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Item No. 07 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

M.A. No. 27/2023
IN
Original Application No. 748/2022

In re : news item published in the Newspaper The Hindu dated 02.10.2022 titled **"Over 6,000 trees illegally cut for tiger safari project in Corbett Reserve, says FSI report"**

Date of hearing: 17.04.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

ORDER

1. The matter has been taken up *suo motu* by the Tribunal in the light of captioned media report to the effect that 600 trees have been illegally cut in Corbett Tiger Reserve in Kalagarh Tiger Reserve Division in Uttrakhand. It is further stated that the Forest Survey of India (FSI) was asked to assess the status of illegally felled trees.

2. The matter was considered on 21.10.2022 in light of report of DG FSI dated 06.09.2022 titled "Illegal felling of trees for the establishment of Pakhrau Tiger Safari, Uttarakhand" and other documents produced during the hearing by DG FSI and PCCF (HoFF), Uttarakhand showing that there was illegality in cutting of trees. To ascertain further facts and remedial action taken, the Tribunal constituted a three-Member Committee comprising DG, Forest Department, ADG, Wildlife Department and ADG, Project Tiger. It was directed that MoEF&CC may file an action taken report.

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3. Relevant extract from the order are as follows:-

"2. In pursuance of notice dated 11.10.2022 about listing of the matter today, Director General, FSI - Shri Anoop Singh, IFS has entered appearance in person. PCCF, Uttarakhand has also entered appearance by VC with learned counsel - Mr. Abhishek Attrey. We have heard them and proceed to dispose of the matter.

3. Shri Anoop Singh, DG FSI has provided the Tribunal a copy of report dated 06.09.2022 submitted by the FSI titled "Illegal felling of trees for the establishment of Pakhrau Tiger Safari, Uttarakhand." He has also filed a copy of letter dated 19.10.2022 from him to the PCCF (HoFF), Uttarakhand in response to letter of Forest Department, Uttarakhand dated 01.10.2022 and comments of the Forest Department dated 08.10.2022, clarifying the position.

a. We have perused the report. Relevant extracts therefrom are:

"**objective of study**

- ***To assess the status of illegal felling in and around Pakhrau Tiger Safari, estimate the number of trees felled in the illegally cleared areas based on the expertise and technology available at FSI.***
- *To scan the area in and around Pakhrau Tiger Safari for any illegal felling.*
- *To document/ analyze whether any area within Kalagarh Tiger Reserve Division is seen to be exhibiting forest cover change.***"**

"RESULTS AND DISCUSSION

S. No.	***Category***	***Outer Polygon Area (ha)***	***Area excluded due to Tree Canopy (ha)***	***Area excluded due to Raod/Fire line before clearance (ha)***	***Balance area (ha)***
1.	*Permitted by IRO & MoEF&CC and Executed elsewhere*	*8.64*	*0.07*	*1.68*	*6.89*
2.	*Permitted by UKFD**	*3.18*	*0.62*	*0.44*	*2.12*
3.	*Not permitted by UKFD**	*1.98*	*0.57*	*0.00*	*1.41*
4	*Extra Polygon which are not permitted by IRO & MoEF&CC*	*10.20*	*4.39*	*0.02*	*5.79*
Total Area in ha		***24.00***	***5.65***	***2.14***	***16.21***

Part 1: Area cleared The following area was deduced as cleared category wise and its summary is given in the table below:

** Permitted or not needs to be confirmed by UKFD*

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Part 2: Estimated no. of Trees clear-felled

The area of clear felling at different sites has been calculated using the GPS survey done by the GIS team of FSI and the Google Earth imagery. The number of trees observed per hectare from all the inventory plots when multiplied with the area figures of a particular site, gives the number of estimated trees felled at that particular site. By adding the estimated trees at different sites, total estimated number of trees felled are arrived in the study area. The standard error of estimates has comes out to be 10.31 trees, which is within the acceptable limit. The standard error percentage has been calculated as 2.72 %, which is quite low and acceptable. The standard error has been used for calculation of 95% confidence limit for the estimated number of trees felled. The site wise area of clear felling and estimated number of trees felled are given in Annexure. The summary of the results has been given in table below. A Powerpoint presentation having these polygons overlaid on latest and older satellite imageries and photographs of the area has also been prepared.

S. No.	***Category***	***Area cleared (ha)***	***Estimated no. of trees cleared***
1.	*Permitted by IRO & MoEF&CC and Executed elsewhere*	*6.89*	*2561*
2.	*Permitted by UKFD**	*2.12*	*804*
3.	*Not permitted by UKFD**	*1.41*	*534*
4	*Extra Polygon which are not permitted by IRO & MoEF&CC*	*5.79*	*2194*
Total		***16.21***	***6093***

** Permitted or not needs to be confirmed by UKFD*

*The area cleared is estimated as 16.21 ha. The trees estimated on this cleared area are 6093 in no. with lower bound of 5765 and upper bound of 6421 with 95% confidence interval and 2.72% Standard Error.***"**

4. From the above, it is seen that illegality in cutting of trees is clearly acknowledged. Thus, accountability needs to be fixed for such violations and damage to environment restored, following due process of law

5. Accordingly, we constitute a three-Member Committee comprising DG, Forest Department, ADG, Wildlife Department and ADG, Project Tiger to identify the violators and the steps required for restoration of environment. Its report with specific recommendations may be furnished to the Secretary, MoEF&CC within one month and steps for further course of action in the matter be finalised within next one month. Till then the Project may not be allowed to proceed.

6. ***The action taken report be filed by the MoEF&CC on or before 31.1.2023*** *before the Registrar General of this Tribunal by e-mail at 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*

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direction appears to be necessary, the Registrar General, NGT may place the matter before the Bench for further direction."

4. No report has been filed by the MoEF&CC but a copy of the report of the Committee has been filed, apart from copy of letter in response to the said report by the State of Uttarakhand addressed to the MoEF&CC.

5. **The report** finds following illegalities:-

"

a) There has been felling of trees more than the stipulated number of 163 in the approval for the Tiger Safari.

b) Works were started without Stage II approval under Forest Conservation Act 1980.

c) The revised DPR as asked for by CZA was never submitted thereby resulting into execution of works without proper approval of CZA.

d) In one case DFO Kalagarh was allowed to execute works in the area under jurisdiction of DFO, Lansdowne by Chief Conservator of Forest, Garhwal in spite of strong reservations by DFO, Lansdowne. For such propositions neither there is any administrative provision or rule nor there is any precedence in the country thereby hinting at poor administrative capabilities of the officer.

e) There was lack of coordination between the field officers amongst themselves. Also because of no clarity in the division of responsibility between PCCF Wildlife and Chief Wildlife Warden there was lack of proper support from wildlife wing of the department.

f) It is evident that the officers were going overboard in getting the works done in whatever way possible in total violation of rules and regulations.

g) Violations and name of erring officials are summarised as under."

6. Persons responsible have been identified as follows:-

"1. Violation of Forest Conservation Act 1980: *In gross violation of the provisions of Forest Conservation Act 1980, the work in Pakhrau Tiger Safari started after laying of foundation stone in November 2020 by then forest Minister Sh. Harak Singh Rawat without having received any stage II clearance under section 2(ii) of Forest Conservation Act 1980. Various administrative sanctions, financial sanctions and work orders were issued much before the Stage II approvals were issued by*

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State Government. It is surprising to note that without any Stage II approvals in hand Govt of Uttarakhand has released following sanctions on 31st March 2021 for the FY 2020-21 and then again Aug 2021 thereby acknowledging that the work of that much amount has been done and the amount be booked before the close of FY.

(i) No. 942/N-2-2021-12(43)2020 dated 31.03.2021 for Rs 258.57 lacs for Interpretation Center at Pakhrau

(ii) No. 771/X-2-2021-12(06)2020 dated 31.03.2021 for Rs 143.57 lacs for Tiger Enclosure

Violations:

- *Violation of Section 26-1 (f) and (h) of the Indian Forest Act, 1927.*
- *Violation of Section 2 (read with Section 3A & 3B) of the Forest Conservation Act 1980*
- *Violation of the conditions described in the FCA Stage-I Approval.*

Officers Responsible:

(i) <u>At Uttarakhand Govt level:</u> All the officers working in Government including the then Hon'ble Minister who issued financial sanctions before final Stage II clearance was issued.

(ii) <u>At Uttarakhand Forest Department Level:</u> Mr Akhilesh Tiwari, DFO Kalagarh and supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).

2. Construction of buildings at Morghatti FRH Campus, Pakhrau FRH Campus

In the report submitted by NTCA and IRO, Dehradun it is reported that the construction of four units of independent buildings were ongoing within the campus of Morghatti FRH campus along with extension of one existing old building. Similar type of constructions were also observed within the campus of Pakhrau FRH campus with four new independent units constructed. The buildings were constructed as cottages which is generally constructed for tourism. Later the buildings were demolished in Morghatti in Nov. 2021 and Pakhrau in Feb 2022. There was no financial and administrative sanctions for these building constructions. As per the report submitted by the Forest Survey of India 162 trees have been felled in and around Morghatti rest house area and 95 trees have been felled in Pakhro forest rest house campus.

Violations:

- *Section 26-1 (f) and (h) of Indian Forest Act 1927.*
- *Section 2 of the Forest Conservation Act, 1980.*

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- *Section 27 (2), 27(4) and 32 of the Wildlife (Protection) Act, 1972.*

Officers Responsible:

Sri Braj Vihari Sharma (Forest Range Officer/SDO) and Sri Kishan Chandra (DFO), and supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).

3. Construction of buildings at Kuggada

Identical to the four double storey buildings each having four rooms were under construction at Pakhrau Forest House Complex and Morghatti Forest Rest House Campus similar construction was also done in Kugadda Forest Camp. There was no financial and administrative sanctions for these building constructions.

Violations:

- *Section 26-1 (f) and (h) of Indian Forest Act 1927.*
- *Section 2(2) of the Forest Conservation Act, 1980.*
- *Section 27(2), 27(4) and 32 of the Wildlife (Protection) Act, 1972.*
- *Violation of relevant Procurement Rules, 2017 Uttarakhand*

Officers Responsible:

Sri Braj Vihari Sharma (Forest Range Officer/SDO) and Sri Kishan Chandra (DFO), and supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden)

4. Construction of buildings at Saneh

As reported in the report submitted by the IRO, Dehradun, Next to Saneh Forest Rest House an eco-park (0.5 ha) was in existence on forest land. The work was being executed by DFO Kalagarh outside his jurisdiction In more than double the area of the eco park and changed the layout plan for tourism facility at Saneh. Despite objections from DFO Lansdowne and CF ***(Annexure-24)*** *the work permission were granted by Sri Sushant Patnaik, CCF Garhwal. Proposal was to construct four cottages, a dormitory, parking area etc. on the said area. Similarly identical four double storey buildings each having four rooms were under construction at Pakhrau Forest House Complex, Morghatti Forest Rest House Campus and Kugadda Forest Camp, Palean Range, Kalagarh Tiger Reserve.*

Violations:

- *Section 26-1 (f) and (h) of Indian Forest Act 1927.*
- *Section 2(2) of the Forest Conservation Act, 1980.*

Officers Responsible:

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Sri Sushant Patnaik (the then CCF Garhwal) for allowing the execution of work despite objections from DFO and Sri Kishan Chand (the then DFO Kalagarh) who executed the work.

5. Construction of Water body near Pakhrau FRH

A big scale has been undertaken in front of Pakharau FRH to develop a water body. The reports by NTCA and IRO, Dehradun indicated that existing surrounding vegetation and standing trees within the created water body suggested that felling of trees has been undertaken to create this water body. As per the report, the sole purpose of creation of water body was to attract wild animals for tourism and not for management purpose. According to FSI report 322 trees were felled in the area during

creation of water body.

Violations:

- *Section 26-1 (f) and (h) of Indian Forest Act 1927.*
- *Section 2(2) of the Forest Conservation Act, 1980*
- *Section 27(2), 27(4) and 32 of the Wildlife (Protection) Act, 1972.*

Officers Responsible: *Sri Braj Vihari Sharma (Forest Range Officer/ SDO), Sri Kishan Chandra (DFO) and supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).*

6. Construction on Kandi Road

The Kandi Road which connects Ramnagar to Kotdwar passing through southern part of Corbett Tiger Reserve is a forest road which in the past was strengthen using RCC beam and cross beam structures. The uniform width of road is about 3 meters. As reported by the NTCA committee from Kalagarh FRH towards Pakhrau, for a distance of about 1.2 kms the height of Kandi Road is raised up to 5 feet by filling of earth material brought from adjoining forest areas in indiscriminate manner using heavy earth movers. As per reports of NTCA, five numbers of single span bridges/culverts of about five-meter width have also been constructed with the size of retention embankment varied from 11-15 meters. There were no financial and technical sanctions for the work.

Violations:

- *Section 26-1 (f) and (h) of Indian Forest Act 1927.*
- *Section 27(2), 27(4) and 32 of the Wildlife (Protection) Act, 1972.*

Officers Responsible:

Sri Braj Vihari Sharma (Forest Range Officer/SDO) and Sri Kishan Chandra (DFO), and supervisory officers Sri Rahul

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(Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).

7. Pakhrau Tiger Safari

The work in Pakhrau Tiger Safari started after laying of foundation stone in November 2020 by then forest Minister Sh. Harak Singh Rawat without having received any stage II clearance under the Forest Conservation Act 1980 and necessary permissions required from CZA. The work started in the tenure of Mr Akhilesh Tiwari, DFO Kalagarh who was posted for 10 months and has spent an approx. amount of Rs.2.433 Crores in Pakhrau Tiger Safari doing majority of work before Mr. Kishan Chand was posted on 30-04-2021 and carried the work forward.

Violations:

- *Violation of Section 26-1 (f) and (h) of the Indian Forest Act, 1927.*
- *There is a violation of the conditions described in the FCA Stage-I Approval.*

Officers Responsible: *Sri Mathura Singh Mavdi and Sri Braj Vihari Sharma (Forest Range Officer), Sri L.R. Nag and Sri Braj Vihari Sharma (SDO), Sri Akhilesh Tiwari and Sri Kishan Chand (DFO).*

8. Construction of Elephant Wall:

The construction of around 2.8 KM wall was done at random locations without any proper justification and also without proper provisions under TCP for such scale. The payments for this were made from CAMPA funds inspite of the fact that no such activity finds mention in approved APO of CAMPA. Even PCCF & HoFF in his report dated 19.01.2022 has mentioned that the state of forests in and around these elephant walls are indicative of illegal tree removals for contruction of such walls.

Violations:

- *Violation of Section 35 of the CAMPA Act 2018.*
- *Violation of Section 26-1(e)*

Officers Responsible:

Sri Braj Vihari Sharma (Forest Range Officer & I/C SDO), Sri Kishan Chand (DFO) and supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).

9.Construction of Chief Wildlife Warden residence in Dhikala and additional two storey new building between two old tourist huts in Domunda Paschim Block, Gairal:

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Illegal construction in the name of the residence of Chief Wildlife Warden made done at Dhikala which is not only in the core area/ critical tiger habitat of Corbett Tiger reserve. News reports & Photos of the site at different intervals are attached for reference ***(Annexure-25) .*** *The construction was allowed to take place from November 2020 onwards by Mr. Rahul the then Director Corbett in the violation of provisions of Wildlife Protection Amendment Act 2006. A show cause notice was issued against Mr. Rahul* ***(Annexure-26)*** *for Dhikala only and that too was disposed at the level of Additional Chief Secretary, Forests Uttarakhand* ***(Annexure-27)*** *without going into the details/merit of the case. The principal source of funds for the illegal construction was supposedly from the Tiger Conservation Foundation, CTR. Construction of additional two storey new building between two old tourist huts in Domunda Paschim Block, Gairal has also been indicated in the special audit letter dated 08.12.2022 issued by the office of Principal Accountant General (Audit), Uttarakhand. However no action has been taken by Govt of Uttarakhand in this regard.*

Officers Responsible: *Sri Rahul (Conservator of Forests/ Director) under whose direct supervision the hut was constructed.*

11. ***Violation of conditions of approvals under FC Act:***

One of the main conditions of FC approval was that the State Government shall ensure that the infrastructure of the tiger safari is created mainly from bamboos and other natural materials. This was totally ignored. Hence it is a violation of provisions of FC Act 1980

Officers Responsible: *All field officers who executed the work supervisory officers Sri Rahul (Conservator of Forests/ Director) & Sri Jabar Singh Suhag (Chief Wildlife Warden).”*

7. Recommendations in the report are as follows:-

“(F) RECOMMENDATIONS FOR RESTORATION OF ENVIRONMENT:

i) Objective parameters should be established as the guiding principles for any type of management interventions viz habitat management, strengthening of roads, residential accommodations etc needed in the tiger reserves. These guidelines should be based on the basic requirement of management for the core and buffer areas of the tiger reserve separately and should be able to delineate the criteria for site selection, size, purpose objectively as far as possible.

ii) Establishment of any new tourism infrastructure in the tiger reserve should be strictly as per the provisions of the approved Tiger Conservation Plan and National Tiger Conservation Authority (Normative Standards for Tourism activities and Project Tiger) Guidelines, 2012.

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iii) *Remaining construction works in the Tiger Safari should be taken up under the supervision of a committee constituted by the State Government Officers along with eminent Experts strictly as per the layout plan. Due diligence should be taken to avoid further tree felling or loss of flora in the safari area. Any changes in the layout plan of the Tiger Safari, as the State Government deem necessary, may be taken up after approval from the competent authority*

iii) *Chief Wildlife Warden, Uttarakhand should get the sites of elephant walls reviewed and should get those walls removed which may cause hinderance in wildlife movement.*

iv) *Suitable disciplinary and legal action should be taken against erring officials/ individuals so that this case becomes an example for future.*

v) *There is certain overlap in the administrative and legal domain in the working of the tiger reserve and any protected area. So, division of responsibility between PCCF Wildlife and Chief Wildlife Warden becomes very difficult and counterproductive. So, PCCF Wildlife must be ex-officio Chief Wildlife Warden in the state as it is already in most of the states. Suitable guidelines may be issued by GoI in this regard.*

vi) *GoI should issue an advisory that in all ecotourism related infrastructure development activities, bamboo and other eco-friendly material should be used invariably.*

It is worthwhile to mention that Application No. 1558 of 2021 was filed by Gaurav Kumar Bansal, advocate before the CEC against the Large-Scale illegal of trees, construction of buildings, bridges, walls, and water bodies in Corbett Tiger Reserve. That in the said application, CEC has filed a report bearing no. 03 of 2021 dated 24/01/2023 by way of I.A. No. 20650 of 2023 in Writ Petition Civil No. 295 of 2020 in the Hon'ble Supreme Court and the same is pending for adjudication before the Apex Court."

8. The letter of the Principal Secretary, Forest Department, Uttarakhand is that the Committee should have confined to illegalities in cutting of trees and not to gone into any other issue. Liability for illegal felling of trees is of the Senior Officers of the Forest Department. There is no violation of Forest (Conservation) Act, 1980 in construction of Tiger Enclosures and the interpretation centre. Such work is ancillary to development of Forest in terms of Handbook of Forest (Conservation) Act,

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1980 and Forest (Conservation) Rules, 2003 (Guidelines and Clarifications). Such activities do not require approval of Government of India.

9. We have considered the matter. While the Committee report holds that not only cutting of trees was illegal but the process of restoration requires the construction made without approval of Central Government to be removed, the Principal Secretary, Uttarakhand has submitted that constructions do not require approval of the Central Government. Prima facie, it appears to be difficult to accept the stand of the Principal Secretary, Uttarakhand. However, we find that in terms of order dated 21.10.2022, MoEF&CC has to finalize its own perception in the matter and to file a report which has not been done.

10. Accordingly, we direct the Secretary, MoEF&CC to file his action taken report in the matter before the next date. The Secretary, Forest, Uttarakhand may also appear on the next date in person or through Video Conferencing to enable the Tribunal to pass further orders.

List for further consideration on 19.07.2023.

A copy of this order be forwarded to Secretary, MoEF&CC and Secretary, Forest Department, Uttarakhand by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

April 17, 2023
M.A. No. 27/2023 In
Original Application No. 748/2022
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