

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

Original Application No. 06/2014 (CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Dr. S.S. Garbyal
(Expert Member)**

BETWEEN:

Bio Diversity Management Committee,
Through The President,
Shri Dilip Mishra,
Keonti Janpad Panchayat, Gangev
District Rewa (MP)

.....Applicant

Versus

1. Union of India
Through the Secretary,
Ministry of Environment & Forests,
Parya Varan Bhawan CGO Complex,
New Delhi – 110 003
2. State of Madhya Pradesh
Through the Secretary,
Ministry of Forest, Vallabh Bhawan,
Bhopal (MP)
3. State of Madhya Pradesh
Through Principal Chief Conservator of Forest,
Ministry of Forest, Satpura Bhawan,
Bhopal (MP)
4. M.P. State Tourism Corporation
Through its Chairman / Managing Director,
Bhadbhada Road,
Bhopal (MP)
5. M/s Shanti Shukla & Company
147-B, Tagore House,
Allahabad (UP)

6. Collector
District Rewa (MP)
7. Laghu Vanopaj Sangh
Through its Managing Director,
“Indira Nikunk Parisar”
74 Bungalows,
Bhopal 1 (MP)
8. Chief Conservator of Forest
Jayantri Kunj, Near Central Academy School,
Rewa (MP)
9. National Biological Diversity Authority
Through Chairman,
5th Floor, Tichel Bio Park, Taramani,
Chennai – 60013 (Tamil Nadu)
10. MP State Biodiversity Board
Through Member Secretary,
26, Kisan Bhawan, 1st Floor,
Arera Hills, Bhopal (M.P.)

.....Respondents

Counsel for Applicant : Shri Deepesh Joshi, Advocate
Counsel for Respondent No. 1 & 9 : Shri Om S. Shrivastav, Advocate
Counsel for Respondent No. 2, 3, 4, 6, 7 & 8 : Shri Sachin K. Verma, Advocate
Counsel for Respondent No. 10 : Dr. Lad B., Manager

J U D G E M E N T

Dated : May 4th , 2016

- 1) Whether the judgement is allowed to be published on the internet - yes / no
- 2) Whether the Judgement is to be published in the All India NGT Report - yes /no

Dr. S.S. GARBYAL , EXPERT MEMBER

1. Petitioner, the Biodiversity Management Committee (for short ‘BMC’), represented by its President Shri Dillip Mishra, Keoti Janpad Panchayat, Gangev, District Rewa filed an Original Application No. 06/2014 on 21.01.2014 under section 14 read with section 15 of the National Green Tribunal Act, 2010 alleging that the Respondent No. 3 / State Govt. of

MP has caused huge environmental damage in Keoti Village forests by constructing Bio Diversity Parks. It was also alleged that illegal mining was going on in the area and illegal construction was also being carried out in the name of development of tourism by using heavy machines and blastings. It was further alleged that 'Tendu Patta' which is a biological resource was being permitted to be collected through contractors without securing the interest of the petitioner who has right to levy charges by way of collection fees from any person collecting any biological resource for commercial purpose.

They had sought reliefs as below :

- “(1) To restrain the Respondent No. 2, 3, 4, 5, 6, 7 & 8 to immediately stop carrying out any constructional activities in Keoti and direct them to demolish construction already carried out in the said area and to restitute the same to its original.” Act in the State of MP particularly with reference to notification of Biodiversity heritage sites,*
- (2) To restrain the Respondents from carrying out any activities of the nature of commercial use in the said Keoti area comprising of dense forest and water fall,*
- (3) To direct the Respondent No. 2 to declare Keoti Gram as Bio Diversity Heritage Sites,*
- (4) To direct the Respondent No.1 to notify the species/bio diversity resources namely, Samavalli /Somlata (Sarcostemma Acidum), Morshikha & Patthar Chatha as threatened species and prohibit and regulate collection thereof for any purpose and to take any appropriate steps to rehabilitate and preserve those species,*
- (5) To direct the Respondents to share revenue benefit as mandated under the provisions of Bio Diversity Act, 2002, from those who are utilizing the Biodiversities for commercial purposes,*
- (6) To direct the Respondent No. 5 & 7 to pay charges by way of collection fee for assessing or collecting the Biodiversity resources, namely, Tendu Patta from the aforesaid areas falling within the territorial jurisdiction of the Petitioner's Committee.*

- (7) *To restrain all the Respondents from carrying out any commercial, recreational or any other activities in the said Keoti area forthwith.*
- (8) *Pass any other appropriate orders which this Hon'ble Tribunal deems just and proper for compensation against the arraying Respondents.*

2. Subsequently, the Applicant vide Misc. Application No. 145/2014 filed in O.A. No. 06/2014 with the prayer to implead the National Biodiversity Authority and the MP State Biodiversity Board as party Respondent Nos. 9 & 10.
3. The amended application in terms of our orders has been filed. Vide our order dated 25.03.2014, notices were ordered to be issued to the newly added Respondents in pursuance of which on 03.04.2014, the Respondents had put in their appearance.
4. Subsequently, the Respondent No. 4 submitted an affidavit that constructions had been stopped. Respondent No. 2, 3, 6 & 8 also submitted that no mining activity is going on in the area.
5. Since the Applicant had raised issues with regard to applicability of the Biological Diversity Act, 2002 on declaration of certain areas to be Biodiversity Heritage Sites under Section 37, the State Government was directed on 11.08.2014 to submit detailed reply, the State was also directed to indicate in their reply whether the State had formulated any procedure or policy as also any rules framed as contemplated under Section 41 for identification / demarcation of territorial jurisdiction of the BMCs both for identification and declaration of a particular site in a BMC area as a Biodiversity Heritage site and to also post such declaration the manner

in which the BMC can levy the charges by way of collection of fees and how the funds to be utilized for benefit sharing.

6. We felt it necessary that the criteria to be adopted and guidelines for such identification of territorial jurisdiction of the BMC must be framed out before declaration of Biodiversity Heritage Site could be considered.
7. MP State Biodiversity Board which was impleaded as Respondent No. 10 submitted that on the basis of the request of the Appellant BMC Rewa, the process for identification of various biological diversity resources with the objects to declare Keoti as a Biodiversity Heritage site was on.
8. In our order dtd. 22.09.2015 we had observed that there are no guidelines framed for implementation of the Biological Diversity Act and Rules pertaining to the Biodiversity Cess benefit sharing as well as declaration of the area in question as Biodiversity Heritage site. In view of this, we had on 07.12.2015 directed that the criteria to be adopted and the guidelines for such identification of site be submitted for consideration in case the same had been proposed.
9. We had again on 02.03.2016 observed that the criteria for declaration of an area as Biodiversity Heritage Site and guidelines had still not been framed. We had, therefore, requested the presence of the Member Secretary, MP State Biodiversity Board for our assistance. We had on 02.03.2016 directed that there should not be any development activity of any kind including mining activities within Keoti Village until further orders.
10. The Members Secretary, MP State Biodiversity Board submitted on 30.03.2016 that the process of identification and the framing of the

guidelines which would facilitate the working of the Biological Diversity Act, 2002 are under process and no time frame has been laid down as required inputs from various stakeholders were yet to be received. We had, therefore, directed the MP State Biodiversity Board to file an affidavit giving details of the steps taken so far and those which are likely to be taken ahead so that all necessary steps required are in place for making the Act and Rules functional in the State of MP.

11. In compliance of our order the Member Secretary, MP State Biodiversity Board filed affidavit on 12.04.2016. Section 37 of the Biological Diversity Act, 2002 provides for notification of Biological heritage sites –

37. Biodiversity Heritage Sites -

- “(1) Without prejudice to any other law for the time being in force, the State Government may from time to time in consultation with the local bodies, notify in the Official Gazette, area of Biodiversity importance as Biodiversity heritage sites under this Act.*
- (2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.*
- (3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.”*

12. We have also been apprised that the provisions for establishment and management of Biological Heritage sites are provided under Rule 22 of MP Biological Rules 2004 which reads as below :

Rule 22.

- “(1) The Board shall, in consultation with the local bodies and other key stakeholders, take necessary steps to facilitate setting up of areas of significant biodiversity values as Heritage Site. Following recommendation from the Board and after*

consultation with the Central Government, the State Government shall issue notification to this effect.

- (2) *The Board shall frame guidelines on the selection, management and other aspects of Heritage Sites, ensuring that these provide decision-making role for relevant Biodiversity Management Committees."*

13. Guidelines issued by the National Biodiversity Authority for selection and management of the Biodiversity Heritage sites have also been annexed with the compliance affidavit as annexure R-10/1. It has also been stated that an expert committee under section 37 of the Biodiversity Act, 2002 and Rule 22 of the MP Biodiversity Rules, 2004 has also been constituted to frame the draft guidelines for Biological Diversity sites in MP.
14. We have also been informed that Biodiversity Management Committee (in short 'BMC') in accordance with Rule 23 of the MP Biodiversity Rules, 2004 has also been constituted for Keoti Village. This committee will ensure conservation, sustainable utilization and equitable sharing of benefits from Biodiversity as provided under Rule. It has further been stated that said BMC shall facilitate preparation of people's Biodiversity register which shall contain comprehensive information on availability and knowledge of local biological resources and traditional knowledge associated with them. The Learned Counsel informed that the entire process is likely to take some more time. State is directed to complete the process within six months.
15. We reiterate our earlier directions that no mining of any sort, construction or alteration of habitat in any manner will be allowed in the area. The State shall ensure compliance of this direction strictly.
16. We would like to emphasize the importance of conservation and protection of Biodiversity because of numerous functions that they

have. Biodiversity is the foundation of ecosystem services to which human well being is intimately linked. Large scale human influences on biodiversity have tremendous impacts on human well being. It is, therefore, important to conserve biodiversity for the sake of our own existences. Plants and other biological resources have been used by the traditional communities for varieties of purposes particularly in health care, food and in a number of household utilites. Many of the recently discovered medicines owe their discoveries to the leads taken from the traditional knowledge of the communities. Medicines originating from wild species like penicillin, aspirin, taxol, quinine etc. have saved millions of lives. 40% of all the prescription drugs have originated from plants and animals. No one knows how many more cures await discovery. Large numbers of known edible plants not yet used offer a tremendous resources of possibilities that could greatly add to our food security. Biodiversity is the life support system of our planet. We depend on it for the air we breathe, the food we eat and water we drink. The connection between Biodiversity and the sustainable future is beginning to be understood only now.

17. In view of very high rate of extinction of species due to varieties of human activities we have to intensify efforts to curb the loss of Biodiversity. We do not yet know what we have already lost and what we are losing everyday because of human activities. The State have to, therefore, devise comprehensive strategies to identify Biodiversity rich sites and to protect and conserve such sites.
18. These days many people have been trying to seek information free of cost from the local people on the knowledge about process, practices and biological uses of natural products that were accumulated through

several generations. The information collected and subsequently published are often patented without giving credit for the leads provided by or giving compensation or reward to the communities or traditional practitioners. The findings are often shown as original discoveries. Patenting of products derived by following leads from traditional knowledge without giving proper compensation is exploitative. Biological resources and traditional knowledge need to be protected and benefits from use of traditional knowledge need to be used for sustainable development of the local people and communities. Protection of traditional knowledge does not mean limiting access to it. Use of traditional knowledge needs to be promoted with adequate measures for equitable sharing of benefits arising from the commercial use of biological resources and associated traditional knowledge by establishing proper system of access to biological resources.

19. It is, therefore, necessary that appropriate management policies are developed by putting in place a system where interests of all the stakeholders are adequately and properly addressed. It is, therefore, imperative that baselines data in the form of biodiversity registers about the status of biological resources in the area is prepared by documenting the resources available and traditional knowledge associated with them. It is because of these facts that preparation of Biodiversity registers containing comprehensive information on availability and knowledge of local biological resources, their medicinal or other uses and other traditional knowledge associated with them is of utmost importance. Equally important is the issue to formulate guidelines for devising benefit sharing formula. As provided in the Rule, 20 of Biological Diversity Rules, 2004, these guidelines

must provide for monetary and other benefits such as royalty etc. and formula for benefit sharing has to be determined on a case by case basis.

20. It is in this context that we direct the State to expeditiously formulate guidelines and strategies in consultation with communities and experts to identify and document resources and knowledge associate with them and to protect and conserve such resources not only in Keoti Village but throughout the State and come out with proper method of sharing of benefits and flow of compensation to people and communities.
21. **With above directions, the Original Application No. 06/2014 is disposed of. The Applicant will, however, have liberty to approach the Tribunal, in case any of the directions are not complied with.**

(Mr. Justice Dalip Singh)
Judicial Member

(Dr. S.S. Garbyal)
Expert Member

Bhopal:
May 4th, 2016

NGT