

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No. 77THC/2017/EZ
(M.A. No. 130/2017/EZ)

Society for Protection Ophiofauna
and Animal Rights (OPORS)

Applicant(s)

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 15.07.2021

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Mr. Rahul Ganguly, Advocate

For Respondent(s): Mr. Bikas Kargupta, Advocate for R-1 & PWD (W.B.),
Mr. Rajib Ray, Advocate for R-2 to 7,
Mr. Gora Chand Roy Choudhury, Advocate for R-8,

ORDER

1. Mr. Rahul Ganguly, learned Counsel is present for the Applicant.
2. Mr. Bikas Kargupta, learned Counsel is present for Respondent Nos.1 & Public Works Department (PWD), Govt. of West Bengal, Mr. Rajib Ray, learned Counsel is present for Respondent Nos. 2 to 7, State Respondents. Govt. of West Bengal and Mr. Gora Chand Roy Choudhury, learned Counsel is present for Respondent No.8, Ministry of Environment, Forest and Climate Change.
3. No one is present for Respondent Nos. 9 & 10, Ministry of Road Transport & Highways and Ministry of Railways.
4. Mr. Rahul Ganguly, learned Counsel submits that this Original Application has become infructuous in view of the judgment passed by the National Green Tribunal, Principal Bench, New Delhi in Original Application No. 19 of 2014 (Dr. Kashmira Kakati Vs. Union of India) dated 08th December, 2017 which was followed by the National Green Tribunal,

Principal Bench, New Delhi in Original Application No. 443 of 2018 (Society for Protecting Ophiofauna and Animal Rights (SPOAR) Vs. State of West Bengal & Ors.). He, however, referred to the certain directions given by the Tribunal in that judgment which are reproduced herein below:-

“.....XXXX.....XXXX.....XXXX.....”

50. For the aforesaid reasons discussed in the test of the Judgment we shall make the following direction to be complied by the Central Government and State Government with a view to protect the elephant population and other related issues:

1) The Central Government shall in exercise of the power conferred by Section 5 of the Environment Protection Act, 1986 and read with the provisions of Wildlife (Protection) Act, 1972 declare the area inhabited or used by elephants as conservation reserves.

2) We direct registration of separate case against the Coal India Limited and Oil India Limited for further enquiry in the matter relating to adverse effect caused to the environment consequent to the act of commission and omission in respect of oil extraction and coal extraction in their respective mines.

3) Declare Bogapani Corridor which connects upper Dehing via Bogapani tea estates as forming part of the elephant corridor and issue notification in this regard.

4) Conduct a Survey of the elephant population in each state and consequently declare the area surrounding thereto as eco-sensitive zone.

5) Declare South Bramhaputra elephant ranges know as Dihing-Patkai Elephant reserve established on 17th April, 2003 by project elephant as the elephant reserve/elephant corridor.

6) We hereby restrain the Digboi Town Municipal Corporation from dumping municipal waste and garbage in Dithing-Patkai Elephant Reserve.

7) Respondent No.7 i.e. Oil India Limited to forthwith stop releasing of untreated oil effluent in open sludge pits and seepage areas around oil rigs in the Digboi Oil field which falls within upper Dihing RF (East Block) and the Dihing-Patkai Elephant Reserve.

8) We hereby direct Coal India Limited to prevent discharge of toxic pollutant i.e. yellowish-orange water flowing out of old mines, abandoned by it within Jeypore RF and Dihing-Patkai Elephant Reserve.

9) We direct Digboi Town Committee, Assam not to allow any construction activity in and around the Digboi rserve.

10) We direct the State of Assam to work out a viable solution for handing over of the abandoned Coal mine of the Coal India Limited to the Forest Department for its proper maintenance and to prevent harm to the flora and fauna.

11) We restrain permanent structure including residence in and around Golai Corridors by the Municipalities and Respondent Nos. 5,6,7&8 or private individuals.

12) We direct Central Government to exercise its power under Section 5 of the Environment Protection Act, 1986 and Wildlife Protection Act, 1972 to give legal recognition and status to the elephant corridors at Golai and Bogapani and other areas to ensure free passage of the endangered wildlife animals.

13) Respondent No.1 to mandate before any proposed development within the establishment elephant habitat a prior wildlife clearance from the standing committee of the national board of wildlife is mandatory.

14) The Respondent No.1 shall consult project elephant to specially assess the impact of development as part of EIA process and ensure such assessment under Section 36 (4) of the Bio Diversity Act.

15) We further direct the State Governments to constitute a State Level Committee comprising of Senior Officers headed by the Chief Conservator of Forest to conduct survey of the elephant population in each district in the State and demarcate the area of their habitation.

16) In the first instance the committee shall complete survey within a period of one year and submit the report to the Core Committee.

17) The Core Committee shall be constituted by the Central Government through Ministry of Environment, Forest and Climate Change to be headed by officer not below the rank of Additional or Joint Secretary in the Ministry who shall examine the report received from each State and to recommend declaration of area inhabited by the elephants as elephant reserve or elephant corridors by the Central Government as elephant reserve.

18) The core committee shall recommend to the Central Government further action in the matter relating to protection of elephants, declaration of elephant corridors, elephant reserves and for such other direction as may be necessary to fulfill the recommendation as contained in the Gajah (The Report of the Elephant Task Force)

19) The State level Committee and Core Committee shall submit its report to the Tribunal within a period of one year from now and the Applicant will be entitled to approach this Tribunal for further direction as the circumstances may require.”

5. The further prayer in this Original Application is for a direction to the Respondents to stop felling of trees in the various lands situated on the periphery of Gorumara Wildlife Sanctuary.
6. We are of the view that Respondent No.1, Ministry of Environment, Forest and Climate Change be directed to file an affidavit showing the compliance of the directions given by the National Green Tribunal, Principal Bench, New Delhi in the judgment mentioned hereinabove as well as the matter relating to felling of trees in the forest area of the Bichabhanga on the periphery of Gorumara National Park for construction of an over-bridge.
7. Mr. Bikas Kargupta, learned Counsel informs us that Stage-II Forest Clearance has been granted by the Ministry of Environment, Forest and Climate Change, on 11th December, 2018.
8. We are also of the view that this document should also be brought on record through an affidavit by Mr. Bikas Kargupta, learned Counsel as well as Mr. Gora Chand Roy Choudhury, learned Counsel appearing for the State Respondents, Govt. of West Bengal and Ministry of Environment, Forest and Climate Change.
9. Let such affidavits be filed within three weeks after serving e-copy/ soft copy of the same upon the learned Counsel for the Applicant as well as learned Counsel for other Respondents.

10. We also direct Mr. Rahul Ganguly, learned Counsel to serve e-copy/soft copy of the order passed in Original Application No. 443 of 2018 (Society for Protecting Ophiofauna and Animal Rights (SPOAR) Vs. State of West Bengal & Ors.) and the judgment passed in Original in Original Application No. 19 of 2014 (Dr. Kashmira Kakati Vs. Union of India), upon the learned Counsel for the parties within 24 hours.

11. **List on 12.08.2021.**

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

July 15, 2021
Original Application No. 77THC/2017/EZ
(M.A. No. 130/2017/EZ)
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