

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI,
NEW DELHI**

Original Application No. 80 of 2014

(M.A. No. 217/2014)

In the matter of:

1. Social Action For Forest & Environment (SAFE),
Through its President
A-93, Sector 36
Greater Noida- 201308

..... Applicant

Versus

1. Union of India
Through the Secretary,
Ministry of Environment and Forest
CGO Complex, Lodhi Road
New Delhi-110003
2. Uttarakhand Forest Department
Through Principal Secretary Forest
Uttarakhand Secretariat
4, Subash Road, Dehradun
Uttarakhand
3. Irrigation Department, Uttarakhand
Through Secretary
Irrigation Department,
Uttarakhand Secretariat,
4, Subash Road,
Dehradun, Uttarakhand
4. Executive Engineer
Uttarakhand Irrigation Department
Mechanical Equipment and Store Division-I
Yamuna Colony,
Dehradun- 248001
5. Chief Engineer-HOD
Uttarakhand Irrigation Department
Yamuna Colony
Dehradun- 248001

6. Principal Chief Conservator of Forests
Uttarakhand
85, Rajur Road, Dehradun
7. Director/Conservator of Forests
Raja Ji National Park,
5/1, Ansari Road, Dehradun- 248001
8. Mr. Sanjay Pokhriyar, Pradhan
Village- Gohri Mafi Raiwala
Rishikesh, Dehradun
Uttarakhand- 249205

.....Respondents

Counsel for appellant:

Mr. Ritwick Dutta, Mr. Rahul Choudhary and
Ms. Meera Gopal, Advocates for appellant

Counsel for Respondents:

Ms. P. Batra Singh, Adv. for respondent no. 1
Mr. Rahul Verma, AAG. for Respondent nos. 2 to 7
Mr. Manoj Gorkela, Mr. Nagesh Gajghate and
Ms. Priya Sharma, Advocates for respondent no. 8

Present:

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Reserved on: 10th March, 2016

Pronounced on: 21st March, 2016

1. A controversy over the construction of 2 km length of wall on the right bank of Song river in Rajaji National Park, Motichur range of Rajaji National Park, Uttarakhand raised in the present application poses two pertinent questions firstly, whether the construction of the said wall is in consonance

with the provisions of Section 2 of the Forest (Conservation) Act, 1980 and secondly, whether it would obstruct movement of elephant and tigers particularly elephants passing through Motichur elephant corridor.

2. The respondent authorities filed replies. They contend that the wall is being constructed to protect lives and properties of the villagers inhabiting village Gohri Mafi situate in the vicinity of the area in question and the construction of wall has been undertaken as an ancillary measure of conservation, development and management of forest and wildlife in accordance with the approved management plan of Raja Ji National Park. It has not been disputed that the construction in the area is used by elephants as a corridor.
3. On this back drop we summoned the Chief Wildlife Warden, Uttarakhand and other officials from MoEF to remain present before us vide order dated 31st March, 2015. On 30th April, 2015 Mr. D.V.S Khati, Chief Wildlife Warden, Uttarakhand in response to the four photographs of the wall at Vol-II which was being constructed along the river Song stated that the ramps have been provided to that wall to facilitate the movement of elephants. Dr. V.B. Mathur, Director Wildlife Institute of India, Dehradun who was present before us then explained that the wall runs about 2 km in length and has 15 to 20 ramps as per plan annexed as R-7/12 to the counter affidavit dated 2-07-2014 of Mr. S.P. Subudhi filed on behalf of the respondent nos. 2,6 and 7. He added that the elephant is

an intelligent animal which has exploratory tendency and in a given circumstance has ability to find out its way, and in the present case ramps spread over 2 Km of length afford passage to the elephants to move across the wall and the river. He placed before us on record copies of the said visit report referred to in the letter dated 19-9-2014.

4. Learned Counsel appearing on behalf of the applicant submitted that the facts regarding location of the ramps, spurs and the effectiveness of the ramps in providing a corridor to the elephants required elaboration. Upon instructions, Dr. V.B. Mathur Director, Wildlife Institute of India, Dehradun submitted that there is no data available as to the effectiveness of the ramps for the purpose of providing passage to the elephants as the exercise undertaken is the maiden exercise. However the elephant has a well developed sensory organ by which it can sense the things along its passage and make way for itself- vide order dated 30th April, 2015.

5. To seek further elaboration in the matter we summoned Mr. Vibhash Pandav, Scientist, Wildlife Institute of India, Uttarakhand to remain present before us for answering the queries in respect of the rationale in choosing particular locations for construction of ramps. On 2nd September, 2015, Dr. Vibhash Pandav appeared before us. With reference to the ramp plan at Annexure II to the affidavit dated 11-5-2015 (ramp size 16.05 mts width and 12 mts length with stone

pitching), Dr. Vibhash Pandav explained that the ramp not only leads the elephants to the top but on the other opposite end of the feet and it has similar structure for climbing down the bund towards the river. According to him, three locations shown in the map at Annexure I to the said affidavit were selected for construction of these ramps for the reasons that these locations were the usual elephant trails which can be distinguished from the other forest area on visual inspection with the elephant foot marks and dung which could readily be detected. He further submitted that elephants do not move randomly but travel in groups on oft beaten path made by them and it being an organized animal it traverses the trails for crossing the country. He referred to photographic evidence of the foot marks. He further explained that he had seen elephants negotiating 54 degrees incline for gaining access to locus on the hills slopes and as such the elephants can easily negotiate 38 degrees incline on the ramp on the river side. He added that the ramp on the river should not be concretized but must have rough surface made by pitching stone and that gentler the slope, easier will be for the elephant to negotiate these trails. He refuted the contentions as suggested by the learned counsel that the elephants taking a minor trail and getting obstructed by the wall without there being ramp would dash its head and die there. Considering the revelations made before us by these experts in Wildlife, We all are of the view that the ramps provided can cater to the Wildlife needs.

6. Section 2 of the Forest Conservation Act reads as under:

2. Restriction on the de-reservation of forests or use of 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) ¹*[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].*

²*[Explanation.- For the purposes 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 horticulture crops or medicinal plants;*
- (b) *any purpose other than reafforestation,*

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes].

7. It is correct that the non forest activity is not permitted in the forest unless the central government grants approval to the diversion of the forest land as per Section 2 of the Forest Conservation Act, 1980. However, the explanation offered for the purpose of the said Section as regards the ‘non forest activity’ does not include any work relating or ancillary to conservation, development and management of forest and

wildlife namely the establishment of check post, fire lines wireless communication and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other alike purposes. Affidavit dated 09th December, 2014 filed by the MoEF reveals that the construction of said wall within the Raja Ji National Park is in accordance with the provisions of the approved management plan of the Raja Ji National Park and may be treated as a work relating or ancillary to conservation development and management of forest and wildlife and as such no forest clearance as envisaged under Section 2 of the Forest Clearance Act, 1980 is necessary. Affidavit dated 19-12-2014 further reveals that WII, Dehradun conducted the site visit and upon review of management plan of the Rajaji National Park submitted a report to the MoEF&CC vide letter dated 8th November, 2014. The material response of the WII Dehradun through the report is in following terms:

- (i) *River Ganga Bisects Rajaji National Park into eastern (250 Km²) and western (570.250 Km²) parts. Both these parts of Rajaji National Park are connected with each other through the narrow Chilla Motichur Corridor (along Motichur rau) and Song River corridor (along song River). There still exists feeble forest connectivity along Motichur rau in Chilla-Motichur. However, the forest connectivity along the Song River has been lost due to the Gohri Mafi village. Animal Movements along the Song River corridor is minimal and most animal movements primarily take place along the right bank of Song River. Animals largely avoid Gohri Mafi village (located on west bank of Ganga, near the confluence of Song with Ganga) and only follow the course of Song River.*
- (ii) *The banks of Song River are subjected to frequent erosion. The left bank of Song River (flowing through Rajaji NP) has already been reinforced in the past and*

has large-scale human settlements. The approved management plan of Rajaji NP has prescribed the riverbank stabilization work on the Song River (Management Plan of Rajaju National Park- 2012-2013 to 2021-2022, Page 429-430).

- (iii) Couple of channels flow out of Song River in to Gohri Mafi settlement with Rajaji NP. These channels have been blocked in the past (1992-1994) to prevent ingress of floodwater in to Gohri Mafi village. During the site visit movement signs of leopard and elephant along this stretch of the river were observed.
- (iv) These channels keep changing their courses and as a result the Gohri Mafi village is still subjected to ingress of floodwater during monsoon. Keeping this in view, the present riverbank reinforcement work was initiated along a large stretch on the right bank of Song River.
- (v) The Management Plan of Rajaji National Park (2012-13 to 2021-22, page 429-30) has a chapter on 'Wildlife Corridor'(pages 425 to 434) that prescribe the following measures to realize the full potential of 'Gohri Corridor':
 - (a) Install screens on both sides of the road bridge over the Song River to minimize the impact of light and sound from the motor vehicles on the animals passing under the bridge.
 - (b) Undertake river bank stabilization work on the Song River and the Ganges by building a combination of a toe wall and spurs along the banks so that a narrow strip with vegetative cover can develop along the river, which can be used by the animals to move along the corridor.
 - (c) Provide vegetative cover on the banks of the Song River and the Ganges.
 - (d) Stabilize the left bank of the Ganges and provides vegetative cover on it near Talla Bhogpur village, on the eastern side.
 - (e) Stabilize and protect the river islands on the Ganges against erosion.
 - (f) Establish anti-poaching camps at a suitable location to provide protection to the migrating wildlife against poaching and other threats.
 - (g) Undertake eco-system work on the islands to improve the herbivore habitat on the islands. Eco-restoration work may include activities such as broadcasting and planting grass seeds.
 - (h) Undertake intensive habitat improvement work in Suswa 5, 6 and 7 compartments of Motichur range. Habitat improvement in this area will help the recovery of the prey base of tigers and discourage the Elephants from raiding crops in Gohri Mafi village.

- (vi) *It is obvious that 'Undertaking river bank stabilization work on the Song River and the Ganges' is one of the eight measures presented in the Management Plan to realize the full potential of the 'Gohri Corridor' and therefore, the usefulness of the said construction alone may not lead to corridor restoration until and unless other 7 measures coupled with reduction in anthropogenic pressures on account of grazing, firewood/fodder collection etc. Are also undertaken in a comprehensive manner.*
- (vii) *Further the said construction though broadly conforms to the Management Plan (2012-13 to 2021-22) and may be treated as a work relating or ancillary to conservation, development and management of wildlife corridor. However, the Management Plan (2012-13 to 2021-22) itself does not provide any details of the scale, cost and time framework for such construction.*
- (viii) *The legal provisions in respect of the said construction by the Irrigation Department may also have to be seen in the context of Forest Conservation Act (1980) and wildlife (protection) Act, 1972."*

8. The applicant in his written submission dated 14th November, 2014 submitted that the measure of river bank stabilization includes the construction of ramp with specific design and location as provided by the Chief Conservator for Forest respondent no. 11 in the affidavit dated 13th April, 2015 and any work undertaken as per the management plan for the river bank stabilization should be undertaken pari passu with other measures given in the wildlife management plan. We do see merit in this submission.

9. At this stage the learned counsel appearing on behalf of the respondent authorities for State of uttarakhand submitted that the State would first carry out the measures prescribed at (a) and (f) i.e. install screens on both sides of the road, road bridge over the Song River and, establish anti-poaching camps at a suitable location, and complete this work on or before 31st

may, 2016 and only upon completion of such work the work of construction of wall i.e. the work as envisaged in clause (b) i.e. river bank stabilization work on the Song River as well as the work to stabilize the left bank of the Ganges the work at (d) and (e) i.e. Stabilize and protect the river island on the River Ganges would be simultaneously undertaken. He further made a statement that work of providing of vegetation cover on the banks of the Song Rivers and Ganges, ecosystem work of the islands and habitat improvement as envisaged in Clauses (c), (g) and (h) would be carried out and completed in ensuing monsoon season i.e. in the month of June, July and August 2016.

10. We believe that if the works as suggested are carried out in the given time frame what is intended by the Wildlife Management Plan of Raja Ji National Park stated herein above will be achieved.

11. We therefore direct the Respondent no. 2 Uttarakhand Forest Department, Respondent no. 3 Irrigation Department Uttarakhand, Respondent no. 4 Executive Engineer, Uttarakhand, Respondent no. 5 Chief Engineer HOD, Uttarakhand, Respondent no. 6 Principal Chief Conservator of Forests, Uttarakhand, Respondent no. 7 Director/Conservator of Forests, Rajaji National Park to abide by the statement made on behalf of the State as aforesaid.

12. With these Directions we hereby dispose of this application with no order as to cost. Original Application no.

80 of 2014 and Miscellaneous Application No. 217 of 2014
made therein stand disposed of accordingly.

....., JM
(U.D. Salvi)

....., EM
(Ranjan Chatterjee)



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