
(2018) 08 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 06 of 2012

Himalayan Yuva Gramin Vikas Sansthan

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 16-08-2018

Acts Referred:

Citation : (2018) 08 UK CK 0092

Hon'ble Judges : Rajiv Sharma, J; Lok Pal Singh, J

Bench : Division Bench

Advocate : C.K. Sharma, S.N. Babulkar, Paresh Tripathi, Rakesh Thapliyal

Final Decision : List along with connected matters, as well as all

Judgement

PER: RAJIV SHARMA, ACJ.

LOK PAL SINGH, J.

1. In sequel to the directions issued in the previous order dated 10.8.2018, the Additional Chief Secretary to the State of Uttarakhand along with Mr.

Rahul, Director, Corbett Tiger Reserve are present in the Court.

2. A fresh supplementary affidavit has been filed today in the Court by Dr. Ranbir Singh, Additional Chief Secretary, to the State of Uttarakhand. We

have gone through the affidavit. Prima facie, we are not satisfied with the averments contained in Paragraph no.5. We requested the Director, Corbett

Tiger Reserve to produce before us the copies of the notices which have been issued to the persons who have encroached upon the Forest Land. The

copy of one of the notices dated 10.08.2018 was placed before us. This notice is not in-conformity with the law. This notice neither bears any diary

number nor any dispatch number. We have permitted the copy of notice issued to Mr. Ali Sher S/o Yusuf to be taken on record.

3. We have also gone through the annexure No.1 whereby the details of 57 Van Gujjars families have been supplied.

4. From a close scrutiny of list placed on record, what emerges is that there are not more than 10-13 families but the respondent-State, for the reasons

best known to it, has included every adult Member as per the submission of Director, Corbett Tiger Reserve, to be the affected family. This is also

serious dereliction of the duty. When confronted with this, the Director, Corbett Tiger Reserve along with the Additional Chief Secretary to the State

of Uttarakhand and learned Advocate General, prayed for withdrawal of this notice, with liberty reserved to issue fresh notices to the families who

have encroached upon the forest land, strictly in accordance with law within twenty-four hours.

5. The Additional Chief Secretary to the State of Uttarakhand has undertaken before us that he will make earnest and sincere efforts to evict the

families who have encroached upon the forest land, within a reasonable period. The Director, Corbett Tiger Reserve shall personally verify the status

of every family by visiting the spot. If it is found that the details given in Annexure No.1 are false, fabricated and forged, the Range Officers, who

have prepared this report, namely Pankaj Sharma and Prashant Hindwan, shall be put under suspension. The list, prima facie, appears to be prepared

with oblique and ulterior motive to give the individuals undue benefit from the State exchequer.

6. It is also stated in the affidavit that the proposal has been approved by Honâ??ble Forest Minister and the same has already been sent to the

Confidential Department with a request to place the same before Honâ??ble Chief Minister and Honâ??ble Cabinet for rehabilitation of the persons

who have encroached upon the forest land.

7. We have never directed the State Govt. to frame and formulate rehabilitation policy. There is an inherent contradiction in the stand of the

respondent-State. At one hand, the respondent-State says that the action shall be taken against the persons who have encroached upon the forest land,

and in the same breath, it is making the rehabilitation policy to rehabilitate them.

8. The Additional Chief Secretary has submitted before the Court that he has submitted the following proposal: -

A. Affected families would be given 0.8 hectare of land,

B. Each of the affected family would be given Rs.10.00 lakh,

C. Plain and simple eviction without any monetary benefit.

9. The Rehabilitation Policies are primarily meant for those persons who are displaced by way of compulsory acquisition of their land for public

projects including Hydro-electric projects or due to natural calamities. How the State Govt. is contemplating the rehabilitation policy for the persons,

who have encroached upon the forest land, with impunity, is beyond our comprehension. The meager compensation is paid to the Army widows and

their family members but the persons who have encroached upon the forest land and are responsible for depletion of wildlife, there is a proposal for

giving them the compensation of Rs.10.00 lakhs each.

10. The State Government cannot give premium on dishonesty. The State Government has not taken prompt decision(s) qua preservation and

conservation of tigers and wildlife in the National Parks including Jim Corbett National Park, despite repeated directions issued by this Court. The Van

Gujjars are a constant threat to the wildlife. The State Government, however, has taken a prompt decision to protect the persons who have

encroached upon the river banks and river beds. The Court can take judicial notice of the fact that the State Government has brought an ordinance to

protect the persons who have encroached upon the land on the bank of river Rispana and its river bed. The rule of law must prevail and not anarchy.

Prima facie, the proposal taken to rehabilitate the Van Gujjars is against the public policy.

11. We have also come across number of news items whereby the persons were permitted to organize processions, Dharnas against the judgments/

orders passed by the Courts with impunity. This is a dangerous trend. This should not be permitted at all. However, the aggrieved person has a right to

take recourse to law.

12. Accordingly, all the District Magistrates throughout the State of Uttarakhand are directed to ensure that no processions/ Dharas are organized

against the judgment/orders passed by the courts.

13. Now, as far as constitution of Special Tiger Protection Force is concerned, fifteen daysâ?? time was sought for the same. The proposal has been

moved on 14.8.2018 before the Honâ??ble Forest Minister to create the same from the Forest Guard Cadre â??on deputationâ?? within a period of

one month. In the interim measure, the State Government has deployed ex-service personnel on contractual basis.

14. The final decision be taken within one week. We impress upon the State Government to recruit ex-servicemen as Members of Special Tiger

Protection Force instead of making the appointment on deputation basis, that too from the lowest cadre i.e. forest guard. The ex-servicemen

have a vast experience in handling the weapons and serving in forest terrains throughout the country. They need not be trained. They are professional.

In this process, they would also be rehabilitated.

15. The Court had already directed the concerned Divisional Forest Officer to register the FIRs against the persons from whose possession the

elephants were recovered. Ms. Neha Verma, the D.F.O. Ramnagar, who is present before the Court, has placed before us the Disease and

Treatment Register of all the elephants which were recovered by the Forest Department. We have gone through the report. As per the medical

report, all the elephants, except one, were found unfit to be deployed for commercial purposes. One female elephant was also found blind by one eye.

The D.F.O. Ramanagar Forest Division has also assured that the proper care is being extended to the elephants as far as housing, fodder etc. is

concerned. The elephants are also taken to the nearby river for bathing.

16. The D.F.O. Ramanagar also submits that the FIRs have been registered at Kotwali, Ramnagar. The copies of FIRs are ordered to be placed on

record. The Senior Superintendent of Police, Nainital is directed to ensure speedy enquiry and investigation in the matter. He shall file his personal

affidavit about the progress of the case on the next date of hearing.

17. It is made clear that only 20 private and commercial Gypsies will be permitted to go to Sitabani. The local inhabitants of the area and the devotees

are permitted to visit Sitabani Temple on the basis of the pass obtained from the office of the concerned DFO. He/she shall maintain proper record.

The vigil shall be kept against the persons who are frequent visitors of this core/sensitive/ critical area.

18. Though, we are not satisfied with the affidavit filed by the Additional Chief Secretary, but we hope and trust that the next supplementary affidavit,

to be filed by him on or before the next date, will be detailed and comprehensive. We also expect from the officers who come to assist the Court to

be

thoroughly prepared at least on facts.

19. The status report be filed on or before the next date of hearing. List along with connected matters, as well as all pending applications, on 23rd

August, 2018.