

(2017) 10 BOM CK 0128
In the Bombay High Court
Case No : 1519 of 2017

Dr. Jerryl Avinash Banait

APPELLANT

Vs

State of Maharashtra Through its Principal Secretary
Department of Forest Mantralaya, & Ors.

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Wild Life \(Protection\) Act, 1972](#), [Section 11](#),
[Section 11\(2\)](#), [Section 11\(1\)\(a\)](#),
[Section 380](#), [Section 380\(c\)](#), [Section](#)

Citation : (2017) 10 BOM CK 0128

Hon'ble Judges : B.P. Dharmadhikari, Swapna Joshi

Bench : DIVISON BENCH

Advocate : Tushar Mandlekar, Rohan Malviya, K.N. Shukul, Ketaki Joshi,
U.M.Aurangabadkar, Mugdha Chandurkar, A.A.Naik

Judgement

1. Rule. Rule, made returnable forthwith. Heard finally.
2. In Public Interest Litigation No.69/2017, the petitioner has taken up this Application questioning the order dated 9.10.2017 passed by Chief Wildlife Warden & Principal Chief Conservator of Forests (Wildlife), Maharashtra State, Nagpur, under Section 11 (1)(a) of the Wild Life (Protection) Act, 1972 (hereinafter referred as "the Act"). By said order in accordance with Section 11(2) of the said Act, permission has been given to destroy tigress (Cub-1 of T-27) and order is remained valid till 20th October, 2017. The impugned order also directs that, however, all efforts to tranquilize the tigress shall also continue.
3. It needs to be noted that this is the third order against the said tigress. Earlier order passed on 23.6.2017 was quashed by this Court on 29.6.2017. Tigress was, then, in captivity since 27.6.2017 and released on 29.7.2017.
4. Adv. Mandlekar submits that the impugned order overlooked the fact that tigress has been validly released into wild on 29.7.2017 and hence instances of

human confrontation or deaths before such release are now not relevant. After 29.7.2017, first death is on 19.9.2017 while the last death is on 2nd October, 2017. Thus, for a period of about 50 days after release, there was no attack on any human being and tigress has survived on natural preys. Learned Advocate for petitioner contends that thus only because of two deaths, inference that tigress is a man-eater could not have been drawn. He points out that in this region there are several other carnivorous animals and any other animal may have caused death or then fed on dead body. He submits that after 29.7.2017, when problem surfaced only three efforts have been made for tranquilization and these efforts are not sufficient. He has invited our attention the minutes of the State level meeting conducted on 14.7.2017, to point out how decision to release this tiger into wilderness was reached. He submits that if there was no trained staff or then proper facilitators, there was no hurry to release the tiger held in captivity. He points out how case of another tiger wandering in Tadoba-Andheri Buffer area has been looked into and dealt with. He contends that thus proper precautions have not been taken and there is abdication of its duties by the Department. Inviting attention to material on record, he submits that when the SOP warrants permission to kill, to be issued to a competent officer only, here an outsider has been permitted. According to him, to satisfy the desire of said outsider or any third person such a hasty decision appears to have been taken.

5. Adv. Shukul, relies upon very same SOP. He submits that these are only the suggestions and not directions issued under Section 38-O of the Act. The same are also not exhaustive and when Section 11 gives power to the competent authority like the Chief Wildlife Warden, the statutory power of said Officer is not circumscribed by SOP. According to him, there are no pleadings of any mala fides or abuse by petitioner before this Court. The decision has been therefore reached honestly and after balancing all interests.

6. He submits that there have been a total of nine instances of human conflict after 18.5.2017 till 2.10.2017 and 4 have resulted in death of human beings. There is evidence on record of stalking and also of animal feeding on human flesh. He reads out the impugned order to urge that it looks into efforts made to tranquilize, the locations where deaths occurred and also coordinates retrieval through GPS to note movement of tigress in area where deaths occurred at the relevant time. He submits that said order also takes note of "not finding any other tiger" in that area since last census. According to him, in this situation, when after honest consideration of all events an order has been passed and subjective satisfaction of Chief Wild Life Warden is material, the satisfaction cannot be interfered with by this Court in exercise of its writ jurisdiction.

7. Adv. Naik appearing for intervenor submits that intervenor is interested only in assisting the court. According to him, material on record sufficiently establishes the animal in question to be man-eater and because of radio collar its identity and involvement is also established beyond doubt. He contends that various procedures prescribed under SOP are only to rule out involvement of any other

tiger in such incident. He therefore contends that while exercising judicial review only relevance of material looked into can be questioned and its sufficiency or adequacy cannot be gone into. He argues that all relevant material has been looked into, and therefore he prays for dismissal of the Application.

8. In brief reply, Adv. Mandlekar submits that only two deaths after 29.7.2017 do not show that tigress is habitual. He invites attention to PM report to urge that there the cause of death is shown to be haemorrhagic shock and not an attack by tiger. He further submits that respondents are relying upon the guidelines for declaration of big cats as man eaters issued on 8th December, 2017 by National Tiger Conservation Authority, while SOP is dated 30.1.2013. According to him, in view of provisions of Section 38-O (c), (k), the SOP which has been issued later in point of time is therefore decisive. He adds that decision to release the tiger into wilderness is itself vitiated and problem tiger could have been tranquilized on 19.9.2017.

9. We have considered the Application and also the record made available for perusal of this Court in the light of arguments advanced. The facts on record show that there was attack on human being on 18.5.2017 where a person was injured. On 19.5. 2017 there was death. On 24.5.2017 again a person was injured. There were two attacks on 8.6.2017 and 9.6.2017 but nobody was injured. On 23.6.2017 there was a death. Animal was then captured on 27.6.2017. It was in captivity till 29.7.2017. Decision to release it was reached on 17.7.2017 and it was released on 29.7.2017. Thereafter on 19.9.2017 there was a death in agricultural field, on 27.9.2017 a person was injured again in agricultural field and lastly on 2.10.2017 there was a death again in an agricultural field.

10. A meeting of State Level Committee to consider the problem of tigers/cubs to train them and to release them, has been conducted on 14.7.2017 and in it case of present tigress Cub-1 of T-27 has been considered in paragraph 4. The Committee-members have taken note of fact that tigress is about two years old living separately from her mother since last about two months and wandering around freely. She is potent to give birth to 3 to 4 generations of tigers in future. Her other siblings namely C-2 and C3 have not attacked human beings. Conduct of Cub-1 is found understandable as "aggressive adolescent behaviour". The Committee has also recorded this period and conduct may last for about 3 to 4 months. The Committee, therefore felt that tigress deserves one opportunity but then her movements needed to be effectively monitored and therefore attention and control needed to be given constantly. In case a wrong conduct was noticed, steps to immediately detain her have been advised. The Committee has also taken note of the fact that if she again attacks human beings or there was any unsavoury incident, the conservation of tigers in the region may itself be jeopardized. The Committee therefore felt that use of radio collar and thereafter, to maintain supervision necessary apparatus, trained staff and active cooperation of staff was essential. The Committee also took note of the fact that only officers

and staff at Pench Tiger Reserve had necessary training. The Committee has then directed that if such a training and arrangement for monitor/ supervision could be provided within one week, then only tigress should be released, otherwise she would be netted in some zoo.

11. After this consideration, the Committee has also looked into case of another tiger wandering in Shivani under Tadoba-Andheri Buffer Zone. There tigress had killed three persons, two persons were injured and there was an attempt to attack one person. All these occurred within 20 days. Only one incident occurred in forest while remaining were in agricultural lands. The Committee felt that release of such tiger may again result in more such conflicts and then because of opposition of respondents/ people, the entire project of Tiger Conservation Preservation would be adversely affected. The Committee therefore recommended that said tiger should not be released and should be detained in some Safari or Zoo.

12. It is in this background that we are considering the controversy.

13. Section 11 of the Act permits hunting of wild animals in certain cases. It open with non-obstante clause, but it is subject to provisions of Chapter IV and it authorizes Chief Wild Life Warden to pass an order in writing with reasons therefor and permit any person to hunt such animal or cause animal to be hunted. Before ordering such hunting, that officer has to satisfy himself that such animal cannot be captured, tranquilized or translocated. Chapter IV is of protected areas and neither applicant nor respondents have relied upon any provisions contained therein. Chapter IV-A is about Central Zoo Authority and and recognition of zoos. Chapter IV-B is about National Tiger Conservation Authority. Section 38-O on which parties rely is placed in this Chapter. Section 38-O is on powers and function of Tiger Conservation Authority. The powers of said authority enable it to lay down normative standards for tourism and guidelines for project tiger for tiger conservation in buffer and core areas and perform such other function as may be necessary to carry out the purposes of Act. Sub-section (2) empowers to issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and any such person, officer or authority is bound to comply with said directions. Said authority has on 8th December, 2007 written to the Chief Wild Life Wardens of all Tigers Reserves on subject of declaring the big cats as man eaters. Perusal of guidelines issued by it show that if tiger begins to wait for human beings and has after killing a person eaten the dead body, it establishes beyond doubt that animal has turned into man-eater. The said National Tiger Conservation Authority therefore states that in such cases it is not necessary to wait till several human lives are lost. It has also observed that though it may be difficult to establish such cases after the first case, after the second case it can easily be decided if the animal has turned into man eater. Little later, the said authority has also mentioned that even if enough evidence has not come forth to establish the animal as man eater but there are definite grounds after one human being is killed, efforts should be

taken to trap it. Where it is established that it is a man eater, such a declaration should be made without delay and steps should be taken to destroy. Efforts to tranquilize or efforts to trap should continue along with the steps taken to destroy it. But then efforts to destroy should not slacken for the sake of trapping or tranquilizing. The National Tiger Conservation Authority also states that after tiger is declared as man eater only experienced and senior forest officer should be authorised to destroy it and in no case permission should be given to others.

14. The Standard Operating Procedures are also released by very same authority on 30.1.2013. Clause (8) suggests field action to deal with strayed wild carnivorous (tiger/leopard). Sub-clause (a) therein states that under no circumstances a tiger should be eliminated by invoking the Act if it is not habituated for causing human death. The Guidelines for dealing with man eater are annexed for compliance/ guidance at annexure II with this SOP. Annexure II suggests steps for loss of human life due to tiger. It is stipulated that a team of technical experts for monitoring on day to day basis should be set up. The said Committee consists of a nominee of Chief Wild Life Warden, nominee of the National Tiger Conservation Authority, a Veterinarian, a Local NGO representative, a representative of Local Panchayat, Field Director/ Protected Area Manager /DFO/ Incharge Chairman. It advises setting up of camera traps near kill site to confirm/establish the ID of the animal. It advises obtaining/ establishing the ID of the aberrant animal causing loss of human life, through the Committee constituted for the purpose, through camera trappings or directing sightings or pug impressions if camera trappings could not be done, besides collecting pieces of hair/scats of the carnivore (if available) for DNA profiling. It states that differentiation should be made between "human kill" due to chance encounters and "habituated maneaters". If successive trapping operation fails, an expert team for chemical immobilization of the aberrant animal is to be set up. This immobilization or tranquilization is to be adopted as first option. If the animal is captured it should be sent to a nearest recognised zoo and not released in the wild.

15. Thus, speaking legally, the guidelines issued by very same authority on 8th December, 2007 and on 30th January, 2013 cannot be seen as inconsistent with each other. On the contrary, it reveals that same are complementary and need to be construed and enforced harmoniously. Endeavour is to achieve equilibrium in human and tigers without creating any hostility and endangering the fate of Tiger Conservation Project.

16. The guidelines noted supra therefore show efforts to be made first to find out whether human kills are chance encounters or otherwise. Thereafter various steps to identify aberrant animal, like setting up of camera trap, collection of pug pug marks, obtaining DNA etc are also prescribed. The guidelines mandate authorities have to first ascertain whether the tiger can be termed as man eater and whether his identity can be established. Object obviously is to rule out elimination of a wrong animal as aberrant animal. Collection of data/evidence is

aimed at saving an innocent tiger.

17. In present facts, after tiger was released on 29.7.2017 it has carried a radio collar and its movement has been tracked, coordinates of her movement or then presence in a particular forest area have been generated and an attempt has been made to match it with the sites of human kill. Because of this gadget, the clinching data becomes available and it is not necessary to insist on collection of other data.

18. Though there has been effort to urge that order to eliminate may have been passed to satisfy the lust of a person who has joined the tranquilizing team later on, there are no such allegations in the Civil Application. Neither the Chief Wildlife Warden nor that person has been joined as parties to substantiate the same Reasons therefor are also not explained. It is therefore just a figment of imagination which has given rise to such contention.

19. The impugned order specifically observes that in Ashti Range where killing occurred on 19.9.2017 during 2016-17 there was no tiger and it has not been seriously challenged before this Court. The impugned order also mentions that baits were kept near the temporarily erected machans with waiting tranquilizing teams but the tigress did not turn up to take the baits. Four teams were deployed for said purpose and this was after order 21.9.2017 giving permission to trap and tranquilize the said animal for its transportation to Gorewada. Again, these facts are not in dispute.

20. The topography of forest area has been described. The impugned order states that the said area has a tall (about 6 feet in height) undergrowth chiefly of grasses, thorny bushes, lantana, and cotton crop etc. The movement of jeeps and gypsy was not possible due to dense vegetation, marshy patches and meandering nalas. It also points out that tranquilizing teams were sent in protective cage with tractor for trapping the tiger. Though the monitoring teams could locate the animal due to radio collar signals, it could not be actually sighted for tranquilizing. Even with the slightest disturbance, the tigress used to move and made it impossible to tranquilize and capture. It also mentions that an elephant from Melghat Tiger Reserve was brought for facilitating monitoring and tranquilizing on 28.09.2017, but the rescue teams could not succeed in their efforts due to site conditions. These facts are again not in dispute.

21. The authority for the purposes of reaching subjective satisfaction has mentioned that on 19.9.2017 one Bhivaji Gonduji Harle was killed and his body was dragged by the tiger to adjoining survey No. 63/2 and then tigress fed on the body. Thus, this attack in one field, dragging of body to other Survey number or feeding on dead body has been used to support the subjective satisfaction. To show that it is T-27 Cub-1, GPS reading of attack spots, time thereof have been matched with GPS radio collar coordinates and conclusion is drawn that it is very same animal which is responsible for killing Shri Bhivaji. This application of mind and consideration therefore cannot be considered either erroneous or perverse.

22. The order also mentions other attack in early hours of 2.10.2007. The tigress on that day attacked one farm labourer Smt. Punotri Nawade. Again material in support thereof finds consideration in impugned order. On the basis of documents made available, conclusion has been reached that tiger attack the victim in Survey No. 1250 of village Warud Part II and then tigress fed on the said body. The tigress also stayed for whole day in neighbourhood. GPS reading of the Radio collar are also matched to substantiate this finding. Again this material and conclusion cannot be said to be perverse.

23. Between these two acts there was attack on one Suresh Namdeo Padole on 29.7.2017 when he was working in agricultural field. He has escaped death as he was carrying spraying equipments on his back. This finding has not been challenged before the court. Thus, a survivor of the attack is very much available.

24. The impugned order thereafter looks into movements of said tigress from 3rd October, 2017 onwards upto 5th October, 2017. It mentions that in the meanwhile a Committee was constituted by Deputy Conservator of Forests to monitor on day to day basis, the issue. The said Committee considered the facts and came to conclusion that tigress has become dangerous to human beings and recommended the competent authority to take action for eliminating her. The proceedings in this respect were made available for our perusal. We also allowed Adv. Mandlekar to go through the same.

25. The consideration in impugned order thereafter shows that tigress has then moved in Katol Range on 8.10.2017. It takes note of the fact that said area is thickly populated having agricultural fields and also cattle.

26. In this view of material available on record, the Chief Wildlife Warden and Principal Chief Conservator of Forests has passed the impugned order and permitted killing of said animal. He declared the animal to be man eater and then exercised power under section 11(1)(a) of the Act to permit its elimination. The Chief Conservator of Forests (Territorial), Nagpur vide impugned order, authorized to arrange to hunting of said tigress. It takes note of fact that said authority has already requisitioned services of specialists Shri Nawab Shafat Ali Khan for tranquilizing and team was working in Nagpur Division and making efforts to capture tigress. Shri Wasif Jamshed joined that team on 8.10.2017. Their expert services are permitted to be utilised for this, as per rule.

27. In this situation, we find that all relevant material has been looked into by Chief Wild Life Warden and Principal Conservator of Forest. The other material which has been mentioned in SOP or 2007 Guidelines is only to ensure identity of the animal. More precaution is obviously necessary when more than one tiger are moving around and therefore there is possibility of more than one animal being involved or then getting killed as man eater in confusion. Hence to establish identity after the animal is eliminated, material is required to be procured in advance. That material thereafter can be compared with physical evidence available from the body of dead animal and its identity can be established

beyond doubt. Forest Department in that event may be required to conduct its own spot verification and panchnama, collecting hair of tiger; pug mark etc.

28. Here, when radio collar has been already used and there is a finding that there was/is no other tiger moving around in the area, there is no question of any such dispute or confusion about identity of problematic animal. The journey of tigress from point of release to spot of each kill is itself an evidence. P.M. report relied upon by applicant does not advance his cause at all. The impugned order takes note of staking or carrying away dead body, feeding on it. Consideration of various facts therein rule out role of any other tiger in human death.

29. When all these material is looked into, it cannot be said that instances of attack on human prior to 29.7.2017 become irrelevant. Her conduct from 18.5.2017 till date is relevant and has been rightly looked into. The Committee in its meeting on 14.7.2017 felt that aggressive adolescent behaviour may continue for 3 to 4 months. First such attack was on 18.5.2017 and period of more than four months has already expired thereafter. The geography and topography of the area, large human population in the vicinity, agricultural fields and activities going on and movement of a tigress of this nature in it, therefore, needs a right approach. Tigress was released on 29.7.2017 as per recommendation of the competent Committee. This shows absence of any personal interest of the forest officers in the matter. We find that all rival interests have been properly looked into. Initially the tigress was captured, detained and after decision of competent authority was released into wilderness after fitting radio collar in it. Thereafter her movements have been watched. The Forest Department adopted right perspective and therefore cannot be blamed at all in the matter. The allegations of mala fides are misconceived and erroneous. After taking all steps and precautions to preserve said Cub-1 of T-27 ultimately because of two later deaths and instances of the stalking and other attacks, in public interest and to further preservation and conservation of tiger in the area, the competent authority has reached proper decision. We do not find any jurisdictional error or perversity in process of reaching the subjective satisfaction.

30. No case is therefore, made out. The Civil Application is therefore rejected. No costs.

31. Steno copy allowed.