

CENTRAL EMPOWERED COMMITTEE

REPORT OF THE CEC IN IA NO.3051-3053 OF 2011 FILED BY DILEEP POOLAKKOT REGARDING THE WOOD BASED INDUSTRIES WORKING IN ALLEGED VIOLATION OF THIS HON'BLE COURT'S ORDER DATED 30.10.2002 IN KERALA

IA No. 3051-3063 of 2011 has been filed by Mr. Dileep Poolakkot with the following prayers:

- "(a) Pass appropriate orders/directions to the Respondents herein to furnish details of all wood based industries functioning in the State of Kerala including details pertaining to the dates on which no objection certificates for their commencement had been granted;
- (b) pass appropriate orders/directions to the Respondents herein to furnish details pertaining to the criteria on which such no objection certificates had been granted;
- (c) pass an order directing the Department of Forest, Government of Kerala to assess the number of wood based industries having valid licence as on 11.11.1992;

- (d) pass an order directing the Department of Forest, Government of Kerala to take immediate action to shut down all saw mills, veneer and other wood based industries set up and in operation contrary to various Government orders and to the orders/direction of this Hon'ble Court;
- (e) pass an order directing the Department of Forest, Government of Kerala to furnish details of its officers who have sanctioned and removed NOCs/Licences in violation of various Government orders and also the orders/directions of this Court's Order dated 29.10.2002 in W.P. (C) 202/1995;
- (f) pass an order directing a detailed enquiry by an Independent agency in respect of wood based Industries who have obtained NOC after 11.11.1992 especially after the order dated 29.10.2002 of this Hon'ble Court in 202/1995;
- (g) pass appropriate orders/directions to the Respondents herein calling upon them to explain their willful inaction/disobedience/breach of the various directions and orders of this Hon'ble Court made in W.P. (C) No. 202/1995; and

(h) pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the present case."

2. This Report is being filed by the CEC pursuant to this Hon'ble Court's order dated 5.8.2011 and after examining the matter during the hearings held before the CEC on 13.9.2011, 18.10.2011, 15.11.2011 and 10.1.2012.

ISSUES RAISED IN THE IA

3. The main issues raised in the IA are summarized as under:

- i) as per the information provided by the letter dated 31.8.2006 of the Divisional Forest Officer, North Wayanad Forest Division, under the Right to Information Act, 2005, there are, as on 30.10.2002, 10 wood based industries with valid licences (refer Annexure A/4 of the IA). Pursuant to this Hon'ble Court's order dated 30.10.2002 the permission for opening any wood based industry without the prior permission of the Central Empowered Committee (CEC) is prohibited. The CEC has not granted any permission for grant of licences to any wood

CEC has till date not approved the grant of licence in favour of Mr. N.P. Unnikrishnan. However, suppressing the above facts, Mr. N.P. Unnikrishnan approached the Hon'ble High Court of Kerala, Ernakulam Bench by filing Writ Petition (C) No. 35210 of 2007 wherein a licence purported to be issued by the Panchayat on 4.3.1999 was relied upon. He was able to get Interim Order dated 12.12.2007 from the Hon'ble High Court and which continues to operate due to the lack of opposition and connivance of various authorities of the State Government. This Hon'ble Court's order dated 30.10.2002 was not placed before the Hon'ble High Court;

- iii) Mr. K.P. Naushad was issued "No Object Certificate" dated 28.11.2002 by the Divisional Forest Officer, Nilambur South Division for establishment of a saw mill and furniture unit and which was issued in violation of this Hon'ble Court's order dated 30.10.2002 i.e. without obtaining prior permission from the CEC. The "No Objection Certificate" was issued even though the proposed wood based unit was not in his jurisdiction and falls within the jurisdiction of

based industry in North Wayanad Division. The Government of Kerala, vide its order dated 11th November, 1992, has directed that the grant of permission to start any wood based industry within a radius of 5 kms. from the forest shall be permitted only after obtaining the "No Objection Certificate" (NOC) from the concerned Divisional Forest Officer (refer Annexure A/3 of the IA). However there are at least 34 other wood based industries which are operating in District Wayanad and which do not have any licence issued by the competent authority and / or No Objection Certificate issued by the Forest Department and / or permission of the CEC. The details of these units were, vide letter dated 23.10.2006 (refer Annexure A/5 of the IA), brought to the notice of the concerned officers of the State Government. No response has however been received from the concerned officers;

- ii) Mr. N.P. Unnikrishnan had filed Application No. 728 before the CEC for seeking permission for the establishment of a veneer unit in District Wayanad (refer Annexure A/7 of the IA). The

Division Forest Officer, Nilambur North Division.
It was after 5 years that the said "No Objection Certificate" (NOC) issued by the Divisional Forest Officer, Nilambur South Division was cancelled vide order dated 11.9.2007 as the NOC was found to have been issued in violation of this Hon'ble Court's order dated 30.10.2002. In spite of the cancellation of the "No Objection Certificate", the same was renewed by the Divisional Forest Officer, North Nilambur vide order dated 30.6.2008.

The Divisional Forest Officer, North Nilambur Division vide his letter dated 12.2.2009 permitted the said wood based industry to relocate in Taluk Mananthavady, District Wayanad and falling in the jurisdiction of the Divisional Forest Officer, North Wayanad Division (Refer Annexure A/12 of the IA). The renewal of the NOC as well as the permission granted for the relocation of the said unit were granted in violation of this Hon'ble Court's order dated 30.10.2002 and in spite of the original NOC already having been cancelled as it was issued

in violation of the Hon'ble Supreme Court's order dated 30.10.2002.

Mr. K.P. Naushad, after relocating the wood based units, filed Writ Petition (C) No. 26513 of 2009 on 17.9.2009 before the Hon'ble High Court seeking issue of the NOC by the Divisional Forest Officer, North Wayanad Division for operating the unit at the new site. In the counter affidavit dated 16.10.2009 filed by the Divisional Forest Officer, North Wayanad Division, it was not disclosed that the NOC issued in favour of Mr. K.P. Naushad has already been cancelled by the issuing authority itself as it was found to have been issued in violation of this Hon'ble Court's order dated 30.10.2002 (refer Annexure A/16 of the IA). Instead in the said counter affidavit it was stated that the NOC was not being issued because one Mr. K.J. Joseph has complained that the location of the saw mill is within 5 kms from the nearby forest. This resulted in the Hon'ble High Court passing the judgment dated 22.10.2009 wherein the Forest Department was directed to issue the NOC within one month if the Petitioner Saw Mill satisfies the

relocation. Moreover, the issue of the NOC, the renewal of the NOC as well as the NOC granted for relocation were illegal and in flagrant violation of the directions of the Hon'ble Supreme Court;

- iv) there are a large number of saw mills and other wood based industries in Kerala and who have been issued NOCs after 30.10.2002 by the Forest Department and without obtaining permission from the CEC;
- v) the Kerala Forest Department, in the meeting convened by the CEC on 21.2.2006, stated that as per the timber availability assessed by the Kerala Forest Research Institute (KFRI), the State of Kerala has surplus timber availability. The said study was carried out in the year 2001. The detailed procedure for assessing the timber availability, grant of permissions/licences to wood based industries was decided in the said meeting (refer Annexure A/27 of the IA). However even thereafter NOCs have been issued in favour of the wood based industries without following the procedure laid down by the CEC. This has also been pointed out in the Circular dated 4.8.2007

other requirements (refer Annexure A/17 of the IA). The Writ Appeals filed by Mr. K.J. Joseph and the Forest Department against the above judgment were dismissed by the Hon'ble High Court and the Forest Department issued the NOC in favour of Mr. K.P. Naushad.

Thereafter, a Review Petition dated 7.1.2010 was filed by the Division Forest Officer, Nilambur North Division and wherein for the first time it was placed on record that (a) the directions of the Hon'ble High Court for issue of the NOC in favour of Mr. Naushad is contrary to the directions of this Hon'ble Court regarding establishment of wood based industries, (b) the NOC issued by the Divisional Forest Officer, Nilambur South Division was against the directions of the Hon'ble Supreme Court and illegal and (c) the NOC granted by the Divisional Forest Officer, Nilambur South Division was already cancelled (refer Annexure A/20 of the IA). These vital facts were never placed before the Hon'ble High Court and due to which the Hon'ble High Court directed issue of the NOC for running the saw mill of Mr. Naushad after its

State of Kerala should be directed to assess the wood based industries having valid licences as on 11.11.1992 and close all the wood based industries set up and operating in violation of the applicable Government orders and the directions of this Hon'ble Court. The details of the officers responsible for the issue/renewal of the NOCs/licences in violation of the Government orders and the directions of this Hon'ble Court should also be directed to be provided. An independent agency may be directed to carry out detailed enquiry in respect of the wood based industries who after 11.11.1992 have been granted NOCs and in particular after this Hon'ble Court's order dated 30.10.2002.

SUBMISSIONS MADE BY THE STATE OF KERALA

4. The submissions made by the State of Kerala in the Affidavit dated 5th November, 2011 filed before the CEC are summarized as under;

- i) In the State of Kerala the licencing authority for the establishment of saw mills and the other wood based industries are the Gram Panchayats, Municipallities, etc. (and not the

issued by the Chief Conservator of Forest (refer Annexure A/29 of the IA);

- vi) the letter dated 4.12.2009 of the Principal Chief Conservator of Forest, Kerala Forest Department (refer Annexure A/30 of the IA), states that there were only 779 industries in existence as on 30.10.2002 and 1332 industries have been established thereafter. Many of the industries set up after 30.10.2002 have also, during the expansion stages, installed new machineries;
- vii) a number of licences have been granted in the State of Kerala for operating rubber wood based industries. A large number of such licencees are operating saw mills based on other wood also;
- viii) presently there are no Rules in existence in the State of Kerala to regulate and control the working of the wood based industries; and
- ix) the Kerala Forest Department should be directed to provide details of all the wood based industries functioning in the State along with the details of the NOCs issued in their favour and the criteria on which such NOCs have been issued. The

Forest Department). Pursuant to the Government orders dated 11.11.1992, 16.7.1999 and 15.11.1999, the NOCs from Forest Department is required once in five years for the renewal of licences for the saw mills and the other wood based Industries located beyond 5 kms of forest boundary, except Sandal wood based industries and once every year for wood based industries located within 5 kms. of the forest boundary and for the sandal wood industries, irrespective of their distance from the nearby forest. The NOC from the Forest Department is also required wherever the capacity of the wood based industries is enhanced and/or there is change in the use and quantity of the raw material;

- ii) the CEC, after the Hon'ble Supreme Court's order dated 30.10.2002, has issued detailed guidelines regarding the issuance of the NOCs to the wood based industries. A State Level Committee for the wood based industries in Kerala (SLC) has been constituted by the CEC under the Chairmanship of the Principal Chief Conservator of Forests, Kerala Forest Department to deal with the applications received

from the wood based industries for grant of NOCs and associated issues;

iii) presently, the NOCs for the wood based industries are being issued as per the guidelines issued by the CEC from time to time. The wood based industries have, for this purpose, been categorised into six schedules and the NOCs are being issued after detailed enquiry and approval of the SLC and after obtaining concurrence of the CEC. The SLC has received more than 11000 applications for issuance of NOCs. It is necessary that the NOCs are issued to eligible units in a time bound manner so that the industry does not suffer and the livelihood of the people is not affected;

iv) presently, the NOCs are being issued only for (a) the units exclusively based on rubber wood which is surplus in the State, (b) for furniture units which are secondary wood based units and (c) pre 30.10.1992 units legally established/operating;

- vii) the licences to the wood based industries is not being granted by the Forest Department but by the Local Self Government institutions such as Gram Panchayats, Municipalities, etc. and based on the guidelines issued by the CEC;
- viii) out of 34 wood based units in District Wayanad (as pointed out in the IA), 9 are saw mill units, and the remaining 25 are furniture making units. Out of the 9 saw mills, 7 are functioning as per the NOCs issued by the Forest Department while the remaining 2 units are functioning under the directions of the Hon'ble High Court. Out of the 25 furniture making units, 14 are not presently functional, one is functioning without any electrical machinery, 2 are functioning with the NOCs issued by the Forest Department and in respect of the balance 8 units, the applications for grant of NOCs are pending with the Forest Department;
- (ix) Mr. N.P. Unnikrishnan was on 2.5.2007 granted a licence by the Gram Panchayat for veneer unit and without obtaining the NOC from the Forest Department. Since this was in violation of the

- v) the NOCs for the new saw mills and the other wood based industries using timber of different forest species are not being issued after this Hon'ble Court's order dated 30.10.2002. The grant of NOCs for such units will be considered only after the assessment regarding the timber availability in the State qua the requirement of the existing units is carried out and only if any surplus timber is found for the new units. As per the decision, taken in the meeting convened by the CEC on 29.4.2008, a fresh study for this purpose has already been entrusted to the Kerala Forest Research Institute (KFRI) and which is yet to be completed;
- vi) most of the submissions made by the Applicant are based on the presumption that the Hon'ble Court has stopped all the wood based industries functioning after 30.10.2002 and that any renewal or issuance of the NOCs is an illegality. This presumption is not correct. It is necessary that the NOCs are issued to the legitimate applicants. There cannot be any illegality for issuing of such NOCs;

xi) the NOCs issued after 30.10.2002 including that of Mr. K.P. Naushad were cancelled by the Division Forest Officer, Nilambur South Division on 4.9.2007. However, the unit of Mr. Naushad was not located within a distance of 5 km. from the nearby forest boundary and the NOC was issued as per the procedure laid down in the Government order dated 15.11.1999. The jurisdiction of the NOC issuing authority in strict sense is irrelevant;

xii) the order for renewal of the NOC in favour of Mr. K.P. Naushad was issued by the Divisional Forest Officer, Nilambur North Division after getting the original file from the Divisional Forest Officer, Nilambur South Division and which did not contain the order issued by the latter for the cancellation of the NOC earlier issued. As stated earlier, the Hon'ble High Court as well as the Hon'ble Supreme Court have in the instance case dismissed the cases filed against the issuance of the NOCs. The averment of the Applicant that a serious conspiracy has taken place regarding the issuance of NOC in favour of Mr. K.P. Naushad is incorrect. The distance of

guidelines issued by the CEC (pursuant to the Hon'ble Supreme Court's order dated 30.10.2002), the Divisional Forest Officer, North Wayanad Division issued order dated 21.5.2007 to stop the functioning of the said veneer unit. Against the impugned order dated 21.5.2007, Mr. Unnikrishnan had filed W.P. (C) No. 352107/0 before the Hon'ble Kerala High Court in which the Kerala Forest Department had filed counter affidavit based on the Hon'ble Supreme Court's order dated 30.1.2002;

- x) the NOC dated 28.11.2002 in favour of Mr. K.P. Naushad was issued by the Divisional Forest Officer, Nilambur South Division. The Divisional Forest Officer might have issued the NOC probably because he was unaware of the order dated 30.10.2002 of this Hon'ble Court. The entire facts of this case were considered by the Hon'ble High Court in Writ Appeal No. 2738 of 2009 and RP 124/2010 in Writ Appeal No. 2738/2009 and by the Hon'ble Supreme Court in SLP (C) No. 15423 of 2010 and the cases filed against the issuance of the NOC were dismissed;

the nearest reserve forest vis-à-vis the location of the wood based industries is more than 5 kms. In the counter affidavit filed before the Hon'ble High Court, the Divisional Forest Officer, North Wayanad had taken a stand against the issuance of the NOC in favour of Mr. K.P. Naushad. However, pursuant to the directions of the Hon'ble High Court, the NOC has been issued in favour of Mr. K.P. Naushad after the Writ Appeal No. 6738 of 2009 filed against the order of the Hon'ble High Court in Writ Petition (C) 26513 of 2009 was dismissed by the Hon'ble High Court. The concerned Forest Officer had not suppressed or wrongfully stated facts in the above said Writ Petition or the Writ Appeal. The distances mentioned in the counter affidavit was confirmed with the GPS readings;

- xlii) the Kerala Forest Department has already issued instructions to all the officers to verify and to close down all the unlicensed wood based industries established/operating in violation of the directions of the Hon'ble Supreme Court;

- xiv) the Divisional Forest Officer, North Wayanad has issued NOC to the wood based industry in accordance with the orders issued by the Hon'ble Supreme Court and the directions of the State Government from time to time;
- xv) In many cases, the verification process and issuance of the NOCs are pending with the SLC/Forest Department and wherein the Hon'ble Kerala High Court has issued directions to maintain status quo till a decision on the application for the NOC is taken by the SLC;
- xvi) It has been decided by the SLC that all the NOCs issued by the DFOs will be reviewed by the Chief Conservator of Forest(SA) and based on the guidelines issued by the CEC in this regard;
- xvii) the NOCs are not being issued on the basis of timber assessment done by the Kerala Forest Research Institute (KFRI) during 2001. As decided in the meeting convened by the CEC on 29.4.2008, the KFRI has been requested to conduct a fresh study on the timber availability in Kerala. Presently, no NOC is being issued for new saw mill, plywood and veneer units using

A copy of the affidavit dated 5th November, 2011 filed before the CEC by the Chief Conservator of Forest (Special Afforestation) is enclosed at ANNEXURE-R-1 to this Report.

OBSERVATIONS AND RECOMMENDATIONS

5. Pursuant to this Hon'ble Court's order dated 30.10.2002 prior permission of the Central Empowered Committee (CEC) is required before granting permission for establishment/operation of saw mills, veneer industries, plywood industries and other wood based industries. Presently, the grant of licences to the wood based industries in State of Kerala is done by the Local Self Government Institutions (LSGI) such as the Gram Panchayats, Municipalities etc. and not by the Kerala Forest Department. Pursuant to the decision taken by the Government of Kerala vide its Government order dated 15.11.1999, the Forest Department is required to issue NOCs once in five years for renewal of licences for saw mills and other wood based industries located beyond 5 kms. from the forest boundary except for sandal wood based units and annually for the wood based industries located

wood of all types. The NOCs are being issued only for the units based exclusively on rubber wood and the furniture making units which are not involved in sawing of round timber. Such NOCs are being issued as per the decision of the SLC and after obtaining concurrence of the CEC and in accordance with the guidelines issued by the CEC in this regard; and

xviii) the enactment of the Rules for regulating saw mills and other wood based industries in Kerala is in final stage. The draft Rules have been approved by the CEC and will be promulgated shortly after completing the formalities. The apprehension of the Applicant that the Kerala Forest Department is verifying applications for issuing of the NOCs without enacting the Saw Mill Rules and without assessing the timber availability has no basis. As stated earlier, the NOCs are not being issued for new units using timber of all types. The guidelines issued by the CEC are being followed in letter and spirit while issuing the NOCs for the units established prior to 30.10.2002 and for the rubber wood based units and the furniture units.

available with the CEC, the Saw Mills Rules have not so far been notified). A copy of the Draft Saw Mill Rules along with the CEC letter dated 4th July, 2011 are enclosed at ANNEXURE-R-2 to this Report;

- (ii) the assessment regarding the timber availability from all sources in the State of Kerala qua the requirement of the existing wood based Industries was carried out by the Kerala Forest Research Institute (KFRI) during 2001 and by which it was assessed that the State of Kerala is a timber surplus State. However considering that thereafter a large number of wood based Industries have been set up in the State of Kerala, the CEC has asked the Kerala Forest Department to carry out a fresh assessment regarding timber availability qua the requirement of the wood based industries in the State. The State of Kerala has entrusted the said study to the KFRI. The study is yet to be completed;

within 5 kms. from the forest boundary and for all the sandal wood based industries.

6. The CEC, after holding detailed discussions with the Kerala Forest Department, has issued detailed guidelines for examination of the proposals received for grant of the NOCs by the Kerala Forest Department. A State Level Committee (SLC) under the Chairmanship of the Principal Chief Conservator of Forest has been constituted to examine such applications. Some of the other important decisions taken by the CEC in consultation with the Kerala Forest Department are given below:

- (i) the State of Kerala should notify the Saw Mill Rules at the earliest and the grant of licences to the wood based industries should be regulated by the Kerala Forest Department. Accordingly, the Draft Kerala Forest (Establishment and Regulation of Saw Mills and other Wood Based Industrial Units) Rules, 2011 have been prepared by the State of Kerala and for which the CEC has given its concurrence vide letter dated 4th July, 2011 (as per the information

allowed the SLC to undertake appropriate decision in respect of such units without referring the individual cases to the CEC. A copy of the CEC letter dated 14th February, 2007 is enclosed at ANNEXURE-R-3 to this Report; and

- (v) the SLC has been authorized to take a decision in respect of the units exclusively based on rubber wood (the State of Kerala has surplus rubber wood availability) and without referring the individual cases to the CEC subject to the one-time payment of amounts varying from Rs.10,000/- per furniture unit to Rs.2.0 lakhs per peeler/press in respect of veneer and plywood units. In addition, the SLC has also been authorized to take a decision in respect of the saw mills established prior to 30.10.2002 and without referring the individual cases to the CEC. In this regard a copy of the CEC letter dated 29th April, 2008 enclosing the minutes of the meeting held on 29.4.2008 with the Kerala Forest

- (iii) pending the completion of the assessment regarding the timber availability qua the requirement of the existing wood based industries in the State, permissions/NOCs for the establishment of new wood based industries dependent on round timber of various species will not be granted. Such permissions will be considered only after the assessment regarding the timber availability is completed and only if it is found that after meeting the requirement of the existing legal wood based units there is surplus timber available in the State;
- (iv) the furniture making units and the other similar secondary wood based units which are not involved in sawing of round timber but are using the sawn timber obtained from the licenced saw mills for furniture making, toy making, handicrafts, etc. may be permitted. Such permissions have been granted throughout the country and without linking with the timber availability in the respective of States/UTs. The CEC vide its letter dated 14th February, 2007 has also

the concerned officers of the Kerala Forest Department did not care to place the full facts before the Hon'ble High Court and which resulted in the Hon'ble High Court passing an order for issuance of the NOC for shifting of the unit at the relocated place. It was only in the Review Petition, filed after the Writ Appeal was dismissed, that the crucial information that the NOC was illegally issued and transferred and it involved violation of the directions of this Hon'ble Court were placed before the Hon'ble High Court.

9. The Saw Mills Rules have not so far been notified and in the absence of which there is no legal mechanism available with the Kerala Forest Department to regulate the working of the wood based industries. There are a number of cases where the wood based industries are working without issue of the NOCs and on the basis of the directions passed by the Hon'ble High Court in the matters filed before it.

10. In the above background the following recommendations are made for consideration of this Hon'ble Court:

- i) the State of Kerala may be directed to immediately within one month notify the Kerala Forest (Establishment and Regulation of Saw Mills and other Wood Based Industrial Units)

Department is enclosed at ANNEXURE-R-4 to this Report.

7. The CEC is of the view that an effective system has been put in place to ensure that the grant of the NOCs to the wood based industries is carried out in a systematic and orderly manner and that the wood based industries dependent on timber of various species are allowed to be established only after the timber availability assessment has been completed and if it is found that there is surplus timber available in the State for such units.
8. However in a number of cases the NOCs were earlier issued without obtaining permission from the competent authority and / or in violation of this Hon'ble Court's order dated 30.10.2002 and the guidelines issued by the CEC from time to time. The case of Mr. K.P. Naushad mentioned in the IA is one of such cases. In this case, (a) the NOC was issued in violation of the this Hon'ble Courts order dated 30.10.2002, (b) even after the cancellation of the original NOC, it was renewed on the basis of the earlier NOC (which was already cancelled) and (c) the NOC for relocation of the unit to another district was issued. What is most unfortunate is that when the matter was being considered by the Hon'ble High Court (in the Writ Petition as well as the Writ Appeals),

Rule, 2011 for which the concurrence has already been given by the CEC on 4th July, 2011;

- ii) the NOCs Issued by the concerned officers of the Forest Department should be reviewed in a time bound manner by the SLC and the NOCs found to have been issued in violation of this Hon'ble Court's order dated 30.10.2002 should be immediately cancelled. Such wood based industries as well as the units working without a valid NOC and/or licence issued by the competent authority should be closed immediately; and
- iii) the assessment of the timber availability from all sources qua the requirement of the existing legal units should be expedited. Till then, no NOC/licence for the wood based industries should be issued except for (a) secondary wood based industries such as furniture making units not involved in sawing of round timber, (b) units based exclusively on rubber and (c) units established prior to 30.10.2002 and with valid NOC/licence. For the units falling in the above said sub category (a) to (c) also, the

NOC/licence should be issued by the concerned officers of the Forest Department only after first obtaining the approval of the State Level Committee for the wood based industries in Kerala.

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


(M.K. diwrajka)
Member Secretary

Dated: 19th March, 2012