

A ANIMAL AND ENVIRONMENT LEGAL DEFENCE FUND

v.

UNION OF INDIA AND ORS.

MARCH 5, 1997

B [A.M. AHMADI, CJ., MRS. SUJATA V. MANOHAR  
AND K. VENKATASWAMI, JJ.]

C *Wild Life (Protection) Act, 1972/Indian Forest Act, 1878 : Sections 24, 33, 35(1) and (4)/Sections 5 and 26(1)(i)—Pench National Park—Notification No. 5/15/82-10/77 dt. 1.3.1983 u/s 35(1)—Final Notification not issued—Protection of traditional fishing rights of Tribals formerly residing in Pench National Park area—Fishing permits issued by Collector—Challenged on the ground that bio-diversity and ecology will be affected—Held, State to issue expeditiously the final notification declaring the area as a National*  
D *Park—Fishing permits granted to Tribals in lieu of traditional rights justified—Directions given for proper implementation of licence conditions.*

E The petitioner-an association of lawyers and others concerned with the protection of environment, filed the present writ petition challenging the order dt. 30.5.1996 of Govt. of Madhya Pradesh whereby 305 fishing permits were issued to tribals in Pench National Park area. The Pench National Park area falling in the State of Madhya Pradesh and Maharashtra was originally declared as a Reserved Forest under the Indian Forest Act, 1878. By Notification No. 5/15/82-10/77 dt. 1.3.1983 the Government of Madhya Pradesh under sec. 35(1) of the Wild Life (Protection) Act, 1972 declared the area as a National Park. The Collectors of Seoni and Chhindwara districts issued proclamations under sections 19 and 21 inviting claims within 60 days in respect of the areas notified. As no claim was received, a final order under section 24 of the Act was issued by both the Collectors. However, no final notification under sec. 35(4) was issued by the Govt. of M.P. declaring the said area as a National Park. The  
F Collector on consideration of the traditional rights of the tribals, issued  
G fishing permits in the Totladoh reservoir with certain conditions.

H The contention of the petitioner was that if fishing was permitted in the heart of the National Park, the bio diversity and ecology of the area will be seriously affected.

The contention of the respondents was that the tribals had a traditional right of fishing for their livelihood and permits were granted in lieu of this traditional rights. It was further contended that if permits were not given a serious problem of feeding and supporting their families will arise.

Partly allowing the petition, this Court

**HELD :** 1.1. The permits granted are in lieu of traditional fishing rights of the tribals. And these permits are issued in settlement of these rights prior to the final notification under section 35(4) notifying the area as a National Park. Hence this do not fall under section 33. [734-H]

1.2. While every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. It would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. [735-B]

2. The petitioner is undoubtedly justified in expressing its apprehensions and in pointing out the dangers of permitting 305 licensees to fish in the Totladoh reservoir. The fishing permits, however, have been granted to the tribals in lieu of their traditional fishing rights. The Collector of Chhindwara in his report has pointed out that fishing was the main source of livelihood of tribals residing in the National Park area. No agricultural land has been made available to them, no work has been made available to them and they do not have any means of livelihood except catching fish which is their traditional occupation. If they are not given fishing permission a serious problem of feeding and supporting their families will arise. The Collector, therefore, recommended recognition of traditional rights of 332 families of 4 villages. In view of these reports the State Government has stated on affidavit that it was satisfied that the traditional rights of fishermen had not been settled and instructions were given to the Chief Wildlife Warden for issuing permission for fishing, to 305 local fishermen. [734-B-F]

3. The State of Madhya Pradesh shall expeditiously issue the final notification under section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the areas of the Pench National Park falling within the State of

A Madhya Pradesh. Since all claims in respect of the National Park area in the State Madhya Pradesh as notified under section 35(1) have been taken care of, it is necessary that a final notification under section 35(4) is issued by the State Govt, as expeditiously as possible. [737-F, D]

B 4. The State of M.P. while granting fishing rights have imposed certain conditions to contain the damage. The petitioners have rightly pointed out the difficulties in maintaining the fishing activity of all these permit-holders. In view of this, certain additional directions are issued for properly implementing the licence conditions. [735-D, H, 736-A]

C *Pradeep Krishen v. Union of India & Ors.*, AIR (1996) SC 2040, referred to.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 785 of 1996.

D (Under Article 32 of the Constitution of India.)

Raj Panjwani and Vijay Panjwani for the Petitioner.

Ms. Niranjana Singh for P. Parmeswaran for the Respondent No. 1.

E S.K. Agnihotri for the Respondent No. 2.

Dr. Rajeev Dhawan, Naresh Mathur, E.C. Vidya Sagar and Ms. Vimla Sinha for the Intervenor.

G.B. Sathe and D.M. Nargolkar for the State of Maharashtra.

F The Judgment of the Court was delivered by

G MRS. SUJATA V. MANOHAR, J. The petitioner is an association of lawyers and other persons who are concerned with protection of the environment. They have filed the present petition in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh (second respondent) granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

H The Pench National Park covers an area falling in the States of

Madhya Pradesh and Maharashtra. The area which falls in the State of Madhya Pradesh covers two districts, Seoni and Chhindwara. The districts of Seoni and Chhindwara were originally parts of the old C.P. and Berar Province. This area was originally declared as a Reserved Forest under the Indian Forest Act of 1878. It continued to remain as a Reserved Forest under the Indian Forest Act of 1927. Under Section 5 of the Indian Forest Act of 1927, once a notification is issued declaring any land as a reserved forest no right shall be acquired in or over such land, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. Under Section 26(1)(i) of the Indian Forest Act, 1927, any person who in contravention of any rules made in this behalf by the state Government hunts, shoots, fishes, poisons water or sets traps or snares, shall be punishable in the manner provided in that section. According to the petitioner, in view of these provisions, the ancestors of the present tribals could not have acquired any fishing right in the Pench River. The present permits which are issued in lieu of this traditional right, therefore, are unwarranted and must be cancelled or set aside.

On the promulgation of the Constitution, the right to safeguard forests and wild life has received constitutional sanction. Under Article 48A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Under Article 51A(g), it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life. In furtherance of these objectives, the Wild Life (Protection) Act, 1972 was promulgated. It provides, *inter alia*, for declaration of sanctuaries, national parks, game reserves and closed areas. Under Section 35 of the Wild Life (Protection) Act, 1972, whenever it appears to the State Government that an area, whether within a sanctuary or not, is by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park for the purpose of protecting, propagating or developing wild life therein or its environment, it may, by notification declare its intention to constitute such area as a National Park. Under sub-section (3) of Section 35 where any area is intended to be declared as a National Park, the provisions of Sections 19 to 26 shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of rights, in relation to any land in such area as they apply to the said matters in relation to any land in a sanctuary.

- A Under sub-section (4), when the period for preferring claims has elapsed, and all claims, if any, have been disposed of by the State Government and all rights in respect of lands proposed to be included in the National Park have become vested in the State Government, the State Government shall publish a notification specifying the limits of the area which shall be comprised within the National Park and declare that the said area shall be a National Park on and from such date as may be specified in the notification.

- C Accordingly, by Notification No. 5/15/82-10/77 dated 1.3.1983 the Government of Madhya Pradesh Forest Department declared its intention under Section 35(1) of the Wild Life (Protection) Act, 1972, to constitute the areas specified therein as a National Park. The area of Pench National Park so notified was within the two districts of Seoni and Chhindwara. On such declaration, the Collector of the concerned district is required under Section 19 of the Wild Life (Protection) Act, 1972 to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.

- E Under Section 21, the Collector is required to publish in every town and village or in the neighbourhood of the area concerned, a proclamation specifying the situation and the limits of the National Park and requiring any person, claiming any right mentioned in Section 19, to prefer before the Collector, within two months a written claim in the prescribed form specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.

- F Under Section 22 the Collector is required to hold an enquiry in the manner specified there. Accordingly on 10.12. 1985, the Collector, Seoni issued a proclamation under Sections 19 and 21 inviting claims within 60 days in respect of the areas notified under Section 35(1) by the notification of 1.3.1983. Apparently no one lodged any claim. The Collector issued a final order under Section 24 of the Wild Life (Protection) Act, on 28.8.1986.

- H The Collector, Chhindwara similarly issued a proclamation under Sections 19 and 21 inviting claims. As no claims were received, a final order under Section 24 was issued by the Collector, Chhindwara on 27.12.1986. However, no notification under Section 35(4) has yet been issued by the

Government of Madhya Pradesh declaring the said area as a National Park. A

As per the counter-affidavit filed on behalf of the second respondent it has been stated that although the necessary proclamations were issued earlier nobody came forward to claim their rights on account of illiteracy and unawareness. However, recently three applications regarding claims had been received pertaining to the traditional rights of villagers residing in 8 villages within the notified area which have now been relocated outside the National Park area. These villagers are tribals. The villagers claim that they had a traditional right of fishing for their livelihood in the Pench river. They have claimed that their traditional right of fishing should be preserved as this is their only source of livelihood. Most of these tribals have been displaced from their original villages and have been resettled in villages outside the National Park area. Under an order dated 30.5.1996 these tribals have now been given permits to fish in the Totladoh reservoir which came into existence in 1986-87 on construction of a dam across the Pench river as a part of the Pench Hydro Electric Project. The reservoir is in the centre of the National Park area which partly falls in Maharashtra and partly in Madhya Pradesh. Apparently, fishing activity has been started in this reservoir by the Fisheries Development Corporation of the State of Madhya Pradesh despite protests from the forest department. B C D

The petitioner as well as the State of Maharashtra have pointed out that if fishing is permitted in the heart of the National Park and as many as 305 fishing permits are issued, the bio-diversity and ecology of the area will be seriously affected. Fishing activity is a potential source of danger to the National Park because it may also lead to illegal felling of trees or poaching. It will be humanly impossible to monitor 305 licensees, their ingress and egress and to ensure that these licensees do not indulge in poaching and other ecologically harmful activities. It is also pointed out that in the Totladoh reservoir there are other wild life varieties such as crocodiles and turtles. There are also a wide range of local fishes. All these may face extinction. The water birds as well as migratory birds that use dead or dying trees and small islands in the reservoir as their roosting and nesting sites will also be disturbed. The fishermen uproot such dead and dying trees to clear the path for movement of their boats. Their activity along the peripheral shallow areas also prevents vegetation along the coast line. The fishermen may light fires for cooking and other purposes or may throw garbage and polythene bags which may also prove damaging to the. E F G H

- A ecology of the area. There is also a danger of large scale poaching of wild animals. The National Park is also a tiger reserve and all these other activities have a direct bearing on the protection of wild life in the National Park area.
- B The petitioner is undoubtedly justified in expressing his apprehensions and in pointing out the dangers of permitting 305 licensees to fish in the Totladoh reservoir. The fishing permits, however, have been granted to the tribals in lieu of their traditional fishing rights. Although the petitioner relies upon the provisions of the Indian Forests Act in support of the contention that the tribals cannot have any rights in a Reserved Forest
- C which has subsequently become a National Park, the Collector of Chhindwara, in his report has pointed out that in fact there were four villages of tribals in the Chhindwara District falling within the Reserved Forest-cum-National Park area where these tribals resided and fishing was their main source of livelihood. Thus the collector of Chhindwara in his
- D letter of 7th of June, 1996 addressed to the Secretary, Government of Madhya Pradesh, Forest Department, in connection with the issuing of a final notification for the establishment of Pench National Park has stated that displaced persons from 4 villages namely, Palaspani, Umarighat, Chhindewani and Chhedia have traditional fishing rights in Pench river. After displacement these persons have not been rehabilitated systematically.
- E No agricultural land has been made available to them, no work has been made available to them and they do not have any means of livelihood except catching fish which is their traditional occupation. If they are not given fishing permission a serious problem of feeding and supporting their families will arise. He has, therefore, recommended recognition of traditional rights of 332 families of 4 villages. In view of these reports the State
- F Government has stated on affidavit that it was satisfied that the traditional rights of fishermen had not been settled and instructions were given to the Chief Wildlife Warden for issuing permission for fishing to 305 local fishermen whose names are set out in the annexure to the affidavit of respondent No. 2 Under Section 33(e) of the Wild Life (Protection) Act
- G as it stood prior to its amendment in 1991, the Chief Wildlife Warden had the power to "regulate, control or prohibit, any fishing". This provision is deleted by the amendment made in Section 33 in 1991. The permits granted in the present case, however, are in lieu of traditional fishing rights of the tribals. And these permits are issued in settlement of these rights prior to
- H the final notification under Section 35(4) notifying the area as a National

Park. Hence these do not fall under Section 33.

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Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are accessible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the damage by imposing conditions on these fishing permits. the permissions which have been given are subject to the following conditions :-

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- (1) The identified families will be given photo identity cards only on the basis of which fishing and transport will be permitted;
- (2) During the rainy season (months: July to October) fishing will be totally banned;
- (3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;
- (4) The photo identity card holders will not be allowed to enter the National Park or the Islands in the reservoir nor will they be allowed to make night halts;
- (5) Transport of fish will be allowed only on Totladoh--Thuepani Road from Totladoh reservoir.

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Despite these conditions the petitioner as well as the State of Maharashtra have opposed these fishing permits being granted. They have rightly pointed out the difficulties in monitoring the fishing activity of all these permit holders.

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A We, therefore, find it necessary to clear some doubts and give some additional directions for properly implementing the licence conditions. We direct that :

B (1) Only the persons named in Annexure R-XVI to the affidavit of respondent No. 2 shall be given individual permits for fishing in Totladoh reservoir. Each permit holder will have a photo identify card with his photograph on it. This will be a personal right given to the identity card holder and the permit granted to him shall not be transferable. The permit will also bear the photograph of the permit holder.

C (2) The permit holder will be entitled to enter the National Park area only at Thuepani and shall be entitled to travel through the National Park only on the Highway joining Thuepani to Totladoh. He will not have any right to enter or travel in the National Park area except along the said highway in order to have access to the Totladoh reservoir.

D (3) The wildlife Warden and/or any other authority nominated by the Madhya Pradesh Government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.

E (4) It shall be made clear that the permit holders shall not be entitled to have any access to the islands in the reservoir.

F (5) The State of Madhya Pradesh shall maintain check posts along the route of these fishermen to ensure that the fishermen do not transgress into any other part of the National Park.

G (6) A daily record of the entry and exit of each permit holder and the quantity of fish carried by him out of the National Park shall be maintained.

G (7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water.

H (8) The Madhya Pradesh State Government shall sanction an adequate number of personnel as also vehicles and boats for the

purpose of monitoring the activities of these 305 permit holders. A monitoring squad shall be posted not merely at the entrance to the National Forest area but also along the route or in other areas of the National Forest as may be required to ensure that there is no poaching or other undesirable activity by the permit holders.

The intervenor organisation which has intervened in this petition, namely, Jan Van Andolan Samiti, Totladoh shall explain to the concerned fishermen, the conditions, subject to which they are allowed to fish in the Totladoh reservoir and shall impress upon these fishermen their obligation to carry on the fishing activity in a manner which does not damage the ecology of the National Park or disturb its environment.

Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. In the case of *Pradeep Krishen v. Union of India & Ors.*, AIR (1996) SC 2040, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wild life in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Article 51A(g). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

The petition is disposed of with these directions.

S.V.K.I.

Petition disposed of.