

Item No. 03

Court No. 1

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

Original Application No. 361/2022

All India Young Lawyers Association

Applicant

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 24.02.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. S.N. Pandey, Advocate for Applicant

Respondent(s): Mr. Rahul Verma, AAG for the State of Uttarakhand  
Mr. Mukesh Verma, Advocate for UKPCB

**ORDER**

1. Grievance in this application is against illegal functioning of Hotels, Resorts, Pubs, Clubs and Ashrams and other illegal commercial activities in Chilla Range of Rajaji National Park.

2. Vide order dated 08.07.2022, the Tribunal sought a factual and action taken report from a joint Committee of District Magistrate, Haridwar, State PCB, Director, Rajaji Tiger Reserve and nominee of District Legal Services Authority, Haridwar.

3. The matter was last considered on 10.10.2022 in the light of joint Committee report acknowledging illegal operation of 19 resorts. Accordingly, the Tribunal directed that remedial action against violations

be taken within three months including recovery of compensation on 'Polluter Pays' principle and restoration of the environment. The Tribunal observed that no commercial activity be allowed in Tiger reserve even with NOC in view of judgment of Hon'ble Supreme Court in *T.N Godavarman v. Union of India & Ors*.<sup>1</sup> An action taken report was required to be filed.

4. Accordingly, report dated 14.02.2023 has been filed by Director, Rajaji Tiger Reserve and report dated 20.02.2023 has been filed by UK PCB.

5. We have heard learned appearing counsel and perused the record. According to the report of Director, Rajaji Tiger Reserve, action has been taken against illegally operating resorts. Six resorts were outside the boundary of Tiger Reserve namely - Van Tarang, Mahadev Pani Resort, Ashram Mahadev Pani Resort, Forest Resort/Vindhyavasi Cottage, Maai ka Ashram, the Nature Resort Bukandi (Heerakhal) and Suleen Jungle Lodge, Bukandi (Heerakhal).

6. We are of the view that the report does not cover the issue fully and ignores the mandate of law. Constructions are prohibited/regulated not only within the forest but also outside within 1 KM of boundary of Tiger Reserve, which is also covered by eco-sensitive zone. It is thus wrongly assumed that the resorts outside the boundary of the Tiger Reserve are legal even if they are within one km of boundary of the tiger reserve. In this regard, judgement of Hon'ble Supreme Court dated 3.6.2022 in *T.N Godavarman Thirumulpad v. Union of India & Ors*<sup>2</sup> is reproduced for ready reference as under:-

"44. We accordingly direct:-

- (a) ***Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one***

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<sup>1</sup> 1997 (2) SCC 267

<sup>2</sup> Order dated 03.06.2022 in W.P (C) No. 202/1995

***kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9<sup>th</sup> February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.***

- (b) *In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.*
- (c) *The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.*
- (d) *Mining within the national parks and wildlife sanctuaries shall not be permitted.*
- (e) *In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.*
- (f) *The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF&CC and both these bodies shall give their respective*

opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.

- (g) *In the event the CEC, MoEF&CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations.*
- (h) *In respect of sanctuaries or national parks for which the proposal of a State or Union Territory has not been given, the 10 kilometres buffer zone as ESZ, as indicated in the order passed by this Court on 4th December 2006 in the case of **Goa Foundation** (supra) and also contained in the Guidelines of 9th February 2011 shall be implemented. Within that area, the entire set of restrictions concerning an ESZ shall operate till a final decision in that regard is arrived at.*
- (i) *I.A. No. 1412 of 2005 and I.A.No.117831 of 2019 do not relate to the issues involved in I.A. No.1000 of 2003. These applications may be placed before the appropriate Bench to be heard independently.*
- (j) *For the same reason, I.A. No.1992 of 2007 shall also be dealt with independently by the appropriate Bench and no order is being passed concerning this application at this stage.*
- (k) *The application of the State of Rajasthan registered as I.A. No.3880 of 2015 relates to clarification of an order passed in the case of **Goa Foundation** (W.P.(C) No.460 of 2004). Let this application be placed before the Bench taking up the case of **Goa Foundation**.*
- (l) *I.A.No.96949 of 2019 and I.A.No.65571 of 2021 are disposed of with directions that the MoEF&CC as also CEC shall proceed to take a decision in regard to the draft proposal for ESZ made by the State of Maharashtra to the extent of 03.89 kilometres and the MoEF&CC shall take final decision on that basis within a period of three months, if said decision has not already been taken.*
- (m) *Prayers for impleadment of the applicants in I.A. Nos. 984 of 2003, 1026 of 2004, 1123 of 2004, 1197 of 2004 and 1251 of 2004 are allowed. Necessary amendments may be carried out in these regards.*

- (n) *For the reasons already given, however, prayers of the applicants in I.A. Nos.982 of 2003, 1027 of 2004, 1124 of 2004, 1198 of 2004, 1210 of 2004, 1250 of 2004 and 1512 of 2006 are rejected.*
- (o) *The CEC shall quantify the compensation to be recovered from each miner indulging in mining activities within the Jamua Ramgarh sanctuary in violation of any statutory provision or order of this Court. Specific recommendations for compensatory afforestation, reclamation, clearing overburden dumping as also compensation in monetary units for degradation of forest resources shall also be made. A further set of recommendations concerning confiscation of earth moving equipments and other machineries lying within or in the periphery of the said sanctuary shall be made by the CEC. Recommendations shall be made within a period of four months before this Court in the form of an application. This Court shall consider passing appropriate order upon going through such application. The exercise concerning such reparation, including quantifying compensation shall be undertaken upon giving the mining operator, State and MoEF&CC opportunity of hearing.*
- (p) *In the event there is any subsisting order of any High Court or any Court subordinate to such High Court covering any of the issues dealt with by this Court in this order, this order shall prevail over any such order which may be contrary to these directions.*
- (q) *We have already observed that there are certain overlapping issues involved in this writ petition and the cases of **Goa Foundation** (Writ Petition (C) No.460 of 2004) and (Writ Petition (C) No.435 of 2012). We request the Hon'ble the Chief Justice of India to consider having the present writ petition i.e. **In Re: T.N. Godavarman Thirumulpad v. Union of India & Ors.**, W.P.(C) No.460 of 2004 (**Goa Foundation v. Union of India**) as also W.P. (C) No.435 of 2012 (**Goa Foundation v. Union of India & Ors.**) be heard together before the same Bench. The registry may place this order before the Hon'ble the Chief Justice of India."*

7. It is thus not clear how the six resorts have been held to be not violating the norms without considering the ESZ Notification and demarcation. With regard to remaining which have been found to be operating illegally, only show-cause notices are said to have been issued to ten resorts namely; Panambi Resort & Spa, Vande Matram Kunj (divya prem sewa mission), Downtown Resort, G Village Resort, Leaf Shade

Resort, Vantra Resort, Rajaji Retreat Resort, R.F.C Resort, Wild Trail Resort and Jungle Lore Wildlife Resort. It is stated that only 7 out of 10 are encroachers. According to report of State PCB, notices have been issued to six resorts and compensation have been imposed on four resorts, three are *Ashrams* which are not under the category of commercial activity and two resorts are not in operation.

8. In view of above, the reports to the extent of established violations may be given effect to, following due process of law, but to the extent the activities have been held legal, the matter needs to be revisited in the light of Section 2 of the Forest (Conservation) Act, 1980 read with judgements of Hon'ble Supreme Court in *T.N Godavarman Thirumulpad, supra*.

9. For this purpose, a committee of higher-level officers has to be constituted in substitution of the committee which has so far dealt with the matter. The Committee will now comprise of ACS, Environment, PCCF Wildlife, Director, Wildlife Institute of India, Dehradun, Integrated Regional Office, MoEF&CC, Dehradun and Director, Tiger Reserve who will act as a nodal agency for coordination and compliance.

10. Meeting of the Committee may be held within two weeks from today and taking stock of the factual position, further remedial action may be completed within three months. The Committee will be free to undertake visit to the site, interact with the stakeholders and take assistance from any other department/institution/individual/expert. The Committee will be free to seek assistance from District Magistrate and SSP for enforcement. The Committee may also verify if there are any more illegal establishments in the Tiger Reserve in question or in prohibited sensitive area and if necessary, get updated demarcation in the light of Hon'ble Supreme Court judgement.

11. An action taken report of compliance status as on 31.05.2023 may be filed on or before June 30, 2023 by email with the Registrar General, NGT by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. If any further direction is found necessary, he may place the matter before the Bench. The report may also be placed on the website of Department of Environment, Uttarakhand.

Subject to above, the application is disposed of.

A copy of this order be forwarded to ACS, Environment, PCCF Wildlife, Uttarakhand, Director Wildlife Institute of India, Dehradun, Integrated Regional Office, MoEF&CC, Dehradun and Director, Tiger Reserve, Dehradun by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 24, 2023  
Original Application No. 361/2022  
AB