of the FC Act granting in-principle sanction can be assailed by filing an Appeal, the said order not being the final allotment order. The language of the Section stipulates that before permitting user of forest land for non-forest purposes, the State Government has to obtained prior approval of the Central Government, thus there is no ambiguity that the State Government is the authority to grant permission for use of forest land for non-forest purpose, but then such permission can be granted only after the Central Government accords approval. Further a right to use the forest land for non-forest purpose accrues only after the State Government passes the order, and not from the date of granting Stage – I or Stage – II Clearance.

There is no ambiguity in the proposition that a person aggrieved by any action of the instrumentalities of the State or

Central Government should have a right to assail the same before competent forum.

23. It is no more *res-integra* that an Appeal is a creation of a Statute and it cannot be created by acquiescence of the parties or by the order of the Court. The findings of a Court or a Tribunal becomes irrelevant and unforceable/ inexecutable once the Forum is found to have no jurisdiction, as doctrine of nullity will come into operation **(see State of Gujrata v. Rajesh Chiman Kal Barat (1996) 5 SCC 477**. Further, there is also no quarrel to the legal proposition that right to Appeal is neither an absolute nor an ingredient of natural justice and the Legislature can put conditions for maintaining the same. **In the case of Vijay Prakash D. Mehta & Jawahar D. Mehta vs. Collector of Customs (Preventive), Bombay, AIR 1988 SC 2010, the Apex Court held as under:-**

> *"Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant……The*

purpose of the Section is to act in terrorem to make the people comply with the provisions of law".

24. In the case of **Nand Lal v. State of Haryana and Ors. AIR 1980 SC 2097**, it was held that "*right of appeal is a creature of Statute and there is no reason why the Legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory".*

25. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. **(See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74))** The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said

as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in **Crawford v. Spooner (1846 (6) Moore PC 1)**, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. **(See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253))**.

26. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. **(See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL).** Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. **(Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors. (AIR 1962 SC 847)**.

The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". **(See Lenigh Valley Coal Co. v. Yensavage 218 FR 547).** The view was re-iterated in **Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981)**.

27. In **Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842),** it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to

amend, modify or repeal it, if deemed necessary. **(See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515).** The legislative *casus omissus* cannot be supplied by judicial interpretative process.

Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said **Danackwerts, L.J. in Artemiou v.**

Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available".

28. "Appeal", is defined in the Oxford Dictionary, volume I, page 398, as the transference of a case from an inferior to a higher Court or tribunal in the hope of reversing or modifying the decision of the former. In the Law Dictionary by Sweet, the term "appeal" is defined as a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court or Court of appeal, and it is added that the term, therefore, includes, in addition to the proceedings specifically so called, the cases stated for the opinion of the Queen's Bench Division and the Court of Crown Cases reserved, and proceedings in error. In the Law Dictionary by Bouvier an appeal is defined as the removal of a case from a Court of inferior to one of superior jurisdiction for the purpose of obtaining a review and re-trial, and it is explained that in its technical sense it differs from a writ of error in this, that it subjects both the law and the facts to a review and re- trial, while the latter is a Common Law process which involves matter of law only for re-examination; it is added, however, that the term "appeal" is used in a comprehensive sense so as to include both

what is described technically as an appeal and also the common law writ of error.**(See – Shiv Shakti Coop. Housing Society v. M/s Swaraj Developers & Others (2003) 6 SCC – 659)**

The discussions made above leaves no doubt in our mind that an Appeal flows from a Statute and if the Statute does not provide an Appeal against a specific order, no Appeal can be entertained.

29. Cumulative reading of Section 2 (A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the **State Government or other authorities**. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

30. However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage – I and/or Stage – II Clearance, thereby granting a consent

to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to passa reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be *ab initio void*. An Appeal can be filed against the said order of the State Government under Section 2 (A) of FC Act and/or under Section 16 (e) of the NGT Act. In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.

31. We are surprised to find that most of the State Governments do not pass separate orders in the light of the basic requirement of Section 2 of the FC Act as explained above thereby creating an embargo and depriving a person aggrieved from filing an Appeal. Section 2 of the FC Act, mandates that as and when the State Government decides to permit use of the Forest land for non forest purpose, it has to pass order to that effect. The said order

along with the conditions imposed by the Central Government according Stage – I and Stage – II Clearance ismandatorily required to be displayed in the website. A copy of the order should also be sent to the MoEF forthwith. After receiving the copy of the order MoEF is also required to upload the same in its website so as to make the entire transactions transparent and bring it to public domain or Government portal and to enable any person aggrieved by the order passed under the provision of Section 2 of the FC Act, to approach this Tribunal in consonance with Section 2 (A) for FC Act or Section 16 (e) of the NGT Act.

32. Apart from the said action the State Government should also insist that the Project Proponent should publish the entire forest clearances granted in verbatim along with the conditions and safe-guards imposed by the Central Government in Stage – I Forest Clearance in two widely circulated daily newspapers one in vernacular language and the other in English language so as to make people aware of the permission granted to the Project Proponent for use of forest land for non-forest purposes. The cause of action for filing an Appeal would commence only from the date when such publication is made in

the newspapers, as well as from the date when the forest clearance and permission to use the Forest land for non-forest purpose is displayed in the website of the concerned State Government or the MoEF, as the case may be. The copies of the Forest Clearance should also be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

33. In view of the discussions made above and reasons assigned we come to the conclusion that the order dated 08th November, 2011 (Annexure A/1), according Stage – I Forest Clearance cannot be assailed by filing an Appeal at this stage and as such the present Appeal is premature and has to be dismissed. Liberty is however granted to the Appellants to prefer an Appeal as and when the State Government passes the final order, permitting the Project Proponent to use the Forest land for non-forest purpose, if they feel aggrieved. In the event such an Appeal is filed, it would be open for the said Appellants to raise all the points which have been raised in the present Appeal and also

other points which would be available to them in law and also bring to the notice the infirmities/ omissions and commissions committed by the MoEF (Central Government) while granting Stage – I and Stage – II forest clearances.

34. The MoEF is directed to issue necessary Notification, stream lining the procedure to be adopted by the State Government and other Authorities for passing orders/decision for granting Forest Clearance under Section 2 of the FC Act, as well as the modalities for communicating the said order in the Public domain on Government portal.

With the directions and observations made in the preceding paragraphs the Appeal stands disposed of. Parties to bear their own cost.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson