

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION 347/2016

IN THE MATTER OF:

Chandra Bhal Singh

....Petitioner

Vs

Union of India.

....Respondent

PAPER BOOK

FOR INDEX PLEASE SEE INSIDE

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N.D.O.H. 7.10.2020

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

Original Application No. 347 of 2016

IN THE MATTER OF:

CHANDRA BHAL SINGH

.. Applicant

VERSUS

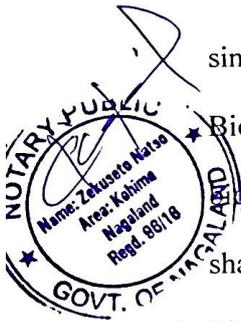
UNION OF INDIA & ORS

.. Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT NO. 19 (NAGALAND STATE BIODIVERSITY BOARD) IN PURSUANT TO THE ORDER DATED 12.04.2019, 09.08.2019 and 18.03.2020.

I, Shri SUPONGNUKSHI AO, IFS, aged 47 years S/o late ARENJENBA R/o Lower Forest Colony, House Number 51, Kohima, Nagaland state and affirm as under:-

1. That, I am the Member Secretary of Nagaland State Biodiversity Board (NSBB).
2. That, it is respectfully submitted that the compliance Affidavit on behalf of the Nagaland State Biodiversity Board have been filed before the Hon'ble NGT Court on 28.09.2016, 24.10.2017, 31.07.2019 and 19.12.2019.
3. That, it is humbly submitted that the Nagaland State Biodiversity Board has been sincerely committed to implementing the various provisions of the State Biodiversity Rules all over the State with the aim to protect and conserve its biological resources, facilitating sustainable utilization as well as fair and equitable sharing of benefits arising out of it.
4. That, it is humbly stated, as mentioned earlier on the compliance affidavit dated 28.09.2016, Nagaland as a State has a unique land holding pattern and in that, the land and resources belong to the community empowered with the special provision of Article 371(A) of the Constitution of India. That, the land holding and ownership system of Nagaland is quite different from other States and that most of the forest and natural resources belongs to and is owned by the communities (also private,



individual, clan and khel) from time immemorial and the same right is protected under Article 371(A) of the constitution. Therefore, keeping all this in consideration, the Nagaland State Biodiversity Board has agreed to constitute BMC's at the Village Local Level only.

5. That, it is humbly submitted that as per the 2016-17, Report of the Rural Development Department, Government of Nagaland, there are 1238 villages under 74 RD Blocks from 11 Districts in Nagaland.
6. That, the Nagaland State Biodiversity Board has constituted 1100 BMCs (88.85 %) out of 1238 Villages in Nagaland as of 21st September, 2020 having representative villages in all the 74 RD Blocks and that the State Board is continuously taking steps to form BMCs in all the Villages in the State.
7. That, it is humbly submitted that the Nagaland State Biodiversity Board (NSBB) has completed 1100 People's Biodiversity Registers (PBRs) of which 18 PBRs is validated by the BMCs and 1082 Base PBRs prepared are yet to be verified in field and validated by the Biodiversity Management Committee (BMCs). This verification and validation of 1082 PBRs will be carried out based on the suitability for field visits and the relaxations on the lockdown imposed by the Government as well as the village authorities.



Status of Biodiversity Management Committee (BMCs) and People's Biodiversity Registers (PBRs) prepared as on 21st September 2020 in the 11 Districts of Nagaland is given below: -

Status of BMCs and PBRs in Nagaland			
DISTRICT	NO. OF BMCs	NO. OF PBRs COMPLETED	REMARKS
KOHIMA	44	9 completed; 35 Base PBR completed	Base PBR in soft copy; field verification and BMC validation ongoing
DIMAPUR	180	180 Base PBR completed	
PHIEK	69	6 completed; 63 Base PBR completed	
PEREN	66	66 Base PBR completed	
ZUNHEBOTO	164	3 completed; 161 Base PBR complete	
WOKHA	133	133 Base PBR completed	
MOKOKCHUNG	77	1 completed; 76 Base PBR completed	
LONGLENG	45	45 Base PBR completed	
KIPHIRE	93	93 Base PBR completed	
MON	109	109 Base PBR completed	
TUENSANG	120	120 Base PBR completed	
Total	1100	1100 (18 completed; 1082 Base PBRs completed)	

8. That, as per the Rules 18 (1) of the Nagaland State Biological Diversity Rules 2012, “ Any person seeking access to biological resources and associated traditional knowledge for research or commercial utilisation shall make an application to the Board in Form – I appended to these Rules. Every application shall be accompanied by a fee of ₹ 100/- in case of such access is for research purpose and ₹ 1,000/- for commercial utilisation, and shall be in the form of a Cheque or Demand draft. Provided that such fee shall not be applicable to recognised traditional healers”. And therefore, the Nagaland State Biodiversity Board has

collected a sum of ₹ 2,700/- (Rupees Two Thousand Seven Hundred only) from the applicants/researchers for access to biological resources for research purposes.

However, the Board has not collected any fees on collection of biological resources for commercial utilization till date. The amount collected has not been utilised till date.



9. That, it is humbly submitted that the State is committed to implementing the Biodiversity Act and that the State is taking active steps to implement all the provisions of the Biodiversity Act, provided some more time is needed to complete the task. It is also humbly requested to waive off the penalty since there has been significant progress, amidst the global pandemic situation and lockdown imposed during the past few months.

It is also stated that the State has constituted a Seven (7) Member State Level People’s Biodiversity Register (PBR) Quality Evaluation and Monitoring Committee. The Committee consists of a Chairman, Member Secretary and Five (5) Members.

10. Some of the problems faced by the Nagaland State Biodiversity Board to complete the process of BMCs and PBRs are as under: -

Difficulty in formation of BMCs:

- a. Lockdown imposed by the State, Districts and Villages is one of the reasons for delay in BMC constitution because of the limited movement of the District Coordinators.
- b. Some village authorities are reluctant to form BMC before imparting training, which is not possible due to lockdown on the present pandemic situation.
- c. Lack of fund (start-up fund) to BMCs.

Difficulty in preparation of PBRs

- i. Exhaustive and labour-intensive documenting exercise of data collection in the formats which are very technical requiring subject experts.
- ii. Lack of sufficient technical staffs in the Board for PBR works.
- iii. Nagaland State has many tribes and each with its own unique culture and language which posed problems because of language barrier. Thus, it is very difficult during the process of data collection.
- iv. Accessibility to remote areas is very difficult due to lack of proper road connectivity.
- v. Limited movement of the Field Executives for data collection and field validation because of the present pandemic situation and lockdown imposed in the villages.



10. That, the facts stated in the above Affidavit are based on the information derived from Official records, believed by me to be true and correct. No part of the same is false and nothing material has been concealed thereof.

[Signature]
DEPONENT

SUPONGNUKSHI AO, IFS
Member Secretary,
Nagaland State Biodiversity Board (NSBB)

*Member Secretary
Nagaland Biodiversity Board*

Verification

I, the Deponent above named do hereby verify that the facts stated in the above Affidavit are based on the information derived from official records, believed by me to be true and correct. No part of the same is false and nothing material has been concealed therefrom.

Verified at Kohima on this day the 21st September 2020.



DEPONENT

SUPONGNUKSHI AO, IFS
Member Secretary,
Nagaland State Biodiversity Board (NSBB)
*Member Secretary
Nagaland Biodiversity Board*

deponent who is personally known
to me/identified
by..... this the 21st
day of Sept 2020 at Kohima

Item No.2

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 347/2016
(I.A. No. 471/2019, M.A. No. 15/2020,
M.A. No. 22/2020& M.A. No. 23/2020)

Chandra Bhal Singh

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 18.03.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Saurabh Sharma, Advocate

For Respondent(s): Mr. Sashi Juneja, Advocate for State of J&K
Ms. Aastha Mehta, Advocate for State of Gujarat
Mr. Mukul Singh, Advocate for MoEF&CC and NBA
Ms. Amrita Sharma, Advocate for State of Karnataka

ORDER

1. This order is being passed in continuation of order dated 09.08.2019. The issue for consideration is the remedial action for non-compliance of provisions of the Biological Diversity Act, 2002 (the Act) and Biological Diversity Rules, 2004 (the Rules) in as much as Biodiversity Management Committees (BMCs) have not been constituted as per Section 41 of the Act and People's Bio Diversity Registers (PBRs) have not been maintained, as required under Rule 22(6).

2. The Act was enacted to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits and for matters connected therewith or incidental thereto with a view to give effect to the United Nations Convention on Biological Diversity (CBD) which came into force on 29.12.1993. The Act seeks to regulate access to biological resources and fair and equitable sharing of benefits arising out of utilization of biological resources by constituting National Biodiversity Authority (NBA) to advise the Central Government and the State Governments on steps towards conservation of biodiversity, sustainable use of its components, equitable sharing of benefits and allied issues. The Act also contains provision for establishment of State Biodiversity Boards to advise the State Government on the subject. The Central Government has to develop national strategies, plans and programmes for conservation and promotion and sustainable use of biodiversity. At local level, every local body has to constitute BMCs. The Rules based on CBD provide that the BMC is to prepare PBRs containing comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use and Traditional Knowledge (TK) associated with them.

3. This Tribunal issued notices to all the States and Union Territories, Boards and Authorities. The matter has been considered on several dates in the last two years. It is not necessary to refer to all the proceedings. Some State Boards have filed their respective affidavits mentioning the steps taken for enforcement of the Act and the Rules.

4. Vide order dated 12.04.2019, noticing huge gap in constitution of BMCs and preparation of PBRs, this Tribunal directed the said steps to be completed within three months and a report filed by MoEF&CC. The States which remained non-compliant were asked to furnish their explanation.
5. The matter was thereafter considered on 09.08.2019 in the light of the report of MoEF&CC dated 02.08.2019, the Tribunal observed:-

“ 5. A report dated 02.08.2019 has been filed by the MoEF&CC to the effect that the Principal Secretaries of Panchayat Raj and Rural Development Departments were asked to expedite the setting up of the BMCs and three regional meetings were held with all the States and the State Biodiversity Boards. The statistics show that as against the need to constitute 317519 BMCs, 155838 BMCs have been constituted and 6868 PBRs have been documented, while 1692 PBRs are still in progress. The BMCs constituted are about 50%. The number of PBRs appears to be less than the PBRs reported earlier.

6. Having regard to the laudable objective to meet the necessity of conservation of biological diversity, delay of more than 16 years in complying with the mandate of law is a matter of serious concern.

7. We regretfully note that the matter on PBR progress noted is 'zero' in the States of Arunachal Pradesh, Bihar, Chhattisgarh, Gujarat, Jammu & Kashmir, Karnataka Madhya Pradesh, Manipur, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal. On the subject of BMC, there is zero progress in Bihar and Jammu & Kashmir.

8. This inadequate progress is in spite of repeated directions of this Tribunal. We asked all the learned counsel appearing in the matter to suggest a reasonable mechanism for ensuring compliance of law with a penal consequence for any further defaults.

9. **India is one of the recognized mega-diverse countries of the world, harbouring nearly 7-8% of the recorded species of the world, and representing 4 of the 34 globally identified biodiversity hotspots. India is also a vast repository of traditional knowledge associated with biological resources. So far, over 91,200**

species of animals and 45,500 species of plants have been documented in the ten biogeographic regions of the country. 5 The indigenous and local community are a repository of traditional knowledge and their knowledge and practices help in conservation and sustainable development of the biodiversity. In the past, India has already faced biopiracy⁶. There is, thus, urgent need to document the knowledge of the local community in the form of PBR.

10. As per certain studies⁷, PBRs help the State and the local community to become aware of the valuable resources being harvested in their area which can be utilised for the overall social and economic development of the State. Furthermore, PBRs also help in conservation of the traditional practices and knowledge of the local community. Studies on the issue of access and benefit sharing (ABS)⁸, show that non establishment of BMCs and absence of PBRs deprives the local community of the advantage of the biological resources. PBRs not only document the knowledge, they also help in identification of benefit claimers.

11. In above background, having considered the submissions made by the learned counsels, we direct as follows:

- (i) The Chief Secretaries of all the States, where the defaults are continuing, may consider giving a warning to the Panchayat Secretaries for their past failures, recording the same in their service record and give direction to the officers who are responsible for the job to ensure compliance with 100% constitution of BMCs and PBRs by 31.01.2020 failing which coercive measures may have to be considered against them. The Chief Secretaries may evolve a mechanism for ensuring a monthly meeting to be attended by the Chairman and Member Secretaries of State Biodiversity Boards, Secretaries, Panchayat, Environment and Forest starting from September, 2019.
- (ii) The States will be accountable for the defaults and required to deposit a sum of Rs. 10 lakhs per month each from 01.02.2020 with the CPCB to be utilized for restoration of the environment. The States will be at liberty to recover the said amount from the persons committing the default.
- (iii) The MoEF&CC and National Biodiversity Authority may hold a review meeting every

month from September 2019 till the above task is completed.

- (iv) *The MoEF&CC may file a compliance report after collecting the necessary data from all the States on or before 15.02.2020. The Monitoring Committee of the MoEF&CC may oversee the quality of PBRs on sample basis by evolving a suitable mechanism”*

6. Accordingly, a final report has been filed by the National Biodiversity Authority, Chennai on behalf of the MoEF&CC giving status of the formation of Biodiversity Management Committees (BMCs) and preparation of Peoples Biodiversity Registers (PBRs) in the local bodies as on 31.2020. The report inter-alia is as follows:

“ As can be seen, there has been an increase of 32.5% in BMC constitution and an increase of 32.7% in PBR formation since the Order of the Hon’ble National Green Tribunal dated 09.08.2019:-

As on 26/07/2016 (when the OA was filed before the Hon’ble Tribunal)		As on 31/07/2020 (Based on which the Tribunal had issued Orders on 09/08/2019)		As on 31/01/2020 (January 2020)	
BMCS formed	PBRs prepared	BMCs formed	PBRs prepared	BMCs formed	PBRs prepared
9700	1,388	1,55,838	6,868	2,43,499	95,252

3. *As already informed in the Interim Report, the National Biodiversity Authority had written to the Chief Secretaries of all States on 08/11/2019 to take necessary action to comply with the Orders of the Hon’ble Tribunal to complete the process of BMC formation and PBR preparation within the stipulated time frame as instructed by the Hon’ble Tribunal.*
7. *PBR is a dynamic document and it has to capture all the biological resources available in the local body in all the four seasons. Besides evaluating the PBRs. The PBR Monitoring Committee constituted by the NBA based on approval by MoEF&CC would be assisting the SBBs to evolve a mechanism to complete the PBRs in an expeditious manner.”*

7. We have also perused the written submissions filed on behalf of the applicant on 16.02.2020 commenting about the compliance as follows:

“4. That a perusal of the Compliance Report dated 13.02.2020 shows that:-

- (i) Out of 2,75,220 local bodies, BMCs have been constituted in 2,48,140 local bodies. This implies that present compliance rate is more than 90%. In the following States and Union Territories: Assam, Goa, Himachal Pradesh, Kerala, Maharashtra, Sikkim, Tripura and Lakshadweep the compliance with respect to BMC constitution is 100 %.*
- (ii) Out of 2,48,140 BMCs, PBRs have been prepared by 95,252 BMCs. This implies that more than 61% of the BMCs are yet to prepare their PBRs. It is important to note that while in the Union Territory of Jammu and Kashmir, State of Bihar and Rajasthan none of the BMCs have prepared their PBRs till date while Uttar Pradesh has achieved 100% target in PBR preparation.”*

8. The applicant has also given comments about the quality of the PBRs, status of collection of fees by the BMCs, status of funding of BMCs and status of access and benefit sharing (ABS).

9. We find that since there are still defaults in the constitution of BMCs and preparation of PBRs within the stipulated time fixed by this Tribunal, the defaulting States are liable to pay compensation in terms of order dated 09.08.2019 from 01.02.2020. The Act was enforced in 2002. The Rules came into force in 2004. Any further delay is not conducive to rule of law. The States cannot be allowed to plead incompetence or inability of carrying out mandate of law, undermining public interest. We may note that in absence of PBRs, regulation for conservation of biodiversity is affected. The Tribunal dealt with a matter in O.A. No. 57/2018 vide order dated 30.07.2019 where concretization within the blue line of Krishna river was found hampering biodiversity at the river bed. The

Hon'ble Supreme Court in Civil Appeal No. 6563/2019, *Wai Municipal Council v. Jeevitnadi Living River Foundation & Ors.*, against the above order of NGT, observed, vide order dated 30.08.2019:-

"We are satisfied that concretization has been done within the prohibited zone, which has hampered the ground seepage and biodiversity at the river bed."

10. There are other similar instances including order of this Tribunal dated 20.02.2020 in O.A. No. 385/2019, *Centre for Wildlife v. UOI* for preservation of great Indian Bustard by removing powerlines from the flight path of the said bird. This matter was also dealt with by the Hon'ble Supreme Court vide order dated 18.02.2019 in Civil Appeal No. 838/2019, *M. K. Ranjitsinh & Ors. V. UOI & Ors.* It is not necessary to multiply similar other instances but the fact remains that the issue is great significance and urgency.
11. In view of the above, we do not find any merit in the applications seeking extension of time. The States may ensure compliance and for the delay, compensation has to be paid as already directed. Only exception which may have to be made is for Jammu & Kashmir and Ladakh on account of developments in the wake of Jammu & Kashmir Reorganization Act, 2019 and peculiar situation which prevailed as mentioned in the affidavit dated 11.02.2020 filed on behalf of the UT of J&K. The time in respect of UTs of J&K and Ladakh will stand extended up to 31.10.2020. For delay beyond the said date, compensation at the same rate as applicable to other States/UTs will be payable from 01.11.2020.

In view of the above, I.A. No. 471/2019, M.A. No. 15/2020, M.A. No. 22/2020 & M.A. No. 23/2020 are dismissed.

12. We are informed that the National Biodiversity Authority of India has prepared and placed on its website a model PBR for guidance of the States. The said model may be revised in the light of other available models. By way of example, reference is made a model prepared by the State of Nagaland.¹ Other similar models may also need to be looked into. The model so revised may be placed on the website within one month from today.

13. The MoEF&CC may continue to monitor the situation and file an updated status report as on 31.08.2020 before 30.09.2020. The stand of the applicant with regard to quality of the PBRs and other issues may be looked into and response filed before the next date by email at judicial-ngt@gov.in. CPCB may take steps to recover compensation from the defaulting States in terms of earlier orders.

List for further consideration on 07.10.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

March 18, 2020
Original Application No. 347/2016
(I.A. No. 471/2019, M.A. No. 15/2020,
M.A. No. 22/2020& M.A. No. 23/2020)
AK

¹<http://gef-satoyama.net/wp/wp-content/uploads/2017/11/Kivikhu-People%E2%80%99s-Biodiversity-Register.pdf>