IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 190 of 2023

Suo Motu PIL in the matter of illegal felling of trees areas of Kaladhungi to Bajpur, U.S. Nagar. ...Petitioner

Vs.

Chief Conservator of Forest Kumaon, Nainital and others ...Respondents

Presents :

Mr. Arvind Vashistha, Senior Advocate, assisted by Mr. Harshpal Sekhon, Amicus Curiae, for the petitioner.

Mr. S.N. Babulkar, Advocate General, assisted by Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State of Uttarakhand.

JUDGEMENT

Hon'ble Sharad Kumar Sharma, J
Hon'ble Pankaj Purohit, J.

Hon'ble Sharad Kumar Sharma, J. (Oral)

One of us, on the basis of the personal cognizance being taken, on account of illegal collection and felling of trees in the notified jungle areas, had taken a *suo motu* cognizance on an issue of a grave concern for the public at large.

2. Upon the cognizance being taken, the matter was registered as a PIL, and ultimately, it was nominated by orders of Acting Chief Justice before this Court to be decided on merits.

3. The prime concern was, that invariably it was seen by this Court, that people even belonging to the urbanized aboriginal areas, adjoining the forest areas, have been found rampantly plundering the forest produce for their personal gains without there being any checks and controls being exercised by the officials of the Forest Department, who are duty bound and were supposed to otherwise discharge their duties in accordance with the provisions of Indian Forest Act of 1927, the Scheduled Tribes and Other Traditional

Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Rules framed thereunder.

4. On the said issue being taken, the concerned Divisional Forest Officers of their respective Zones assigned to them, were called upon, and ultimately, this Court looking to the seriousness of the issue, had appointed an Amicus Curiae by an order 9th November, 2023, to assist the Court, in arriving to a rightful decision with regard to the issue as raised in the present PIL.

5. By an order dated 9th November, 2023, we expected, that the official of the Forest Department would be informing the Court with regard to the exercise ! whether they have taken or not in accordance with Chapter-IV of the Forest Rights Act of 2006. But since no plausible reply was forthcoming, this Court was constrained in taking an action under Section 13 to be read with Section 14 of the Contempt of Courts Act, as well as to be read with Article 215 of the Constitution of India, issuing notices to the Principal Secretary, Forest, by an order dated 14th December, 2023.

6. The respective officials as directed by the earlier order are present before this Court, and their cause is being defended by none other than the learned Advocate General.

7. To sum up the controversy, this Court has observed in the various orders passed earlier during the proceedings of the PIL, that it had been a common experience, that where the people, who are not even legally entitled to gather and collect the fallen woods or to cut the forest trees, have been found to be picking wood or cutting trees in notified forest areas, without their being any valid authority being vested with them in accordance with the prevalent laws. In fact, what was more of concern was the inaction on the part of the Principal Secretary, Forest, and his other subordinate officials, including the DFOs of concerned areas, against them the cognizance was taken.

They too have derelicted in performance of their official duties vested upon them under law, resulting to rampant shrinking of forest areas.

8. The debate came forward from the State's view point, that initially, the State Government had argued, that under the notification of 1966, as it was issued while exercising powers under Section 4 of the Indian Forest Act of 1927, the forest dwellers had certain rights vested with them, to collect the fire wood for their personal needs, but then, the notification of 1966, was not conferring an unfettered right. It had certain checks and controls, which were mandatorily supposed to be exercised on the class of persons, as it has been provided and classified subsequently in the Act of 2006, who could have an access to the forest area for the purposes of collecting the forest woods for their personal needs, within the notified prescribed limit. The personal rights given to the class of persons under Act of 2006, do not vest a right of commercial plundering of woods from the forest areas.

9. What is more concerning for us is, that ever since 1926, till date, where the law had regulated the field, when this matter has been taken up finally, the entire mechanism provided under law regulating the forest of the State, which happens to the basic source of subsistence of the State of Uttarakhand, in fact, the responsible officials have been in a deep slumber till we have taken cognizance on the issue.

10. A defence came forward from the learned Advocate General, and it was vehemently argued by the learned Advocate General, that as if the implications of the provisions of Act of 2006, would be wide enough to include any class of person residing within the territory of the State of Uttarakhand, whether they are forest dwellers or not, they could still collect woods from the notified forest, irrespective of any check and control to be exercised upon their nefarious acts, as per prevalent law, based on which, records reveals

no criterion or parameters have been laid down by the Forest Department, itself which is headed by Principal Secretary, Forest. That speaks volumes about inaction, which itself would be misconduct on their part.

11. In order to answer the argument as extended by the learned Advocate General, while interpreting the implications of the definition of Section 2 (o), it becomes necessary to consider as to what would be the basic objective of the Act called as "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

12. Before any reference is made to the basic legislative intent of the Act, it is important to refer to, in order to answer the argument extended by the learned Advocate General, that the Act of 2006, by its nomenclature itself, is confined to **"restricting and recognizing"** the rights of the so called unclassified Scheduled Tribes and other traditional forest dwellers, who under law could at all be said to have any rights to lift forest woods. Meaning thereby, quite explicitly, that the Act of 2006, was clearly aiming at to regulate the rights of the Scheduled Tribes and other forest traditional dwellers, as defined therein the Act of 2006, and it was not an Act *in rem*, for which, the benefits of which could be extended *in rem* to every person irrespective of the classification provided under the Act itself as to whom the rights could have been protected under the Act of 2006.

13. The forest rights are ancestral rights for the land, created under law, not by precedents or tradition, in which, normally the inhabitant, who normally resides, and which has been for ages had been traditionally recognized in a consolidated State forest area, so that their integral survival in the State, particularly in the forest area is maintained, but simultaneously, it has to be primarily aimed for balancing the ecological system. The application of law, has had to be rationally construed under the changed circumstances, and old age law

has had to be rationally interpreted with the changed circumstances, which necessitates imposition of restricting and recognizing the rights with the frame work of law.

14. The rampant and pace of depletion of forest area, as of now witnessed by us cannot be equated to be read with the notification of 1966, to permit the forest dwellers to collect wood or cut forest trees even without they being identified by the mechanism provided under the Act itself, and to illegally permit to plunder the forest resources according to their whims and fancies and un-regulatedly. It has to be deprecated and controlled too. The law has to meet the need of time and social ecological changes, and what has been experienced is that gradually, the forest areas of the State are shrinking, and on the contrary, it has been advocated without any logical basis based on any credible material relied by the learned Advocate General, that for the purposes of development of the State, there has had to be an equitable economical development too, and that has to be given precedence over the rights of the protection of forest as contemplated under the Indian Forest Act of 1927 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006. The arguments sound to be illogical ecological exploitation of notified forest cannot be permitted to equate the so called artificial need of economic development, which itself is a self created fiction, divergent to the issues.

15. The learned Advocate General, particularly harped upon to magnify the implications of Act of 2006 by drawing the attention of this Court to the definition of the “other traditional forest dwellers” as defined under Section 2 (o) of the Act of 2006.

16. What he intends to interpret from the said provision, which is extracted hereunder, is that the legislature, by the use of word **“other”**, prior to the words “traditional forest dwellers”, would encompass within itself any **“other person”**, who can take the liberty

to collect the forest woods from notified forest areas, which is an issue in concern. But, on the contrary, in answer to it, the learned Amicus Curiae, Mr. Arvind Vashistha, has argued that in consonance with the legal preposition as argued by the learned Advocate General, that the law has to be read as a whole. There cannot be any dispute on that legal perception. Section 2 (o) is extracted hereunder :-

> "(o) "other traditional forest dwellers" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for *bona fide* livelihood needs.
>
> Explanation - For the purposes of this clause, "generation" means a period comprising of twenty-five years."

17. If the provision contained under Section 2 (o) which is extracted hereinabove itself is taken into consideration, there has had to be a harmonious construction, for interpreting the definition, and its legislative need and purpose.

18. In fact, the learned Advocate General has attempted to draw a distinction, about the intent use of the word "other" under the definition under Section 2 (o), but the same has been argued to the contrary by the learned Amicus Curiae, he submitted that, that the use of word "other" has been placed under and within the inverted comma, along with the following words i.e. "traditional forest dwellers", meaning thereby, that the word "other", here, would mean, and would be read, along with the expression "traditional forest dwellers" and not in isolation, in order to give it a holistic meaning, and that has been further clarified by the learned Amicus Curiae, that other traditional forest dwellers, here, on a holistic reading of the provision, would mean a community or a member of identified community, who had traditionally proved to have resided in the area for last three generations, which is the cut off intent of legislature. This was the particular provision, which was not addressed by the

learned Advocate General, as to whether the use of words for “three generations”, as used under the definition clause could be separated in its reading, and dissected to be read from the word “other traditional forest dwellers”, particularly, when it is giving a singular expression; meaning and purpose to achieve in league with the object of the Act of 2006.

19. The definition of the “other traditional forest dwellers”, gives a parameter of satisfaction of pre-qualification under the definition clause itself, that they have had to be the person who has been traditionally residing over three generations in the notified forest areas for least three generations, is a concept required to be established by appreciation of fact and evidence in relation to each such dweller, and that too prior to the cut off provided therein, under the provisions i.e. 13th day of December, 2005. Where is that determination made by the respondents, which is absolutely lacking in their pleadings and arguments.

20. Thus, this Court is in respectful disagreement, with the arguments as extended by the learned Advocate General, attempting to read the definition by splitting its interpretation into two parts, and widening its scope by making it applicable to the other persons too, i.e. public *in rem,* along with the classified traditional forest dwellers, which may not have a rational interpretation for the reason being that, if that gravamen of argument is accepted, it would rather make the purpose of the Act, as provided in its SOR as to be redundant, because there wouldn’t have been any justifiable need for the legislature to provide, the purpose of law to help of the Act of protecting the rights of the “Scheduled Tribes” and “other traditional forest dwellers”, which is a simple denomination and it cannot be splitted in its interpretation and in its ground level applicability.

21. Thus, owing to what has been argued, this Court is of the view, that the definition, as it has been attempted to be interpreted by

the learned Advocate General, as to who would be the actual "other traditional forest dwellers", is not acceptable by this Court. The other traditional forest dwellers, herein, would not even denote those traditional forest dwellers, who have failed to establish by evidence of having residing in the forest area except for the proof of residence for last three generations, which is a condition precedent to be classified as traditional forest dwellers as per the definition provided under Section 2 (o) of the Act of 2006, to avail the rights reserved under the Act of 2006.

22. Secondly, he has harped upon to address the Court, on the definition of "village" as provided under Section 2 (p) of the Act of 2006. What he intends to infer and read the definition of "village" as if it was to be a part and parcel of the definition of other traditional forest dwellers, provided and defined under Section 2 (o) of the Act of 2006.

23. If the dichotomy of the definition of village as given Section 2 (p) is considered, it does not at any stage have its independent legal existence except for the villages, which have been defined under Clause (b) of Section 4 of the Panchayats (Extension to the Scheduled Area) Act, 1996, or any village area which has been thus notified as such by the State laws, to be a revenue village.

24. The reference of the definition of "village" was attempted to magnify the amplitude of the definition of the "other traditional forest dwellers", as provided under Section 2 (o), is an insignificant and irrational argument raised by the learned Advocate General, for the reason being, that had that been the intention of the legislature, the legislature ought to have used the word "village" while defining the definition of the "other traditional forest dwellers" as contemplated under Section 2 (o), which has not been done by the legislature, and hence, Section 2 (o) and the Section 2 (p), they have a divergent implication and intention to be met with and they are not

interrelated or inter dependent to each other, and at least for the purpose of issue, in question, on which, the cognizance has been taken by this Court.

25. What is important is that, if Section 2 (o), as extracted above is read, when it uses the terms :-

i. at least three generations

ii. the cut off provided therein, i.e. prior to the 13th day of December, 2005.

iii. primarily resides in forest areas, excludes residents of any other area.

iv. who are dependants on the forest for their *bona fide* living, that means prior to identifying the person, as to be the other traditional forest dwellers. The aforesaid ingredients are mandatorily required to be satisfied based on credible evidence.

26. There has had to be a prior plausible satisfaction of these parameters by the officials of the Forest Department itself before granting them any right of collecting forest woods, as safeguarded under the Act of 2006, or even under any of the existing law so proclaimed by the respondents allegedly granting the forest dwellers the right to collect wood from the notified forest areas. The reason behind it, is that the determination of class of “Scheduled Tribes” and “other traditional forest dwellers”, cannot be done at the whims and fancies of the officials of the Forest Department or their Guards posted at the different ornamental posts, who owe an official responsibility under their service law, to exercise checks and controls, that illegal picking and collection of forest woods or cutting of forest trees should not be permitted, which they have utterly failed. For that purposes, the Act of 2006 itself, has provided a self contained mechanism under Chapter-IV, as to in what manner the identification of such “other traditional forest dwellers” or the “Scheduled Tribes”, would be made for the purposes of protecting their rights

contemplated under the Act of 2006. It is not only that, Section 6 in itself is a self contained provision, which has its own mechanism for determination, which provides for the constitution of various committees at various levels laying down the parameters for determining, as to who would be entitled for the protection of the right contemplated and protected under the Act of 2006, which admittedly, has never been done, nor shown to be even done by top bracketed elite officials of the Forest Department.

27. But, since there is nothing on record filed by the respondents by way of their response, that any such action or exercise of classification has been taken under Section 6, ever since the promulgation of the Act, notifying the same on 29th December, 2006. It completely shows inaction on part of all the officials of the Forest Department.

28. There was never such committee which was ever constituted as such, which could be said to have been constituted so far as to resort to process to determine as to who would be the actual traditional forest dwellers or a Scheduled Tribe, who could be protected by the rights conferred upon them under the Act of 2006.

29. This controversy has to be looked into from yet another perspective, that as already referred to above, the Act of 2006 itself uses the word **"recognition"**. Recognition, under its literal sense means, an identification of a legally enforceable right, meaning thereby, for giving a person a statutory right under law for availing the benefits protected under an Act of 2006. The recognition, herein, would be the precondition, it would mean to be a recognition to be given to a class of people after the exercise being undertaken under Chapter-IV of the Act, and until and unless, the said exercise is being undertaken, it would be absolutely preposterous on the part of the State to argue, that the alleged concept of definition of "other traditional forest dwellers", as argued could be determined by the

State, even without first exhausting the steps provided under Chapter –IV of the Act of 2006, or identifying them, and it is only after the exhaustion of said process of identification as given under Chapter-IV, by complying with the provisions contained under Section 6, and once all the steps are exhausted, only then stage comes of recognition of a class. Since, the very first chain is missing, the second chain of recognition of right under Act of 2006, would not be there.

30. Under the Act by GSR No. IE dated 1st January, 2008, the Ministry of Tribal Affairs, Government of India, have framed the Rules called as ”Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules 2007”. These Rules too have to be harmoniously construed and be applied being subordinate legislation because, they are augmenting the process of implementation of the provisions of the Act, and all the processes contemplated therein, under Chapter IV, and particularly, as addressed upon by the learned Amicus Curiae, that these processes contemplated under the Statute were for the purposes of achieving the object of Chapter-IV of the Act, it could have been only possible when, there is a process undertaken as provided under Rules 9 and 10 is resorted to and exhausted by the State by constitution of the Monitoring Committee, who would be functioning body in accordance with the guidelines framed under Rule 10, which has not been shown by any material placed on record to be complied by the respondents at any stage.

31. We are agonized in observing that the act of inaction, at the hand of respondents, that none of the procedure contemplated under Rules 9 and 10 of constitution of the Monitoring Committee and such other various Committees for the purposes of achieving the object of identification of the “other traditional forest dwellers “ and “Scheduled Tribes” had yet been done by the State and its agencies or instrumentalities, who have been conferred with the responsibility under Chapter-IV of the Act of 2006, and their determination as

contemplated under Rule 11 of the Rules framed under the Act. No permission could be granted to extract any forest produce by anyone whatsoever.

32. This in itself speaks volumes about the inaction on the part of the Officers of the Forest Department right from its pinnacle to the ground level officers, for not paying any heed to the intent of the Rules and the Act, to meet the laudable object, it intended to achieve to protect the forest from its generalized plundering by any person according to their own need and without there being any check and control, as if forest being an unsheltered widow. This aspect itself is revealed when the statements which were recorded by the Principal Secretary, Forest, who is present in person, that it is only after when the cognizance was taken by this Court, that the State Government had issued an SOP on 26th December, 2023, which in fact, is a first attempt made by the Forest Department for laying down the guidelines for identification of the groups concerned under Section 2 (o), which apparently shows that lull prevailed prior to it.

33. First of all, perhaps this is for the first time the attempt has been made, and secondly, this *red tapism* of issuing of SOP on 26th December, 2023, was attempted to just to cloud the issue, was not at all called for when the field itself is covered by the Act, and Rules framed thereunder, and when it specifically provides an inbuilt mechanism for identification of the “Scheduled Tribes”, and the “other traditional forest dwellers”, for whom the rights could at all have been recognized. We would not hesitate to observe, that an absolute slumber prevailed with the respondents for last more than the three decades at least, when the State has not taken any action to resort to any of processes provided for the determination or verification as contemplated under Chapter-IV to be read with Rule 11 of the Rules of 2006.

34. This Court cannot ignore this vital fact, that the issue involved is of a wide public implication. The inaction on part of State officials cannot be safeguarded or ignored by this Court, on the basis as argued, that this Court should extend sympathy while exercising its equitable jurisdiction. The sympathy is not nor could ever be taken as a substitute to a process of enforcement of law. The State has constituted an independent Department headed by the Principal Secretary, Forest, and the presumption would be, that he since being in the helm of affairs, he would be deemed to be conscious of law and the illegal activities, which had been rampantly going on in the Forest areas, and he will have to shoulder and carry the burden about the issues as already observed above, with regard to the illegal collection of woods from forest areas, and not even that, even cutting of the green trees also, because some of the photographs which they have annexed by the respondents in their defence, it was not the head load which was permitted, rather the persons were found carrying woods from notified forest areas after cutting the green trees, which were having a plain sharp cuts, and not the blunt edge caused by natural felling of branches, when they were found to be carried by e-rikshaws, motor cycles, cycles and other mode of transports. It cannot be ruled out, that these activities which were consistently carried in nature discussed above, could have at all been possible without the connivance of the Guards posted at the various posts by the Department, headed by the Principal Secretary of the Forest. This Court has personally seen them on a surprise visit. The Forest post guards were found not properly uniformed, rather were found sleeping. On a call being made by one of us to the Ranger, no heed was paid by him too. This itself speaks about connivance in league with officers, and their aptitude of working.

35. The dereliction in performance of the assigned official duties in itself is a professional misconduct, and at least, the Senior Officers of the department cannot say, and have an excuse, that they were not aware of law, because ignorentia of law is non excusat. The presumption under law would be, that when an authority is heading

the Department, the knowledge of law, and its regulatory measures will be presumed to be there in knowledge with the head of the Department, i.e. Principal Secretary, Forest, and other subordinate senior officials, that includes the DFOs of the different areas, and Range Officers, particularly, the areas in question, that they were conscious of their responsibilities, but still they have knowingly persisted to continue the forest to be plundered by persons not eligible and that too for decades together.

36. Though this Court should have issued positive directions for taking of a disciplinary action by the State against the Principal Secretary, Forest, and by the Principal Secretary, Forest himself, as against the other subordinate Forest Officials, but this Court, being conscious of its jurisdiction, which it is exercising in the PIL, is not passing any positive direction, but rather directing the State to take an action against the erring officials, who are here before us by proceedings in accordance with the provisions of Government Servants (Discipline and Appeal) Rules, 2003.

37. Owing to the above, this PIL is laid to rest, with the direction to the State Government, and the Principal Secretary, Forest, to take an appropriate action as recommended above in accordance with the Rules of 2003.

38. Subject to the aforesaid, the PIL stands disposed of.

39. While issuing the above direction, and as lastly pointed by the learned Amicus Curiae, that the State may be directed to take an action in accordance with Chapter – IV to be read with Rules 9 and 11 of undertaking the exercise of identifying the “other traditional forest dwellers”, and the “Scheduled Tribes” whose rights are to be recognized under the Act of 2006. The entire exercise is to be undertaken by the State within a period of two months from today. Lest failing which, they would be liable to be dealt with in accordance with Article 215 of the Constitution of India. During this period, there would be a complete restriction and ban on lifting forest wood from forest areas by anyone.

40. After conclusion of the judgment, the learned Advocate General, has requested that the Court should observe, that the exercise under Chapter–IV would be made by the State within the prescribed time without being prejudiced by the findings, which have been recorded by this Court in the above judgment. The said request is accepted.

(Pankaj Purohit, J.) **(Sharad Kumar Sharma J.)**

28.12.2023 28.12.2023

Shiv