

(2018) 12 RAJ CK 0278

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 8831 Of 2018

Ajay Shankar Dubey

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Wildlife Protection Act, 1972 — Section 2(16), 11, 11(a), 11(1)(a), 12, 12(bb), 38, 38(O), 38L, 38O(f), 38O(1)(f), 38O(1)(k), 38O(2)
Constitution Of India, 1950 — Article 21, 48A, 252

Citation : (2018) 12 RAJ CK 0278

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : R.N. Mathur, Anurag Kalawatiya, Shovit Jhajharia, N.M. Lodha, Sheetanshu Sharma, R.D. Rastogi, C.S. Sinha, Mahendra Singh Kachchawa

Final Decision : Dismissed

Judgement

This writ petition by way of Public Interest Litigation has been filed by Ajay Shankar Dubey seeking a direction to the respondents to shift/relocate the tiger T-91 back to Ramgarh Vishdhari Wildlife Sanctuary (for short-`RVWS') from Mukundra Hills Tiger Reserve (for short-`the MHTR') with the further prayer that the translocation of tiger T-91 or any other tiger in MHTR should be allowed to take place only upon final approval granted after complying with action points recommended by the National Tiger Conservation Authority (for short-`the NTCA'). Prayer has also been made to set aside the order/direction of the State Government for translocation of the tiger T-91 to MHTR.

Petitioner Ajay Shankar Dubey claims to have been a wildlife/environment activist, especially for tiger conservation programs, for the last more than twenty years. It is contended that he is the Secretary and the founder of `Prayatna', a Bhopalbased NGO, which primarily works to protect and advocate the cause of environment and good governance. He is the elected member of Board of Management of the Transparency International India. He is relentlessly

committed for protection of national animal tiger. The Tiger Reserves all over India have better monitoring as a result of the petition filed by him before the Supreme Court in which; i) core and buffer areas were defined in 27 Tigers Reserves of India, ii) 5 States were fined for not notifying buffer and core areas in their tiger reserves, iii) national guidelines for the management of tiger reserves were issued. These orders are reported in (2012) 13 SCC pages 779, 781 and 782, all titled *Ajay Dubey vs. National Tiger Conservation Authority & Ors.*

The essential facts that may be necessary to fully comprehend the controversy involved in this matter are stated thus. The MHTR was declared as a Tiger Reserve by the State Government on 9.4.2013. Pursuant to the recommendation of the State Wildlife Board dated 8.1.2015, the State Government sought permission from the NTCA for reintroduction of one tiger and one tigress from Madhya Pradesh / Maharashtra, in lieu of which one tiger and one tigress from Ranthambore Tiger Reserve (for short- 'RTR') were offered to be rehabilitated to Madhya Pradesh / Maharashtra. The NTCA considered the application/proposal of the State Government in the meeting held on 27.4.2015. It however deferred the decision suggesting certain actionable points. Thereafter, the NTCA constituted a three-member Committee consisting of representatives of Wildlife Institute of India, Dehradun (for short- 'WII, Dehradun') and NTCA and the Field Director of Sariska Tiger Reserve, Rajasthan on 16.07.2015, for assessing the MHTR for tiger relocation vis-a-vis prey habitat. The Committee gave its report in August, 2016 with certain actionable points/recommendations, which were to be complied with by the State Government. The Technical Committee of the NTCA on 7.10.2016, upon consideration of all the aspects, decided to give "in principle approval" for reintroduction of tigers. The NTCA by letter dated 7.11.2016 conveyed to the Chief Wildlife Warden, Government of Rajasthan, Jaipur, "in principle" acceptance of the recommendations of the Technical Committee by the competent authority. The NTCA thereafter directed that the tiger reintroduction plan should be advanced to December, 2018 as per the Standard Operating Procedure of the NTCA for active management towards rehabilitation of tigers from source areas at the landscape level (for short- 'the SOP'). The Chief Wildlife Warden on 2.8.2017 wrote a letter to the Member-Secretary, the NTCA in response to the aforesaid letter dated 7.11.2016, mentioning that priority has been given to increase prey base in the area; and Sambhars and Chinkaras are being transferred there from various areas in the State. A request was again made to approve the re-introduction plan. The Technical Committee of the NTCA considered the proposal for approval. It was thereupon that the NTCA on 9.10.2017 granted "in principle approval" to the Chief Wildlife Warden for translocation of 2 female tigers and 1 male tiger in the northern part of the MHTR in the first phase in compliance with the SOP of the NTCA, with the active involvement of WII, Dehradun in the translocation and monitoring thereafter. It was required that the proposal be sent again to NTCA for final approval. The Field Director was required to intensify voluntary relocation of the villagers from the

core area of the tiger reserve and monitor the ungulate population of the prey in remaining area of Tiger Reserve continuously for two years. The prey base assessment shall be carried out by WII, Dehradun. The next phase of translocation should be initiated only after the assessment of prey animals. The Member-Secretary of the NTCA by letter dated 1.3.2018 conveyed approval of the Ministry of Environment, Forest and Climate Change, Government of India, for tranquilization and translocation of one male and two female tigers.

The Assistant Inspector General, NTCA, again wrote letter dated 20.3.2018 to the Chief Wildlife Warden inquiring about the progress in respect of recommendations/actionable points for translocation proposal. Report was called regarding certain articles published in the media in respect of translocation of tigers, raising serious concern as to why the State authorities were going ahead with the shifting of the tiger without approval of the NTCA. When the NTCA heard the news of tiger translocation activities taking place at the MHTR without its final approval, it sent an expert, i.e., Shri Nishant Verma, DIG, NTCA Headquarters, for the field visit. He carried out the inspection on 20th/21st February, 2018. He made certain adverse remarks on the state of affairs in the MHTR in his report submitted to the NTCA. He also mentioned that the entire tiger reserve has been fenced on the periphery which was contrary to the SOPs of the NTCA and further that prey base assessment has not been made. He mentioned that the location of the tiger reserve has been changed to south-eastern part of the Mukandra Hills area, whereas "in-principle approval" was granted for the northern part of MHTR after making a preliminary study of the area. The NTCA in the aforementioned letter dated 20.03.2018 called for an immediate response from the Chief Wildlife Warden on all these issues. When no response was received, the NTCA vide letter dated 26.03.2018 kept the "in-principle approval" in abeyance. The Chief Wildlife Warden, Rajasthan, Jaipur, in response to the letter of NTCA dated 26.3.2018 wrote a detailed letter dated 29.3.2018 conveying about various steps taken to comply actionable points suggested by the Technical Committee of the NTCA and clarifying position of the State on the issues highlighted in a certain news report.

Against the backdrop of the aforementioned facts, the MemberSecretary, NTCA, New Delhi, wrote a letter to the Chief Secretary, Government of Rajasthan, Jaipur on 6.4.2018 conveying that it has been brought to their notice that the authorities in the State of Rajasthan in complete violation of the provisions of the Wildlife Protection Act 1972 (for short-`the Act of 1972), have captured tiger T-91 in Bundi District near RVWS for translocation to the MHTR without concurrence of the NTCA. It was stated that "in principle approval" accorded by the Technical Committee was kept in abeyance for want of compliance of recommendations made by the Committee constituted by the NTCA. These recommendations were made as per the mandate of the NTCA conferred by Section 38 O(1)(f) and (k) of the Act of 1972 by virtue of power derived from Section 38 O(2) of the Act. It was stated that the Chief Wildlife Warden was also apprised about the non-compliance, who has hastily submitted a prey estimation report of MHTR instead

of composite report encompassing various facts, which would have facilitated and safeguarded future of the tiger. This amounted to willful violation of the Act of 1972 by the authorities in the State Government. The Chief Secretary was therefore requested to fix responsibility and take appropriate/suitable action against erring officers under intimation to the NTCA. In response to the aforesaid letter dated 6.4.2018, the Chief Secretary sent a strongly worded reply to the Member-Secretary of the NTCA on 25.4.2018 that the State Government was of the view that the Chief Wildlife Warden was fully competent to take a decision after passing a reasoned order on 30.3.2018 under section 11(1)(a) of the Act of 1972. It was stated that NTCA was mixing up the issue of shifting of strayed tiger T-91 to MHTR and the issue of translocation of 3 tigers from RTR to MHTR. The Chief Secretary demanded from the NTCA certain information on various issues to take "further view in the matter and/or to take this matter to the Central Government"

including on the question; whether the Chief Wildlife Warden was not fully competent to take decisions about capturing, translocating or shifting a tiger, or for that matter any animal, that has strayed from its natural habitat, causing danger to itself and to the human population; and whether the NTCA by virtue of the provisions of Section 38 of the Act of 1972 have overriding powers over those of the Chief Wildlife Warden under Section 11(1) (a) of the Act of 1972, empowering to initiate appropriate steps under extraordinary circumstances. The Chief Wildlife Warden also separately wrote to the Member-Secretary, NTCA on 26.4.2018 raising the issues about objections of the dwellers of nearby villagers for grazing of their cattle and proximity of human population and again requested for approval of the translocation of tigers in the southern part near Mashalpur grassland area, which was within the old critical area of the tiger reserve. It was conveyed that tiger T-91 had strayed from its natural habitat outside RTR to Bundi District, posing danger to itself and also also to the human population. It was therefore translocated to the nearest and the best possible habitat in MHTR. The tiger was first translocated in 28 hectare enclosure and then released in the Mashalpura grassland, which is fully fenced and safe for the movement of tiger. Once fully developed, Mashalpura area will have about 200 sq. km. inviolate space for breeding of tigers. Request was therefore made to restore "in principle approval."

The Chief Wildlife Warden in response to the letter of NTCA dated 11.5.2018 addressed letter dated 30.05.2018 to the Member-Secretary of the NTCA inviting his attention towards the detailed compliance report sent earlier on 8.5.2018, enumerated all the steps taken. He in his letter again requested for restoration of the "in principle approval" to translocate 2 female tigers from Ranthambhore as 1 male tiger was already habitated as a stray animal. The Technical Committee of NTCA in its meeting on 25.06.2018 considered the issue of shifting 2 female tigers and changing the area from northern side to southern side. After due deliberations, it resolved to accept the request. The minutes of the meeting held on 25.06.2018 were drawn on 24.07.2018. A copy of the said minutes was

produced before the court during the course of arguments and was taken on record, in which matter of the MHTR finds mention at agenda item no.2. The NTCA sent a letter to the Chief Wildlife Warden, Rajasthan on 24.07.2018 with reference to his letter dated 26.04.2018 and also referring to the NTCA meeting dated 25.06.2018 and granted the permission for restoration of "in principle approval" for reintroduction of 1 male and 2 female tigers and also for releasing them in the southern part of MHTR subject to compliance of NTCA Protocol, SOPs etc. It was also mentioned that compliance of this order would be reported and considered in the next meeting of the Technical Committee. Obviously, such compliance report would be submitted only after shifting of 2 tigress from Ranthambhore to southern part of MHTR.

We have heard Shri R.N. Mathur, learned senior counsel for the petitioner, Shri N.M. Lodha, learned Advocate General for the State and Shri R.D. Rastogi, learned Additional Solicitor General for Union of India.

Shri R.N. Mathur, learned senior counsel appearing for the petitioner, has argued that ever since the State Government submitted the proposal to the NTCA in 2013 for reintroduction/shifting of the Tiger/s to MHTR, its northern part was the selected area and on the basis of such proposal of the State Government, the NTCA had given its "in-principle approval" for shifting of the tiger in northern side of MHTR only. There is no explanation on record as to how the State Government, without taking final approval from the NTCA, shifted the Tiger T-91 to the southern part of MHTR. This was wholly illegal. When a query was made by this Court to this effect, the respondent-State authority produced the letter dated 26.4.2018 purported to have been sent to the NTCA showing that they sought permission to change the area from northern part to southern part of MHTR. This was a simple camouflage. The tiger T-91 was shifted to southern part of MHTR even after filing the present writ petition. The requirement of law is to seek prior consent of the NTCA as per the provisions contained in Act of 1972 and seeking post facto approval is not envisaged in law. The respondent-State authorities in doing so have violated the Standard Operating Procedures (SOPs), which was required to be mandatorily followed in case of reintroduction of tiger to a new area or even in cases where a stray tiger is required to be shifted to a new area in emergency situations.

Shri R.N. Mathur, learned Senior Counsel submitted that the respondents have sought to justify their conduct by submitting that they were required to shift tiger T-91 to MHTR in an emergency situation since it had strayed from RTR and gone to RVWS in Bundi, where it had the danger of entering into conflict with human or could attack the cattle belonging to villagers or being killed by the poachers. Therefore, it could not be taken back to Ranthambore. The respondents seem to be suggesting that they in order to save the life of tiger immediately shifted it to MHTR on their own. Learned senior counsel refuted the suggestions of any emergency kind situation. He submitted that the tiger T-91 being a wild animal, while constantly moving from one place to another, had

gone from RTR to RVWS in its usual course through a natural trail. RVWS was also a wildlife sanctuary. Tiger therefore cannot be taken to have strayed from its natural habitat. He never attacked any human or cattle belonging to the villagers. The assertion of the State Government is totally false and concocted. They have not produced on record any document such as any newspaper report/ FIR etc. or any other details, of the attack on cattle or compensation paid to cattle owners or otherwise any material to substantiate the allegation that tiger T91 had attacked any human population, justifying their stand that it was urgently required to be shifted to MHTR. Even if according to the respondents, the tiger had strayed out of the Wildlife area, the requirement of law as per Section 11(1)(a) of the Act of 1972 is that the respondents, instead of shifting it to another new place where even the proper facilities were not available, ought to have shifted it back to RTR.

Learned Senior Counsel argued that petitioner by way of this petition challenges the grossly unlawful and arbitrary action of the Government of Rajasthan in capturing a tiger T-91 from RVWS and relocating it to a newly established/under developed Tiger Reserve named MHTR, without taking final approval from NTCA, which as per Section 38-O(f) of the Act of 1972 was mandatory. In doing so, the respondent-State authorities have also violated the Stand Operating Procedures prescribed by NTCA in this regard. The Chief Wildlife Warden as per Section 11(1) (a) of the Act of 1972 could take the decision to shift the tiger only if he was satisfied that it (i) has become dangerous to human life or (ii) is so disabled or diseased as to be beyond recovery. Only then he can order in writing any person to hunt, which includes capturing such animal. There is no evidence in the present case that the tiger T-91 had become dangerous to human life or become disabled to be beyond recovery. It is argued that according to Section 12(bb) of the Act of 1972, if the Chief Wildlife Warden wants to translocate some wild animal as specified in Schedule-I, (which also include a tiger) for the purpose of scientific management, then also he has to take prior permission from the NTCA. Since the NTCA had deferred the decision on the request of the State authorities pending compliance of certain actionable points, they now as a cover of their illegal action are taking recourse to Section 11(1)(a) of the Act of 1972. It is argued that the NTCA being a statutory authority in terms of the provisions contained in Chapter IV B of the Act of 1972 would have supremacy over all the State authorities and its powers under Section 38 O of the Act of 1972 shall prevail over the powers of the State Government in relation to approving any tiger conservation plan in the country.

Shri R.N. Mathur, learned senior counsel submitted that the NTCA and the Ministry of Environment and Forest and Climate Change i.e., respondent nos.4 and 5, in their first reply to the writ petition fully supported the case of the petitioner and maintained that the State authorities were wholly unjustified in shifting the tiger T-91 to MHTR without taking final approval from the NTCA. The NTCA has however taken a total 'U' turn in the subsequently filed additional affidavit and is now supporting the State Government by contending that the

subsequent to restoration of the "in principle approval" by order dated 24.7.2018 sufficient compliance of the actionable points/recommendations was made by the State authorities. Such a sudden shift in the stand of the NTCA should be seriously viewed by this Court, which has come about only after change of the Member-Secretary of NTCA. Reference is made to the letter of Chief Secretary of the State of Rajasthan dated 25.04.2018, who challenged the authority of NTCA so as to justify the unilateral shifting of Tiger T91 citing the power of Chief Wildlife Warden under Section 11(1) (a) of the Act of 1972. Neither sufficient prey is available in southern part of MHTR where T-91 has been shifted and two tigresses are sought to be shifted, nor existing villagers in that part of MHTR have been relocated outside the core area of tiger reserve. It is therefore submitted that till such time, the adequate infrastructure is not properly developed in the MHTR and sufficient prey base is not prepared, the tiger may be ordered to be sent back to the RTR from where it had originally come. The translocation of the tiger to the MHTR at the later stage may be carried out by the State Government under this Court's monitoring and status report should be submitted by them before this Court from time to time.

Shri N.M. Lodha, learned Advocate General for the State has submitted that the present writ petition ought not to be entertained as PIL at the instance of the petitioner, who is the resident of Madhya Pradesh and whose working area is also Madhya Pradesh. The petitioner has never visited the area of the MHTR as it is a restricted area. He has no knowledge of the flora and fauna and natural habitat of the area. The Field Director of Ranthambhore Tiger Reserve vide letter dated 17.12.2017 conveyed to the Chief Wildlife Warden that Tiger T-91 has strayed out of the RTR. He also communicated on 7.12.2017 and then on 14.12.2017 that the tiger's movement was found inside a silica mine at Bododya village, hence he recommended that stray tiger be immediately shifted/translocated to Mukandara as soon as possible before losing its track. The tiger T-91 had to be captured in RVWS as it strayed from its natural habitat RTR posing danger to itself and to the human population necessitating its shifting/translocation to the MHTR, which was the best and nearest possible habitat. The Chief Wildlife Warden in exercise of his power to that effect under Section 11 of the Act has passed a detailed order thereabout on 30.3.2017. In doing so, he has considered all relevant aspects namely; that the RTR has over population of tigers and therefore putting the strayed tiger back to Ranthambhore was dangerous to life of tiger as it could die in territorial fights.

Learned Advocate General cited the judgement passed by the division bench of this Court in Chandra Bhal Singh, D.B. PIL Petition No.7387/2015 decided on 28.5.2015, wherein it was held that power under Section 11 can be exercised by the Chief Wildlife Warden in circumstances like these. It is argued that order dated 30.3.2018 passed by Chief Wildlife Warden under Section 11 of the Act clearly shows that before passing the order, a detailed discussion was made with the concerned authorities. Position which was prevalent at that time was also taken note of and so also it was considered that though the "in principle

approval" for translocation of the tiger/s has been kept in abeyance, but the same would not come in his way of invoking Section 11, which confers an independent power upon him. This power had to be exercised independently in the welfare of the tiger as well as for the safety of the residents of the nearby areas. It was also considered whether or not tiger T-91 could be relocated to RTR. Thereafter, a conscious decision was taken that T-91 should be kept in the southern side of MHTR.

It is argued that after "in principle approval" was kept in abeyance vide order dated 29.3.2018, the Chief Wildlife Warden submitted a detailed compliance report on 29.3.2018 regarding actionable points, wherein it was clarified that prey based assessment has been conducted. SOP for rehabilitation of tigers from source area at landscape level is only of suggestive nature. Moreover, there is another SOP issued by NTCA vide letter dated 30.1.2013, which provides for emergency situations due to straying of tigers in human dominated landscapes. Reference in specific is made to point no.4 and 7 of the SOP issued on 30.1.2013. It is contended that petitioner has not alleged any violation of SOP relating to the straying tigers. It is argued that the copy of the order dated 30.3.2018 passed by the Chief Wildlife Warden was sent to the NTCA, which never raised any objection. Although originally the proposal was for shifting three tigers (one male and two female), but after passing of the order dated 30.3.2018, considering that one male tiger (T-91) already stood relocated in MHTR, final approval was given for shifting of only two female tigers by order dated 24.7.2018. It is submitted that on the basis of current estimates of ungulate prey at MHTR, potential tiger density is 5 per 100 km. Area of MHTR is 759 sq. kms., hence more than 35 tigers can be kept in MHTR.

It is argued that the proposal was sent by the Chief Wildlife Warden, Rajasthan, regarding reintroduction of tigers in MHTR, which was thoroughly considered by NTCA in its meeting dated 25.6.2018, wherein two female tigers have been allowed to be shifted from RTR to MHTR in the southern part as one male tiger (T-91) has already been located in MHTR. The local residents of nearby villages strongly opposed the reintroduction of tigers in the northern area because it will restrict the grazing of their animals in the area. Many a times, villagers manhandled forest personnel. Special Task Force (STPF) staff was deployed from Ranthambhore to get some work done in the region, but in view of the continued hostile environment and non-cooperation of the people, the department developed 28 hectares of grass land in the southern side of MHTR where the tiger was relocated, which was fully fit and safe for its movement. Request was therefore made to change the northern part of the MHTR to the southern part. The aforesaid proposal was considered by the Technical Committee of the NTCA in its meeting on 25.6.2018 and after detailed discussions and deliberations, decision was taken to restore the "in-principle approval" of phase-I in which two female tigers were to be released in southern part of MHTR subject to compliance of the NTCA protocol, SOPs and Court order, if any. Approval was also granted for changing the location from northern to southern part of MHTR. Reference is

made to the communication dated 27.7.2018 wherein it was made clear that matter was considered by the NTCA and approval has been granted.

Learned Advocate General submitted that presently the tiger T-91 is alone in southern part of the MHTR and this might have caused several psychological problems to it. Two female tigers should therefore be allowed to be shifted immediately so as to implement the complete plan for relocation of the tiger. Learned Advocate General in support of his arguments has relied on judgement of the Supreme Court in (2011) 5 SCC 341 on the scope of judicial review. Reliance is also placed on judgement of the Supreme Court in State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr.-(2011) 7 SCC 639 and in Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity & Ors.-(2010) 3 SCC 732 to argue that recommendation of Expert Committee should not be turned down.

Shri R.D. Rastogi, learned Additional Solicitor General has adopted most of the arguments made by Shri N.M. Lodha, learned Advocate General and submitted that no allegation has been levelled by the petitioner against any of the functionaries of the respondent NTCA / Union of India on affidavit that their decision was actuated with any bias or malafide motive. The clarificatory affidavit submitted by the NTCA on 22.10.2018 filed pursuant to directions of this Court fully justifies the manner in which the decision was taken to shift 1 male tiger and 2 female tigers in MHTR and also about the change of location from Northern to Southern part. The NTCA is a statutory body, which consists of experts. The petitioner has failed to show as to how the NTCA and the Chief Wildlife Warden have erred in law.

Relying on judgement of the Supreme Court in Centre for Public Interest Litigation vs. UOI & Ors.-(2016) 6 SCC 408 and Victoria Memorial Hall, supra, learned Additional Solicitor General argued that this Court would not be justified in interfering with the decisions which are outcome of deliberations of technical experts of the subject. Relying on the judgement of the Supreme Court in Tata Cellular vs. UOI-(1994) 6 SCC 651, it is argued that the Court can examine the decision making process, but not the decision. It is therefore prayed that the petition be dismissed.

We have bestowed our anxious consideration to the rival submissions and perused the material on record.

Re-introduction in the context of a Wildlife Sanctuary is a strategy by which species, which were sometimes in the past, part and parcel of a given habitat, is sought to be restored there. Reintroduction of any species to its former geographical range, where it is locally exterminated is a well known strategy used by the wild life managers and conservation biologists for recovery of such species. As per IUCN definition, "re-introduction" is an attempt to establish a species in an area, which was once part of its historical range, but from which it has been extirpated or become extinct. A taxon is extinct when there is no

reasonable doubt that the last individual has died (IUCN Guidelines, 1995). It is thus an effective and valuable tool for recovery of the species that has become locally extinct. In the case of re-introduction, wild animals are translocated to a habitat similar to one where they have been living and have been enjoying of the similar sort of prey base. The strategy of re-introduction was successfully adopted by the NTCA in the recent past in the Tiger Reserves of Sariska and Panna. Translocation however is generally attempted in the case of problematic wild animal, which has become threat to human being or when a wild animal has strayed or become disabled or deceased. They are then captured to be re-located to a similar habitat.

The Supreme Court in *Centre for Environmental Law, World Wide Fund-India vs. Union of India & Ors.*-(2013) 8 SCC 234 held that "Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life." Highlighting the norms of reintroduction of a species to its historical habitat, albeit in the context of reintroduction of Asiatic Lions, one of the endangered species, from Gir in Gujarat to Kuno in Madhya Pradesh, the Supreme Court in para 58 of the judgement observed as under:

"58. No species can survive on the brink of extinction indefinitely and the probabilities associated with a critically endangered species make their extinction a matter of time. Convention biology is the science that studies biodiversity and the dynamics of extinction. Eco-system approach to protecting endangered species emphasizes on recovery, and complement and support ecosystem based conservation approach. Re-introduction of an animal or plant into the habitat from where it has become extinct is also known as ex situ conservation. India has successfully achieved certain reintroduction programmes, for example, the Rhino from Kaziranga, re-introduction of Gangetic gharial in the rivers of Uttar Pradesh, Rajasthan, etc. Re-introduction of an organism is the intentional movement of an organism into a part of its native range from where it has disappeared or become extirpated in historic times as a result of human activities or natural catastrophe."

The Standard Operating Procedure For Active Management Towards Rehabilitation Of Tigers From Source Areas At The Landscape Level in clause 3 thereof, deals with straying tigers in human dominated landscapes and contain related advisories on the subject. Clause 4 thereof indicates its purpose which reads thus:

"4. Purpose- With the increase in tiger numbers in India, there will be several areas where dispersing tigers will move through human dominated landscapes and at times result in human-tiger conflict. Conservation in such areas will now be dependent on quick, timely and appropriate mitigation of these conflict situations. Often tigers involved in conflict or tigers that come into human dominated landscapes may need to be captured. If such tigers are not man

eatery then there is a possibility to release them back into the wild. However, capturing tigers and releasing them to the source of their origin would not always resolve the problem. Often, the main reason for the dispersal of tigers is the high density of the source population. It is important to relocate such tigers to areas of lower tiger density (or no tigers but have recorded tiger presence in the historical range), which have good habitat and prey populations. However, care needs to be taken to ensure that such relocations are done within population clusters that share a recent common gene pool. Based on the current genetic knowledge and existing corridor connectivity, we herein identify such population clusters within each landscape and suggest areas that are suitable to relocate surplus tigers"

Note 2 at the bottom of the SOP aforesaid provides that "adequacy of field protection/prey base should be ascertained at the new site prior to translocation", whereas Note 3 requires that "'Soft' release of the tiger should be preferred as a precautionary measure, which would necessitate the creation of an in-situ enclosure with natural prey at the release site." Note 4 however provides that "the translocated tiger should invariably radio collared to facilitate close monitoring after release."

There is a separate Standard Operating Procedure To Deal With Emergency Arising Due To Straying Of Tigers In Human Dominated Landscapes. Clause 4 of the SOP for Straying Tigers gives its purpose "to ensure that straying tigers are handled in the most appropriate manner to avoid casualty/injury to human beings, tiger, cattle and property." Clause 8 of this SOP provides the Suggested field actions to deal with strayed wild carnivores (tiger/leopard), which in sub-clause (a) at the outset requires constitution of a Committee immediately for technical guidance and monitoring on day to day basis with i) a nominee of the Chief Wildlife Warden; ii) a nominee of the National Tiger Conservation Authority, iii) A veterinarian, iv) Local NGO representative, v) A representative of the local Panchayat and vi) Field Director etc. Sub-clause (m) of clause 8 would for a situation like the present one provides that:

"8(m) In case, the tranquilised tiger is found to be healthy in prime or young age without any incapacitation (loss of canine, injury, broken paw etc.), as confirmed/certified by the Committee as constituted at para (1), then it may be released after radio collaring in a suitable habitat with adequate prey base, away from the territory of a resident male tiger (if any) or human settlements, under intimation to the National Tiger Conservation Authority. (Under no circumstances an injured/incapacitated tiger should be released back, and the same needs to be sent to a recognized zoo)."

Going by the aforesaid SOPs, it is evident that both in the case of translocation for the purpose of re-introduction of tiger from RTR to MHTR and to deal with the Tiger which had strayed from RTR into RVWS, the State authorities/Chief Wild Life Warden were under an obligation to keep the NTCA informed of all the developments and rather take them into confidence for capturing of the tiger

T-91 and releasing the same into southern part of the MHTR. But we have to for that purpose also examine this issue from the perspective of the State authority whether it would be wise to direct repatriation of the tiger T-91 to RTR for the reason of omission on the part of the State authorities to seek prior approval of the NTCA for its shifting to MHTR. Answering this question has also become necessary because the Chief Secretary of the State in its letter dated 25.4.2018 addressed to the NTCA has raised the question of safety of strayed tiger T-91 to the RVWS and that the issue of translocation of 2 tigers from RTR to MHTR could not be mixed up therewith. In his view, the Chief Wildlife Warden in such emergent circumstances was fully competent to take decisions about capturing, translocating, or shifting of tiger T-91 that had strayed from its natural habitat. We have to also keep in view clause 8(m) of the SOP regarding stray tigers which authorizes release of tranquilised healthy tiger, away from the territory of a resident male tiger under intimation to the NTCA.

The Chief Wildlife Warden in the situation that he was faced with has prior to capturing the tiger T-91 and releasing it in southern part of the MHTR, passed a reasoned order dated 30.3.2018 in which he has referred to the communication dated 26.3.2018 addressed to him by the Field Director, MHTR, Kota about the wandering of tiger T-91 outside the forest area of RVWS and the areas adjoining thereto for last two weeks. He has mentioned therein that there are many poachers residing in that area, which might pose danger to the life of the tiger and the tiger itself may pose danger to the villagers. Two persons with guns and torches were seen in the photograph of the camera trap. In the past also, there had been the incident of hunting of tigers and the death of one of the hunters. A sense of non-cooperation and hostility had developed among the local people. Earlier one tigress, which came from RTR to Kota, had died. There was limited prey base in the area where the tiger was currently wandering on account of which, there is possibility of the tiger attacking the cattle belonging to the local people and this might result in a conflict situation between man and animal, posing danger to the tiger itself. The Field Director, MHTR therefore requested that the appropriate orders for translocating the tiger T-91 to a safer area be passed. The Field Director then again on 29.3.2018 wrote a letter to the Chief Wildlife Warden stating that the tiger T-91 had strayed from RTR and was presently wandering in Bandrapore area and Ramgarh Mahal region of RVWS, which is a disturbed area and prone to human wild conflict. He again invited attention of the Field Director towards two persons with guns and torches, whose photographs were captured in one of the camera traps deployed to monitor the tigers. He therefore pressed the urgency of immediate remedial measures considering that there are serious concerns regarding safety of the tiger and requested that some decision may be taken to deal with this straying animal to translocate it to some secure location. The Chief Wildlife Warden has mentioned in his order that he discussed the matter with the Field Director, MHTR as also the Field Director, RTR. He also considered the possibility of releasing tiger back to RTR after translocating, but as of now, it could not be immediately decided as

to in which part of RTR, the tiger should be released and if it is released in any part of RTR, there is possibility of territorial fights between this tiger and pre-existing tiger/tigress in that area posing danger of death of anyone of them. There is therefore possibility of tiger again coming out of RTR. In order to avoid such a situation, it would be appropriate to relocate this tiger to a new place where it can remain safe. Reference was made to the letter of the NTCA dated 9.10.2017 in which "in principle approval" was granted by the NTCA for translocation of one male and two female tiger to MHTR as per the provisions contained in Section 12 of the Act of 1972. It was also noted that the NTCA has for the present has kept the "in principle approval" in abeyance by order dated 26.3.2018, but it did so under ignorance of the ground reality and without verifying the true facts in emergency situation like this. After discussing the matter with the Field Directors of both MHTR and RTR, the Chief Wildlife Warden arrived at the satisfaction that in view of the prevailing circumstances, it had become necessary to translocate the tiger T-91 to a secure location. He held that considering the agitation of the civilians in the populated area adjoining RVWS and the safety of the tiger itself, it was required to be urgently translocated elsewhere. The Chief Wildlife Warden therefore in exercise of the powers under Section 11(1)(a) has after recording the aforesaid satisfaction and considering the safety, emergency situation and larger interest of the tiger T-91, directed to tranquilise the tiger and shift it to MHTR.

The Wildlife Protection Act, 1972 was enacted by the Parliament with the object of providing for the protection of wild animals, birds and plants etc. when the Legislatures of as many as eleven States including State of Rajasthan passed resolutions authorizing the Parliament under Article 252 of the Constitution of India to enact necessary legislation on the subject of Wildlife Protection at a time when the subject of protection of wildlife animal was included in Entry 20 of List-II (the State List) in the Seventh Schedule of the Constitution and the Central Government had no power to make laws thereabout. Subsequently, however, the subjects of "forest" and "protection of a wild animal and plant" were brought respectively in Entry-17A and 17B of List-III (concurrent list) in the VIIth Schedule of the Constitution of India by the Constitution (42nd Amendment) Act, 1976 with effect from 3-1-1977. The Constitution (42nd Amendment) Act, 1976 also simultaneously inserted Article 48A in Part-IV relating to directive principles of the State policy of the Constitution of India, providing that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

Relevant provisions in the Wildlife Protection Act, 1972, which deal with the power of the Chief Wildlife Warden on the subject may be noted at this juncture. Section 11(1)(a) of the Act for the facility of reference, is reproduced as under:

"11. Hunting of wild animals to be permitted in certain cases.- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV,-

(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted: Provided that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilised or translocated:

Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

Explanation.- For the purpose of clause (a), the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal."

Section 12(bb) of the Act to the extent it is relevant for the present case, is reproduced hereunder:

"12. Grant of permit for special purposes- Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Chief Wild Life Warden, to grant a permit, by an order in writing stating the reasons therefor, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of-

[illegible][illegible]

(bb) scientific management,

Explanation - For the purposes of clause (bb), the expression, "Scientific Management" means-

(i) translocation of any wild animal to an alternative suitable habitat, or

(ii) population management of wild life without killing or poisoning or destroying any wild animals."

Section 11, which begins with a non-obstante clause in its clause (a) provides that the Chief Wildlife Warden may by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life. This power of the Chief Wildlife Warden is subject to two separate provisos. The first proviso stipulates that no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilised or translocated. The intention of the legislature in so providing evidently is that there is no need to kill a wild animal if it can be captured after being tranquilised to be translocated. The second proviso

provides that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing. The explanation to Section 11(a) then has further emphasised the legislative intention by providing that for the purposes of this proviso, the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal. Section 12 of the Act, which also begins with a non-obstante clause, empowers the Chief Wildlife Warden to grant permit by a reasoned order in writing to any person specified therein to hunt any wild animal for the purpose of scientific management, which also means translocation of any wild animal to an alternative suitable habitat, or population management of wild life without killing or poisoning or destroying any wild animals. Clause (bb) of Section 12 was specifically inserted in the Act of 1972 by Amending Act 23 of 1982 with effect from 21.5.1982, which authorises the Chief Wildlife Warden to grant a special permit for the purpose of scientific management. The Chief Wildlife Warden in its report has underlined the need for re-locating/translocating tigers. The issue of population management of wild tigers in RTR need not be overemphasised and has to be viewed in the light of the order passed by the Chief Wildlife Warden on 30.3.2018 and "in principle approval" already granted by the NTCA for translocation of one male tiger and two female tigers to MHTR. "Hunting" has been defined in Section 2(16) of the Wild Life (Protection) Act, 1972 to include (a) killing or poisoning of any wild animal or captive animal and every attempt to do so; (b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so; (c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles. Therefore even an attempt to capture a wild animal would be covered by the inclusive definition of "hunting". It would be thus clear that hunting as mentioned in clause 2(16) of the Act also includes capturing of any wild or captive animal or every attempt to do so.

No doubt, there were initially some misgivings on the part of the NTCA in regard to activities of the authorities of the State of Rajasthan, which led to the "in principle approval" being held in abeyance. Notwithstanding the order passed by the NTCA on 26.3.2018 keeping the "in principle approval" earlier granted in abeyance, the reasons recorded by the Chief Wildlife Warden in his order dated 30.3.2018 cannot be completely brushed aside. He has recorded his satisfaction as to the necessity of relocating the tiger T-91 on the basis of the report received from the Field Director, MHTR on 26th March, 2018 and followed by his another report on 29th March, 2018 and especially, the fact that if the problem was not immediately addressed, straying tiger wandering in that area, there could a danger not only to the human population in the adjoining villages, but also to the tiger itself, particularly in view of the past incident when one female tiger, which strayed into Kota was found dead in a mysterious circumstance and photographs of the two poachers with guns and torches, captured by camera trap, which the

respondents have placed on record at Annexure-R/11 and R/12.

Section 38 O(f) of the Act confers power on the NTCA to approve, coordinate, research and monitoring on tiger, copredators, prey, habitat, related ecological and socio-economic parameters and their evaluation. We are satisfied that the NTCA in the present matter is fully vigilant about its duties, which is evident from the fact that immediately after it learnt about the attempted translocation of the tiger T-91 in the circumstances enumerated above, it independently called for a report from the State authorities by letter dated 20.3.2018 and also required them to clarify the stand with regard to certain articles published in the media thereabout. It even sent an expert namely; Shri Nishant Verma, DIG (NTCA) Headquarters for the field visit. He carried out the inspection on 20th/21st February, 2018 and submitted its report to the NTCA. A doubt was raised with regard to change of the location of the tiger from northern part to the south eastern part of the Mukandra Hills contrary to what was envisaged in the "in principle approval" and when the State authorities could not immediately satisfy NTCA of its stand, the NTCA vide order dated 26.3.2018 kept the "in house approval" in abeyance. But then the State authorities soon came in damage control mode, which is apparent from the detailed letter by the Chief Wildlife Warden on 29.3.2018 to the Member Secretary, the NTCA conveying that department has ordered two high quality VHF and GPS enabled radio collars, one of which has already been procured and also procured one normal regular VHF radio collar. He amply clarified the issues raised in the article published in DNA and also that the Wall was being constructed in accordance with the Tiger Conservation Plan MHTR submitted to it. The big enclosure at least 8 times the size of home range of tigers in RTR has been created and all the precautionary measures in accordance with SOP are being taken. The Task Force has been constituted by order dated 16.10.2017 to implement the project. Once the project is complete, it will have 200 sq. km of pure grassland. It also clarified the earlier decision to translocate tigers in northern part of the MHTR was changed because the villagers of Borawas having about 2000 families located at the entry gate of the MHTR had strongly opposed the reintroduction of tigers in that region as it would restrict the grazing of their animals. They also mishandled the forest personnel in the month of November, 2017 and the atmosphere was quite hostile and non-cooperative. The department therefore developed alternate site in Mashalpur area, which is also within the tiger reserve situated in northern part of the core critical area. Even the Chief Secretary of the State wrote a detailed letter to the Member Secretary, NTCA on 25.4.2018. The Chief Wildlife Warden again wrote a letter dated 26.4.2018 to Member Secretary in which also he mentioned about the objections being raised by the dwellers of nearby villagers for grazing of their cattle and proximity of human population and requesting for approval of the translocation of tigers to be given for southern part near Mashalpur grassland area, which was in the old critical area of the tiger reserve with fully fenced buffer forest of about 200 sq. kms. inviolate space for breeding tigers.

Furthermore, the Chief Wildlife Warden by letter dated 8.5.2018 informed the NTCA that on their recommendation, the Field Director, MHTR, has already sent a request letter to Director, WII, Dehradun on 13.10.2011, who by letter dated 10.11.2017 agreed to provide technical support for translocation and monitoring of tigers in MHTR, Kota. The prey base assessment has been done by specially trained intern researcher with the active participation of wildlife and forestry students from different colleges of Rajasthan and forest personnel of the MHTR from 24th October, 2017 to 20th November, 2017. It was informed that tiger T-91 was first translocated in 28 hectare enclosure and then released in the Mashalpura grassland, which is fully fenced and safe for the movement of tiger. For intensifying the voluntary relocation of two critical villages Girdharpura and Damodarpura from the core area of the Tiger Reserve, plan has already been submitted to the State Government to rehabilitate these villages. A proposal for diversion of 100 ha. forest land has been sent to Government of India under the Forest Conservation Act. Two villages-Kharlibawari and Laxmipura have been partially relocated in 2016-17. Thus 27 out of 54 families have already been relocated. The Chief Wildlife Warden in response to the letter of the NTCA dated 11.5.2018 sent a detailed reply on 30.5.2018. Therein, he referred to the detailed compliance report dated 8.5.2018 and stated that MHTR has been developed as a part of metapopulation of RTR. Over population of tigers in RTR provided an opportunity for a case to tiger recovery strategy of MHTR. A comprehensive habitat prey and tiger population recovery programme has been prepared for MHTR. 500 Cheetals have been relocated in MHTR to augment prey base for tigers. Sambhars and Chinkaras are being transferred there from other parts of the State. A full time sociologist has been engaged for involving local communities in tiger reintroduction activities. Recruitment of Forest Guards has already been done in the year 2016-17. Special Tiger Protection Force for MHTR has already been constituted. RVWS and forest area near Lakheri and Indergarh in Bundi District between MHTR and RTR were being developed as suitable corridor for tiger migration between Ranthambhore and MHTR. On the basis of current estimates of ungulate prey at MHTR, potential tiger density is 5 per 100 km. area of MHTR is 759 sq. kms., hence more than 35 tigers can be kept in MHTR. Request was again made for restoration of the "in principle approval" to translocate 2 female tigers from Ranthambhore as 1 male tiger was already habitated as a stray animal.

The Technical Committee of NTCA in their meeting on 25.06.2018 took up this issue for consideration. The minutes of the meeting have been produced before this Court. Agenda item no.2 deals with this issue, which is reproduced as under:

"Agenda Items 2:

Proposal received from Chief Wildlife Warden, Rajasthan regarding proposal for reintroduction of tigers in the Mukundra Hills Tiger Reserve (MHTR), Kota, Rajasthan Brief: After detailed discussions/deliberations, the committee recommended for restoration of "in-principle" approval and approval of Phase-I

(two female tigers) for tiger release in southern part of MHTR subject to compliance of NTCA protocol, SOPs and Court order (if any) and phasing out chain link fencing and wall along the enclosure periphery except along railway line/roads. The committee also recommended for site inspection by the committee already constituted for this purpose (comprising of NTCA, WII & State Forest Department officials) for assessment of the compliance furnished and submitting its report before the technical committee in its next meeting.

Decision: Approved as per condition mentioned above including the restoration of "in-principle" approval."

The aforementioned minutes of the Technical Committee, NTCA demonstrate that it recommended not only restoration of "in principle approval", but also grant of final approval of Phase-I (two female tigers) for tiger release in southern part of MHTR subject to compliance of NTCA protocol, SOPs and Court order, if any, and phasing out chain link fencing and wall along the enclosure periphery except along railway line/roads. The Committee has also recommended for site inspection by the Committee already constituted for this purpose comprising of NTCA, WII & State Forest Department officials for assessment of the compliance finished and submitting its report before the technical committee in its next meeting, which would happen only after remaining two female tigers have been prelocated in the area of MHTR.

The Supreme Court in Secretary and Curator, Victoria Memorial Hall, supra relying on its earlier constitution bench judgement in University of Mysore vs. C.D. Govinda Rao-AIR 1965 SC 491 and several other judgements held that it is normally wise and safe for courts to leave decision to experts who are more familiar with the problem they face than the courts generally can be. The power to undertake judicial review of a particular decision of the State is confined to only decision making process and not the decision itself.

The Supreme Court in Montecarlo Limited Vs. National Thermal Power Corporation Limited, (2016) 15 SCC 272 while dealing with the scope of interference by the courts in such matters held in para 26 as under:

"26. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relating to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works

and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints."

In *Cellular Operators Association of India and Others Vs. Union of India & Others*, (2003) 3 SCC 186, the Supreme Court held that where legal issues are intertwined with those involving determination of policy and a plethora of technical issues, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is inconsistent with the Constitution and the laws.

The Supreme Court in recently delivered judgment in *Municipal Corporation, Ujjain and Another Vs. BVG India Limited & Others*, (2018) 5 SCC 462, after referring to judgment in *Tata Cellular Vs. Union of India*, (1994) 6 SCC 651 held that there are inherent limitations in exercise of the power of judicial review by the constitutional courts and the modern trend points to judicial restraint in administrative action. Relevant discussion is to be found in para 10 of the report, which is reproduced as under:

"10. The modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or a quasi-administrative sphere. However, the decision must not only be tested by the application of the *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, (1948) 1KB 223 (CA)] principle of reasonableness, but must also be free from arbitrariness and not affected by bias or actuated by mala fides."

In view of the settled position of law as aforesaid, we are of the considered view that this Court cannot act as a Court of Appeal over the decision of the respondents for it cannot go into the advisability of shifting or otherwise of the tigers for reintroduction in MHTR. It can merely examine the manner in which the decision has been taken. It is for the experts in the field of forest and wildlife to decide and take the call. If the NTCA, which is a premier Central Agency constituted under Section 38 L of Chapter IVB of the Act of 1972, having the necessary power to perform the various functions entrusted to it under Section 38 O including the monitoring on tiger, co-predators, prey, habitat, etc., on the basis of whatever material the State authorities have produced before it, has approved of the action and when its Technical Committee has in the resolution dated 25.6.2018 directed that this shall be ensured by constant monitoring through the Committee for site inspection already constituted earlier for this purpose consisting of representative of NTCA and WII, Dehradun and State Forest officials for assessment of the compliance furnished and the fresh report

shall be submitted by the Technical Committee, we see no reason for not permitting the respondents in going ahead with the implementation of the project of re-introduction/translocation of two female tigers, particularly when one male tiger is already there in the southern part of the MHTR. The shifting of two female tigers in the southern area in MHTR is also necessary for biological reasons for the male tiger, which strayed in RVWS and was captured and translocated to MHTR and is now alone there and for obvious reasons, may be under stress. Once the NTCA satisfied with the compliance submitted by the Chief Wildlife Warden and the State authorities, about various actionable points and recommendation, has restored the "in principle approval" and also granted "final approval" for reintroduction of two female tigers after one tiger has already been relocated in MHTR, taking another view of the matter by this Court would tantamount to substituting decision of the expert bodies in the field, which in the facts of the case, would be wholly uncalled for.

In view of above discussion, we do not find any merit in this writ petition, which is accordingly dismissed.