

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

**CIC/SA/A/2015/000635
(Video Conference – Bangalore)**

**Davis George Thomas Vs. Ministry of Environment & Forest, Climate
Change, GOI**

Important Dates and time taken:

RTI/CPIO:19-11/6-2-15(79)	FA/FAO: 17-1/13-2-15(27)	2 nd Appeal: 27-4-2015
Disposed of with directions	Hearing:13-10-2015	Decision:23-10-2015

Parties present:

The appellant is present for video conference at Bangalore. The Public Authority is represented by Ms. Rita Khanna, Scientist-F and Mr. Y.P.Singh, Scientist-D.

FACTS:

2. The appellant is seeking information regarding the details of the agencies/projects proposed to be established at Amrit Mahal Kavals, Challakers Taluk, Chitradurga District, Karnataka. As no information was received he approached the Commission in second appeal after exhausting the first appeal.

DECISION:

3. Both the parties made their submissions. The respondent officer submitted that the information sought by the appellant is of strategic importance and hence cannot be disclosed as per the exemptions provided under the RTI Act.

4. The Environment Support Group (ESG), to which appellant also belonged, has filed Applications No. 6/2013 and 12/2013 before the Hon'ble National Green Tribunal. In those cases, the ESG raised a variety of grounds highlighting how project proponents had commenced work in total disregard of applicable laws, norms and clearance procedures. In particular it was highlighted that fundamental provisions of the Environment Protection Act, 1986 (and Rules), Environment Impact Assessment Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest Conservation Act, 1980, etc. had been flouted by the proponents, who started ground work without any clearances whatsoever. The Petitioners also demonstrated that none of the projects had been grouped together flouting risk assessment norms (for instance an uranium enrichment plant is proposed next to a weaponised drone testing facility) and without addressing basic land use planning, industrial and hazardous facilities citing norms. In addition, the locating of the projects were in violation of provisions of the Factories Act, 1948, Karnataka Town and Country Planning Act, 1961, Aircraft Act, 1934 and the Constitutional 74th Amendment (Nagarpalika) Act, 1992.

6. The appellant stated that the NGT (Southern Zone, Chennai) in order dated 27th August 2014 in Application No.6/2013 and 12/2013 had given directions to the respondent Ministry to revisit the exemptions given to the M/s Sagitaur Ventures India Pvt Ltd to commission solar power project. Brief background of the case is as follows :

Background of the NGT order

1. Chitradurga district is in the agro-ecological sub-region of the Eastern Ghats and the Tamil Nadu Uplands and Deccan Plateau. It is a hot semi-arid eco-region, according to Indian Council for Agricultural Research.

2. In Chellakere talug 52% of the area falls under semi critical and 47% under over exploited category as per Central Ground Water Board. A total of 101 farmers have committed suicide in the district between 2003-07 of which 45 suicides are reported to be due to crop failure. Highest number suicides happened in the lowest rainfall year in the last decade. ... Major part of the district is falling under over-exploited and critical category. The stage of groundwater development in the district is more than 100% which requires immediate intervention by way of conservation and artificial recharge to ground water in order to arrest the declining trend in water level. Clearly therefore, farming distress associated with water insecurity is a matter of serious concern in the district.
3. It is evident from these facts stated above that the Amrit Mahal Kavals of Challakere taluk of Chitradurga district constitute a critical component of the last few remaining flagship faunal species of grasslands ecosystem in India. There is very little understanding of the floral diversity of such ecosystems (13th para of judgment)
4. During 2008-10 the Government of Karnataka through the office of the Deputy Commissioner of the Chitradurga District began to divert almost all the Amrit Mahal Kavals in Challakere Taluk to a variety of urban, industrial, infrastructure development, research and defence related projects without consultation process of any kind.
5. Appellant alleged that for seven projects 9273 acres of forest land was diverted for non-forest purposes and allocated for various activities as per confirmed figures besides 10000 acres are being converted to station Indian Army, which is to be confirmed.
6. Karnataka State Pollution Control Board issued a Notice on 12th April 2011 for starting the projects without CFE and directed to start process of taking consent for establishment CFE from KSPCB immediately. Such notices were issued to occupiers such as ISRO, Indian Institute of Science IISC, Chitradurga, Bhabha Atomic Research Centre BARC, Aeronautical Development Establishment ADE, M/s Sagitaur Ventures Pvt Ltd, Bangalore, etc. All such notices were received by

the seven respondents, certified copies of receipt were obtained under RTI Act were submitted by the appellant.

7. Such activities in Challakere Amrit Mahal Kavals are in violation of Section 2 of the Forest Conservation Act 1980, according to which no state shall divert forest land for non-forest purpose without prior approval of the Central Government. Diversion of 9273 acres of forest land here was without such permission. Supreme Court in TN Godavarman Thirumalpad v Union of India AIR 1997 SC 1228 specifically ordered to cease all on-going activity within any forest in any State throughout the country without the approval of central government.
8. The Planning Commission (Environment and Forest Division) constituted a Task Force on Grasslands and Deserts for the Environment and Forests Sector for the Eleventh Five Year Plan 2007-12 stated that the Grasslands are the common lands of the community and are the responsibility of none. They should be protected. Some of recommendations of Task Force are relevant for Amrit Mahal Kaval. The report recommended modification of the new EIA guidelines to make it mandatory to have EIA for preservation of forest containing wild life and flora and fauna like grasslands of Amrit Mahal Kaval, and give high priority to protecting semi -arid regions and increase grasslands and desert ecosystems.
9. The NGT in para 26 mentioned that it was clear that Karnataka state has diverted almost all of the Amrit Mahal Kavals of Challakere Taluk to non-forest and non-pastoral purposes without application of mind. The proposed investments will directly and irreversibly affect the impacted communities and biodiversity of the area especially the pastoral communities, whose livelihoods are intricately linked to the existence of these grasslands. The projects have commenced in blatant violation of all the applicable rule, norms, standards and statutes as evident from the fact that the Amrit Mahal Kavals have been blocked off to pastoral communities by building 28 km long wall that fundamentally attacks their very right to live. So serious has been the impact on pastoral communities from this one act, that already several families have run into huge debts trying to find fodder for their cattle, several more are forced to sell their livestock to survive

and there is widespread pain and agony suffered as a consequence of these illegal activities by the impacted communities.

10. Hon'ble High Court of Karnataka in writ petition 17954/1997 directed to protect these lands and no portion of that land in any way be diverted or illegally encroached upon. This was not appealed and thus became final and binding. Karnataka state law department rightly opined that this order binds the state including all its departments. High Court confirmed this aspect and thus the Amrit Mahal Kavals Gomala lands need to be protected.
11. During Vijaya nagar empire these grasslands spread over 4.15 lakh acres across Karnataka were meticulously protected and trespassers were prosecuted.
12. Almost all respondents contended that Amrit Mahal Kavals lands are not designated forestlands, no wall of 28 km long was constructed, and no rule is flouted.
13. Though the relief is barred by limitation, however, there is no impediment on considering the issues of environmental degradation. (Para 154)
14. The NGT concluded that the above referred lands are not forest lands. (Paragraphs 164 -174)

Specific directions of NGT

15. The NGT observed: Grasslands have to be protected as a wild life habitat.It becomes imperative to recognize the ecological, hydrological, economic and sociological role of grasslands as source of survival for millions of livestock and rural people..... Bustard species can be considered as indicators of grassland ecosystem and by conserving the bustards and their habitats, a large number of species that are dependent on the healthy grasslands can be protected. Keeping in view that these magnificent birds are now on the verge of extinction, there is an urgent need to launch Project Bustards and immediately provide all the necessary steps to ensure their survival. (Paragraph 181)

- 16....It becomes necessary to issue directions to the Government of Karnataka to preserve and maintain the remaining area of Amrit Mahal Kaval lands in Chitradurga district without any diversion, thereby enabling the villagers around the Kaval lands to use the same as they have been used by them in the past. (Paragraph 199)
17. In view of fact that Amrit Mahal Kavals lands are shrinking and only a small extent remains, the Government of Karnataka is directed to firm up and finalize action plan for the protection and conservation of the said endangered species and initiate time bound execution of the plan forthwith. In this exercise, the Government of Karnataka is also directed to ensure proper and timely coordination amongst concerned departments and agencies to achieve the planned objectives. (Paragraph 203)
18. Regarding the approvals to be obtained by the respondents in response to KSPCB notifications, the NGT held that the answer by these respondents will not satisfy the law. The law mandates that without obtaining the prior environmental clearances and prior consent for establishment the project proponents should not commence any activity connected to and concerned with the establishment of the project. ..it is made clear that both BARC and ISRO shall proceed with the activities either constructional or otherwise on establishment of respective projects only after obtaining environmental clearance from MoEF and consent for establishment from KSPCB. Paragraph 205.
19. DRDO need not take clearance from MoEF
20. Karnataka Government is restrained from making any further allotment in Amrit Mahal Kaval lands in Chitradurga district to any one on any reason or for any purpose. Para 212
21. Paragraph 214: Both MoEF and KSPCB are directed to strictly comply with the observations and also the directions given to them at the time of grant of Environmental clearance and or Consent for Establishment as the case maybe.

22. Para 215. In addition to directions given under different heads at appropriate sections of the judgment, we give the following "Specific" directions to the MoEF, KSPCB and the Allottee Project Proponents:

1. At the time of granting EC or CFE to the Project Proponents who have been allotted sites in the land in question, the MoEF and/or KSPCB as the case may be, are directed to take strict note of the observations and comments made in this judgment regarding several environmental issues and concerns raised by the applicants and include verifiable and measurable "conditions" regarding the same to be complied in full, at all stages, by the project proponents.
2. Citing an Office Memorandum issued by the MoEF, M/s. Sagitaur Ventures India Pvt. Limited, the 14th Respondent in Application no. 6 of 2013, claims that it need not obtain EC from the MoEF. We are of the considered view that the Solar thermal power technology is still at its infancy. Its impacts on environment are being investigated in many research institutes across the globe and newer and newer information on this aspect is emerging. In fact, the applicant placed before the tribunal a few of the recent literature on this aspect and took us through the significant findings in this regard. Keeping these and the averments made by the applicant on the subject in mind and also guided by the "Precautionary Principle"- one of the legs of the concept of "Sustainable Development", we direct the MoEF to revisit the exemption order with regard to EC given to M/s. Sagitaur Ventures India Pvt. Limited and pass suitable orders in the light of recent research findings and other relevant materials available.
3. We direct the KSPCB to issue the Consent to Establish to M/s. Sagitaur Ventures India Pvt. Limited only after satisfying itself with the compliance of all items listed in the Office Memorandum No. J-11013/41/2006-IA.II (1) dated 30th June, 2011 issued by the MoEF.
4. The KSSIDC and the IISc are directed to permit the villagers to offer pooja, celebrate festivals and conduct traditional rituals on concerned days at the temples located in the sites allotted to them in the land under question, during and even after their establishment and subsequent operation.
5. The BARC is directed to shift the temporary fence abutting the mud road near the south western corner of their land suitably and open up a passage to

the villagers to enable them to reach their respective agricultural lands and also Kaluvehalli village.

6. The BARC and IISc are directed to evolve and implement a joint action to plan to enable free movement of villagers from Khudapura to Old Sheep farm through their respective premises.

7. The ISRO is directed to provide water to the villagers of Ullarti village through the borewells located in the site allotted to them, on a continuous basis i.e., during the establishment and operating phases of the organization.

23. The above directions of the NGT, are well balanced and did not impose any undue restraints on developmental activities initiated by these public authorities in true spirit of sustainable development principles. These directions are also significant as the villagers had right to water, right to way, right to livelihood and to culture in rest of the lands left after allocations of land made. The NGT has rightly prohibited and restricted the Government of Karnataka from further allocation of lands in Amrit Mahal Kavals grasslands area. The Government of Karnataka has a responsibility to honour the right of people to way, water, culture and livelihood in these lands.

24. The appellant sought information about action taken to implement the directions of the NGT as mentioned above. Hence the Commission directs the public authorities to provide the following information to the appellant within one month from the date of this order.

- a) The MoEF to provide comprehensive information as to implementation of the directions of the NGT in paragraph 181 stating: Bustard species can be considered as indicators of grassland ecosystem and by conserving the bustards and their habitats, a large number of species that are dependent on the healthy grasslands can be protected. Keeping in view that these magnificent birds are now on the verge of extinction, there is an urgent need to launch Project Bustards and immediately provide all the necessary steps to ensure their survival. Whether MoEF has launched project Bustard? If so details of the same and if not the reasons for the same shall be explained in a note to the applicants and same shall be placed on official website.
- b) The Government of Karnataka to explain what measures it has taken to implement the orders of NGT in paragraph 199 referred above to preserve and maintain the remaining lands of Amrit Mahal Kaval and whether it has refrained

- from allotment of further lands in Amrit Mahal Kaval, whether any orders prohibiting allotment was issued, if so the copy of the same, if not, reasons.
- c) The Government of Karnataka to explain whether the direction of NGT "to firm up and finalize action plan for the protection and conservation of the said endangered species and initiate time bound execution of the plan forthwith. In this exercise, the Government of Karnataka is also directed to ensure proper and timely coordination amongst concerned departments and agencies to achieve the planned objectives", is implemented, whether action plan is firmed up and finalized, if so details with concerned documents and if not why, the reasons shall be explained.
- d) In view of direction: 'Karnataka Government is restrained from making any further allotment in Amrit Mahal Kaval lands in Chitradurga district to any one on any reason or for any purpose. Para 212", the Government of Karnataka to inform how they are implementing this direction.
- e) In view of the observation "... it is made clear that both BARC and ISRO shall proceed with the activities either constructional or otherwise on establishment of respective projects only after obtaining environmental clearance from MoEF and consent for establishment from KSPCB (Paragraph 205)", whether BARC and ISRO obtained necessary clearances and consent? The BARC and ISRO are directed to provide information along with the necessary copies of documents.
- f) The MoEF is directed inform whether BARC and ISRO obtained the above referred clearances and consent.
- g) In view of the direction of NGT: "Both MoEF and KSPCB are directed to strictly comply with the observations and also the directions given to them at the time of grant of Environmental clearance and or Consent for Establishment as the case maybe", the MoEf and KSPCB to inform what measures they have taken to implement this direction? Any specific notification issued, if yes, the copy of the same, if not the reasons.

- h) The MoEF and KSPCB to inform how they are implementing direction of NGT in paragraph 215 point 1.
- i) Whether MoEF revisited the exemption deemed to have been given to M/s Sagitaur Ventures India Pvt Ltd and passed suitable orders as per Point 1 in Paragraph 215.
- j) The KSPCB and MoEF to inform whether it has complied with the order of NGT under Point 3 of Para 215, whether M/s Sagitaur Ventures complied with OM 2006 dated 30th June 2011 issued by MoEF.
- k) The KSSIDC and IISc to inform whether they are permitting the villagers to offer pooja, celebrate festivals and conduct traditional rituals on concerned days at the temples located in the sites allotted to them during and even after their establishment and subsequent operation, how are they doing it, have they notified the same in Kannada language and the language which the people of locality understand, is there any oral notification? KSSCIDC and IISC to provide proof of the participation of the people in above referred activities regularly.
- l) The BARC to inform whether they shifted the temporary fence and opened up a passage to the villagers as directed by NGT in point 5 paragraph 215, provide the proof of the same.
- m) The BARC and IISc are to inform whether they have evolved joint action plan and how they implemented that to enable free movement of villagers from Khudapura to Old Sheep farm through their respective premises.
- n) The ISRO to inform whether they are providing water to the villagers of Ullarti village through the borewells located in the site allotted to them, on a continuous basis. Commission directs them to facilitate inspection to appellants, who in turn are directed to report their findings to the Commission in a month.

7. The Commission finds it is absolutely irrelevant and non-applicable the claim of the respondent authority that information sought is barred from disclosure under Section 8(1)(a) stating that it would impact the strategic security installations of the nation. They have not shown any evidence or convincing reason to show how disclosure of this information about implementation of NGT order affects security interests of the nation. It is ridiculous that MoEF did not understand the implication of their claim of this exemption. How can informing about implementation of environmental protection order of NGT affect the security of the country? The orders of NGT are so clear and specific that they pertain to various rights of the people. It is surprising that well educated CPIOs who are senior Scientists in Environmental sciences have taken this stand without applying their minds to the rights of the people and environmental degradation. The Commission records its displeasure.
8. In view of the observations in above paragraph, the Commission observes that the information sought was unduly delayed by the MoEF raising irrelevant grounds, the Commission, in exercise of its powers under Section 19(8)(b) directs the MoEF to pay Rs 10,000 as compensation to the appellant and recommend not to claim serious exemptions without any seriousness, just to block the information sought as they did in this case and train their CPIOs properly to prevent such inordinate delay in disclosure like this. With this observation, the present appeal is disposed of.


(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy


(U.C. Joshi)
Deputy Secretary



Address of the parties :

1. The CPIO under the RTI Act, Govt. of India
Ministry of Environment and Forests & Climate change
Indira Parvaran Bhavan, Jor Bagh Road (RTI Cell)
Lodi Road PO, New Delhi-110003

2. Shri Davis George Thomas
3354, K.R.Road,
Bangalore-560070

Address of the parties :

1. The CPIO under the RTI Act, Govt. of India
Ministry of Environment and Forests & Climate change
Indira Parvaran Bhavan, Jor Bagh Road (RTI Cell)
Lodi Road PO, New Delhi-110003
2. ✓ Shri Davis George Thomas
3354, K.R.Road,
Bangalore-560070
3. The Project Director,
Bhabha Atomic Research centre
Post Box No. 1, Yelwal
Mysore - 571130
4. Group Head, Construction and Maintenance
ISRO Satellite Centre
Department of Space Government of India
PO Box No. 1795, Airport road,
Vimanapura
Post Bangalore - 560 017
5. The Chairman
Karnataka Small Scale Industries Development Corporation Ltd.
Industrial Estate, Rajaji Nagar West off Chord Road
Bangalore - 560 010
6. Chairman
Karnataka State Pollution Control Board
Parisara Bhavan Church Street
Bangalore -560001