

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

Original Application No. 347/2016
(I.A. No. 471/2019, M.A. No. 15/2020,
M.A. No. 22/2020& M.A. No. 23/2020)

Chandra Bhal Singh

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 18.03.2020

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Saurabh Sharma, Advocate

For Respondent(s):

Mr. Sashi Juneja, Advocate for State of J&K
Ms. Aastha Mehta, Advocate for State of
Gujarat
Mr. Mukul Singh, Advocate for MoEF&CC
and NBA
Ms. Amrita Sharma, Advocate for State of
Karnatka

ORDER

1. This order is being passed in continuation of order dated 09.08.2019. The issue for consideration is the remedial action for non-compliance of provisions of the Biological Diversity Act, 2002 (the Act) and Biological Diversity Rules, 2004 (the Rules) in as much as Biodiversity Management Committees (BMCs) have not been constituted as per Section 41 of the Act and People's Bio Diversity Registers (PBRs) have not been maintained, as required under Rule 22(6).

2. The Act was enacted to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits and for matters connected therewith or incidental thereto with a view to give effect to the United Nations Convention on Biological Diversity (CBD) which came into force on 29.12.1993. The Act seeks to regulate access to biological resources and fair and equitable sharing of benefits arising out of utilization of biological resources by constituting National Biodiversity Authority (NBA) to advise the Central Government and the State Governments on steps towards conservation of biodiversity, sustainable use of its components, equitable sharing of benefits and allied issues. The Act also contains provision for establishment of State Biodiversity Boards to advise the State Government on the subject. The Central Government has to develop national strategies, plans and programmes for conservation and promotion and sustainable use of biodiversity. At local level, every local body has to constitute BMCs. The Rules based on CBD provide that the BMC is to prepare PBRs containing comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use and Traditional Knowledge (TK) associated with them.

3. This Tribunal issued notices to all the States and Union Territories, Boards and Authorities. The matter has been considered on several dates in the last two years. It is not necessary to refer to all the proceedings. Some State Boards have filed their respective affidavits mentioning the steps taken for enforcement of the Act and the Rules.

4. Vide order dated 12.04.2019, noticing huge gap in constitution of BMCs and preparation of PBRs, this Tribunal directed the said steps to be completed within three months and a report filed by MoEF&CC. The States which remained non-compliant were asked to furnish their explanation.

5. The matter was thereafter considered on 09.08.2019 in the light of the report of MoEF&CC dated 02.08.2019, the Tribunal observed:-

“ 5. A report dated 02.08.2019 has been filed by the MoEF&CC to the effect that the Principal Secretaries of Panchayat Raj and Rural Development Departments were asked to expedite the setting up of the BMCs and three regional meetings were held with all the States and the State Biodiversity Boards. The statistics show that as against the need to constitute 317519 BMCs, 155838 BMCs have been constituted and 6868 PBRs have been documented, while 1692 PBRs are still in progress. The BMCs constituted are about 50%. The number of PBRs appears to be less than the PBRs reported earlier.

6. Having regard to the laudable objective to meet the necessity of conservation of biological diversity, delay of more than 16 years in complying with the mandate of law is a matter of serious concern.

7. We regretfully note that the matter on PBR progress noted is 'zero' in the States of Arunachal Pradesh, Bihar, Chhattisgarh, Gujarat, Jammu & Kashmir, Karnataka Madhya Pradesh, Manipur, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal. On the subject of BMC, there is zero progress in Bihar and Jammu & Kashmir.

8. This inadequate progress is in spite of repeated directions of this Tribunal. We asked all the learned counsel appearing in the matter to suggest a reasonable mechanism for ensuring compliance of law with a penal consequence for any further defaults.

9. India is one of the recognized mega-diverse countries of the world, harbouring nearly 7-8% of the recorded species of the world, and representing 4 of the 34 globally identified biodiversity hotspots. India is also a vast repository of traditional knowledge associated with biological resources. So far, over 91,200

species of animals and 45,500 species of plants have been documented in the ten biogeographic regions of the country. 5 The indigenous and local community are a repository of traditional knowledge and their knowledge and practices help in conservation and sustainable development of the biodiversity. In the past, India has already faced biopiracy6. There is, thus, urgent need to document the knowledge of the local community in the form of PBR.

10. As per certain studies⁷, PBRs help the State and the local community to become aware of the valuable resources being harvested in their area which can be utilised for the overall social and economic development of the State. Furthermore, PBRs also help in conservation of the traditional practices and knowledge of the local community. Studies on the issue of access and benefit sharing (ABS)⁸, show that non establishment of BMCs and absence of PBRs deprives the local community of the advantage of the biological resources. PBRs not only document the knowledge, they also help in identification of benefit claimers.

11. In above background, having considered the submissions made by the learned counsels, we direct as follows:

- (i) The Chief Secretaries of all the States, where the defaults are continuing, may consider giving a warning to the Panchayat Secretaries for their past failures, recording the same in their service record and give direction to the officers who are responsible for the job to ensure compliance with 100% constitution of BMCs and PBRs by 31.01.2020 failing which coercive measures may have to be considered against them. The Chief Secretaries may evolve a mechanism for ensuring a monthly meeting to be attended by the Chairman and Member Secretaries of State Biodiversity Boards, Secretaries, Panchayat, Environment and Forest starting from September, 2019.
- (ii) The States will be accountable for the defaults and required to deposit a sum of Rs. 10 lakhs per month each from 01.02.2020 with the CPCB to be utilized for restoration of the environment. The States will be at liberty to recover the said amount from the persons committing the default.
- (iii) The MoEF&CC and National Biodiversity Authority may hold a review meeting every

month from September 2019 till the above task is completed.

(iv) *The MoEF&CC may file a compliance report after collecting the necessary data from all the States on or before 15.02.2020. The Monitoring Committee of the MoEF&CC may oversee the quality of PBRs on sample basis by evolving a suitable mechanism”*

6. Accordingly, a final report has been filed by the National Biodiversity Authority, Chennai on behalf of the MoEF&CC giving status of the formation of Biodiversity Management Committees (BMCs) and preparation of Peoples Biodiversity Registers (PBRs) in the local bodies as on 31.2020. The report inter-alia is as follows:

“ *As can be seen, there has been an increase of 32.5% in BMC constitution and an increase of 32.7% in PBR formation since the Order of the Hon’ble National Green Tribunal dated 09.08.2019:-*

As on 26/07/2016 (when the OA was filed before the Hon’ble Tribunal)		As on 31/07/2020 (Based on which the Tribunal had issued Orders on 09/08/2019)		As on 31/01/2020 (January 2020)	
BMCS formed	PBRs prepared	BMCs formed	PBRs prepared	BMCs formed	PBRs prepared
9700	1,388	1,55,838	6,868	2,43,499	95,252

3. *As already informed in the Interim Report, the National Biodiversity Authority had written to the Chief Secretaries of all States on 08/11/2019 to take necessary action to comply with the Orders of the Hon’ble Tribunal to complete the process of BMC formation and PBR preparation within the stipulated time frame as instructed by the Hon’ble Tribunal.*

7. *PBR is a dynamic document and it has to capture all the biological resources available in the local body in all the four seasons. Besides evaluating the PBRs. The PBR Monitoring Committee constituted by the NBA based on approval by MoEF&CC would be assisting the SBBs to evolve a mechanism to complete the PBRs in an expeditious manner.”*

7. We have also perused the written submissions filed on behalf of the applicant on 16.02.2020 commenting about the compliance as follows:

“4. That a perusal of the Compliance Report dated 13.02.2020 shows that:-

(i) Out of 2,75,220 local bodies, BMCs have been constituted in 2,48,140 local bodies. This implies that present compliance rate is more than 90%. In the following States and Union Territories: Assam, Goa, Himachal Pradesh, Kerala, Maharashtra, Sikkim, Tripura and Lakshadweep the compliance with respect to BMC constitution is 100 %.

(ii) Out of 2,48,140 BMCs, PBRs have been prepared by 95,252 BMCs. This implies that more than 61% of the BMCs are yet to prepare their PBRs. It is important to note that while in the Union Territory of Jammu and Kashmir, State of Bihar and Rajasthan none of the BMCs have prepared their PBRs till date while Uttar Pradesh has achieved 100% target in PBR preparation.”

8. The applicant has also given comments about the quality of the PBRs, status of collection of fees by the BMCs, status of funding of BMCs and status of access and benefit sharing (ABS).

9. We find that since there are still defaults in the constitution of BMCs and preparation of PBRs within the stipulated time fixed by this Tribunal, the defaulting States are liable to pay compensation in terms of order dated 09.08.2019 from 01.02.2020. The Act was enforced in 2002. The Rules came into force in 2004. Any further delay is not conducive to rule of law. The States cannot be allowed to plead incompetence or inability of carrying out mandate of law, undermining public interest. We may note that in absence of PBRs, regulation for conservation of biodiversity is affected. The Tribunal dealt with a matter in O.A. No. 57/2018 vide order dated 30.07.2019 where concretization within the blue line of Krishna river was found hampering biodiversity at the river bed. The

Hon'ble Supreme Court in Civil Appeal No. 6563/2019, *Wai Municipal Council v. Jeevitnadi Living River Foundation & Ors.*, against the above order of NGT, observed, vide order dated 30.08.2019:-

"We are satisfied that concretization has been done within the prohibited zone, which has hampered the ground seepage and biodiversity at the river bed."

10. There are other similar instances including order of this Tribunal dated 20.02.2020 in O.A. No. 385/2019, *Centre for Wildlife v. UOI* for preservation of great Indian Bustard by removing powerlines from the flight path of the said bird. This matter was also dealt with by the Hon'ble Supreme Court vide order dated 18.02.2019 in Civil Appeal No. 838/2019, *M. K. Ranjitsinh & Ors. V. UOI & Ors.* It is not necessary to multiply similar other instances but the fact remains that the issue is great significance and urgency.
11. In view of the above, we do not find any merit in the applications seeking extension of time. The States may ensure compliance and for the delay, compensation has to be paid as already directed. Only exception which may have to be made is for Jammu & Kashmir and Ladakh on account of developments in the wake of Jammu & Kashmir Reorganization Act, 2019 and peculiar situation which prevailed as mentioned in the affidavit dated 11.02.2020 filed on behalf of the UT of J&K. The time in respect of UTs of J&K and Ladakh will stand extended up to 31.10.2020. For delay beyond the said date, compensation at the same rate as applicable to other States/UTs will be payable from 01.11.2020.

In view of the above, I.A. No. 471/2019, M.A. No. 15/2020, M.A. No. 22/2020 & M.A. No. 23/2020 are dismissed.

12. We are informed that the National Biodiversity Authority of India has prepared and placed on its website a model PBR for guidance of the States. The said model may be revised in the light of other available models. By way of example, reference is made a model prepared by the State of Nagaland.¹ Other similar models may also need to be looked into. The model so revised may be placed on the website within one month from today.

13. The MoEF&CC may continue to monitor the situation and file an updated status report as on 31.08.2020 before 30.09.2020. The stand of the applicant with regard to quality of the PBRs and other issues may be looked into and response filed before the next date by email at judicial-ngt@gov.in. CPCB may take steps to recover compensation from the defaulting States in terms of earlier orders.

List for further consideration on 07.10.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

March 18, 2020
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M.A. No. 22/2020& M.A. No. 23/2020)
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¹ <http://gef-satoyama.net/wp/wp-content/uploads/2017/11/Kivikhu-People%E2%80%99s-Biodiversity-Register.pdf>