

From,

Ramesh kumar Sudhanshu.
Principal Secretary
Govt. of Uttarakhand.

To,

Secretary, MoEF&CC
Govt. of India
Indira Paryavaran Bhavan
Jorbagh, N.Delhi-110003

Forest Section-2

Dehradun, Dated (2 April, 2023

Sub: Report submitted by the a three-Member Committee comprising DG, Forest Department, ADG Wildlife Department and ADG, Project Tiger in compliance with the Hon. NGT's order in O.A. No. 748/2022.

Madam,

In response to a news item published in the Newspaper The Hindu dated 02.10.2022 titled "**Over 6,000 trees illegally cut for tiger safari project in Corbett Reserve, says FSI report**", the matter was taken up *suo moto* by the National Green Tribunal as Original Application No. 748/2022. In its order dated 21.10.2022, the Hon NGT was pleased to direct as follows:

4. From the above, it is seen that illegality in cutting of trees is clearly acknowledged. Thus, accountability needs to be fixed for such violations and damage to environment restored, following due process of law.

5. Accordingly, we constitute a three-Member Committee comprising DG, Forest Department, ADG Wildlife Department and ADG, Project Tiger to identify the violators and the steps required for restoration of environment. Its report with specific recommendations may be furnished to the Secretary, MoEF&CC within one month and steps for further course of action in the matter be finalised within next one month. Till then the Project may not be allowed to proceed.

6. The action taken report be filed by the MoEF&CC on or before 31.1.2023 before the Registrar General of this Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. If any further direction appears to be necessary, the Registrar General, NGT may place the matter before the Bench for further direction.

The application is disposed of.

From a simple reading of the above, it is clear that the Hon NGT has tasked this abovementioned committee with the explicit mandate to

- a) examine the illegality in cutting of trees and identify the violators
- c) and the steps required for restoration of environment.

The committee has recently submitted its report to the NGT through you, as per directions of the NGT.

2) From our perusal of the report submitted by this three member committee, it appears that this committee has, at the very beginning failed to appreciate its mandate clearly and thus waded in directions of its own, which were never part of the directions of the Hon'ble NGT.

Thus, the Committee, on Page 2 of its report identifies its mandate as follows:

- a) To identify the violators
- b) the steps required for restoration of environment.

3) Thus, either by design or by accident the committee conveniently ignores its given role to examine the illegality in cutting of trees and identify the violators of this act and further suggest the steps required for restoration of environment.

By shifting focus from the examination of the illegal cutting of trees including the quantum, the committee has chosen to expand its mandate unilaterally

and seems to have gone on a fact finding mission of its own, neither mandated nor desired, considering that the matter of other violations in this project and nearby sites has already been examined in detail by several committees/bodies including the MoEF&CC's IRO and the NTCA.

On this ground alone, this report stands vitiated.

Further, the state government has already taken very serious and deterrent action including suspension, arrest and charge sheet against various erring persons in this matter, which has gone completely ignored.

4) With regard to the illicit felling of trees, examination of which was the primary mandate of this committee, following observations has been made at different pages of the report:

(a) On page no 25 of the report at point no 8, the committee observes that *"The perusal of the various construction works suggest that the attempts have been made to minimise the tree felling during the construction of the various infrastructure of the Tiger Safari. The internal and the service roads have been aligned in such a way that there is minimum tree felling. The Site Inspection Report dated 07.09.2020 of the DIG, IRO had also observed that there will be minimum felling of trees on the access roads falling inside the Tiger Safari as the density of trees will allow the roads to be built without much felling. Similarly, the interpretation centre and administrative buildings have been placed at relatively open area."*

On the other hand the FSI has estimated illicit felling of 2561 trees in this area which is contrary to the observations recorded by the committee after field visit.

(b) On page no 27 at point no 13, the Committee states as follows: *"Committee visited the site of waterbody which has been constructed near the Pakhrau FRH. Construction of water body was done in front of Pakhrau FRH after clearing vegetation and standing trees by undertaking excavation work on big scale. Size of the pit dug for waterhole as measured*

by DFO during inspection was found 100 mts × 100 mts x 1 mtr which is huge by all standards and by any means cannot said to be a waterhole for wild animals. It would have been deeper a year ago. 122 uprooted trees and 13 stumps were even found in this pit area during inspection indicating destruction of habitat. The location and size of water body cannot be considered as part of habitat improvement or wildlife management interventions....

(c) On page no 27 of the report at point no 14, the committee observes that " Stumps were noticed near the construction sites of Interpretation Centre and Administrative building, Pakhrau FRH and Morghatti Forest Campuses, water holes & elephant walls indicate irrational and massive felling of trees (density of forest about 0.4) way more than 163 trees originally proposed to be felled at the proposed Tiger Safari site in Pakhrau has been indicated by Forest Survey of India (FSI) in its report. FSI has estimated felling of 6093 trees with 5765 on lower side and 6421 on higher side with 95% confidence interval and 2.25 % standard error. FSI is a premier agency and prepares biennial survey report of entire India and looking at the state of site and also the comparative images there are no reasons to doubt the estimates of FSI."

5) It is on the last count that the committee seems to have failed its expectations. If the fact that FSI is a premier agency and prepares biennial survey report of entire India is itself sufficient to raise its report beyond any realm of doubt, there would have been no need of this committee. The Hon NGT during its hearing had already taken note of the report submitted by the FSI. The Uttarakhand Forest Department has been raising various technical observations to the FSI which, in its considered opinion have largely remained unanswered. These inter alia include that the FSI report relies on extrapolation of inventory instead of analysis of very high-resolution satellite data for the estimation of tree felling and extrapolation of ground data instead of remotely sensed data. Further, time series data has not been made

available, despite a specific request for the same. In this regard, PCCF(HoFF) has already communicated his observations and technical comments to the Government of Uttarakhand vide his letter no PO/214 dated 03-01-2023. Such observations have also been duly shared with the Committee and it would have been prudent for it to have examined these in detail and presented its considered view on the same to settle this issue. That it has abdicated its responsibility on this count and not chosen to do so is a glaring lacunae in this report.

Further, it is stated that in case felling of trees in such large numbers did take place, the responsibility of senior officers upto the level of HoFF for the same cannot be denied. However, the committee has chosen to remain silent on this.

6) The report has, on page no 29 point no 1, under the heading of violation of Forest Conservation Act 1980, considered the construction of Tiger Enclosures and the Interpretation Centre before the stage II clearance of the Tiger Safari Proposal as violation of the Forest Conservation Act, 1980. This interpretation does not seem to be correct and the issue needs to be amplified in some detail for clarity:

Section 2 of the Forest Conservation Act, 1980, states as follows:-

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose

Not with standing anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

ii) that any forest land or any portion thereof may be used for any non-forest purpose;

iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

b) any purpose other than reforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

7) The explanation as given above explicitly establishes that **any work relating or ancillary to protection, development and management of forest and wildlife, shall not fall in the category of non-forestry activity and therefore section 2(2) of the Forest Conservation Act shall not be applicable in carrying out such works.** While there is no exhaustive list of forestry and non-forestry activities, the Act itself clarifies that any activity **ancillary to protection, development and management of forest and wildlife is a forestry activity** and there is nothing in the Act which bars the taking up of any forestry activity in forest areas without the approval of the Government of India.

8) Attention is further drawn to the Para 1.22 of **Handbook of Forest (Conservation) Act, 1980 and Forest Conservation Rules, 2003 (Guidelines**

&Clarifications) issued in March 2019 by the MoEF&CC, Government of India which states as follows:

1.22. Zoo, Rescue, Rehabilitation Center and captive breeding facility

Zoo, Rescue, Rehabilitation Center and Captive breeding facility for wild life management is treated as a forestry activity for the purpose of applicability of the provisions of FCA 1980. However construction of Zoo over forest land has both forestry and non-forestry components. After thorough deliberation and discussion, it has been decided that detail proposal for construction of Zoo, after approval of plan by CZA, shall be submitted to MoEF&CC as per the procedure prescribed for diversion of forest land. It has been decided that not more than 15 per cent of total forest area, requested for diversion under FCA 1980, may be used for non-forestry activities. Accordingly, 15 per cent of the total NPV calculated for the area sought for diversion will be charged against the proposal. For the purpose of Compensatory afforestation (CA), if the project is being submitted and constructed by central government agency, then it will be done over the degraded forest area equivalent to 30 per cent of the total forest area being diverted. In case it the project is being submitted and constructed by State Government agencies /private agencies then it will be done over non forest land equivalent to 15 per cent of total area being diverted. In such cases the non-forest land shall be transferred, mutated in the name of forest department and notified as Protected Forest prior to stage II approval. **(page 43-44)**

9) Further, attention is drawn to the Para 12.6 of this Handbook:

12.6 Zoo/Rescue Centers: Establishment/Re-location of zoos or rescue centers in forest area, including rescue centers in a zoo/wild life safari or otherwise where wild animals are kept also for exhibition to the public, requires diversion of forest land with prior approval of Central Government under FCA, 1980. However, establishment of a rescue center inside the forest by the State Government purely for rehabilitation and recapitulation and not

for public display and enjoyment is not treated as a non-forest activity (Explanation b under Section 2 of the FCA, 1980)

The establishment of Zoo and Wildlife Safari whether stationary or mobile, where captive animals are kept for exhibition to the public that does not include a circus and an establishment of a licensed dealer in captive animals, are non-site specific and requires diversion of forest land with prior approval of Central Government under FCA 1980. Proposals of construction of Zoo shall be entertained under the provisions of FCA 1980 only when accompanied by CZA approved plan along with mandatory documents

It is empirically arrived at that not more than 15% of the activities in the establishment of a new zoo shall be non-forestry in nature. Therefore, the following general conditions are arrived at for approving new Zoos:

- a. The State Government shall ensure that the non-forestry activities should be limited to the minimum, and in any case should not be more than 15% of the diverted area
- b. The conditions imposed by Central Zoo Authority shall be strictly adhered to
- c. NPV at the rate of 15% of the entire diverted area under Section 2(ii) and (iii) shall be charged.
- d. Compensatory afforestation shall be raised as per dispensation specified in guidelines 2.5 (v).

12.7: Activities required to be done in a Zoo as per the approved Management Plan will not attract the provisions of Forest (Conservation) Act provided such activities are necessary for management of animals and imparting education & have the prior approval of CZA. **(Page 88-89)**

10) From a simple reading of the above, it is clear that for the establishment of any zoo/safari, provisions of the Forest Conservation Act 1980 are not attracted, but establishment of zoo/safari has both forestry and

non-forestry components and therefore, the approval of the Government of India is necessary before establishing it.

11) Further, the establishment of zoo(safari) has a minimum of 85% area under forestry activity and taking up of any forestry activity on forest land does not require prior approval of the Government of India. To amplify this further, attention is drawn to the following decisions of the Forest Advisory Committee(FAC), MoEF&CC, chaired by the DG Forest & Special Secretary, Govt. of India in some similar matters-

i. In the agenda number 4 of the meeting of the Government of India's Forest Advisory Committee on 19.12.2018, a proposal to establish a Zoological Park in Bellary district of Karnataka came up for discussion. According to the records attached with this proposal to establish a Zoological Park, some works had already been done before the proposal to establish Zoological Park was submitted for the in-principle approval. Taking cognizance of this, it was decided by the Forest Advisory Committee that the works which have been done before obtaining permission under the provisions of the Forest Conservation Act, 1980 are basically forestry works and therefore such works do not come within the scope of Forest Conservation Act and hence there is no violation of this Act. It is clearly mentioned in paragraph I of the decision taken on this agenda by the Forest Advisory Committee that establishment of zoo comprises of both forestry (Ex-situ Conservation, rescue Centre, breeding of endangered species, nature education) that non-forestry (Cafeteria, Parking) components.

ii. Similarly, in the meeting of the Forest Advisory Committee dated 15.01.2019, a proposal to shift the zoo located in Thrissur under Thrissur Forest Division of Thrissur district to Puttur came up for deliberation. According to the records enclosed with this proposal, some works had already been done at the place in Puttur where the zoo was to be shifted, before Stage-1 approval to the proposal was received. Taking cognizance of this, the Forest Advisory Committee decided that the works which have been done before obtaining

permission under the provisions of Forest Conservation Act 1980 are basically forestry works, hence such works do not violate Forest Conservation Act.

iii. A similar matter came up for discussion in the meeting of the Forest Advisory Committee dated 25.04.2017 to establish International Zoo in Nagpur. Here too, some works had already been done at the proposed place without getting even stage-1 approval. Again, the Forest Advisory Committee opined that the works which have been done before obtaining permission under the provisions of Forest Conservation Act 1980 are basically forestry works hence there is no violation of the Forest Conservation Act 1980.

12) It is pertinent here to point out the judgment passed by the Hon'ble High Court of Rajasthan in a matter relating to the construction of an Interpretation centre in the Keoladeo National Park. (Om Prakash Choudhary And Anr. vs State Of Rajasthan And Ors. on 4 August, 2004 , AIR 2005 Raj 18, RLW 2005 (1) Raj 167, 2004 (4) WLC 388 Author: A D Singh).

The petitioners were aggrieved by the construction of Salim All Nature Interpretation Center at Keoladeo National Park, Bharatpur and sought a direction for demolition of the construction.

In this instance, the Hon'ble High Court held as follows,:

"We have considered the submissions of the learned counsel for the parties. It is true that according to Section 2 of the Forest (Conservation) Act, 1980 neither the State Government nor any other functionary or authority of the State is competent to issue, except with the prior approval of the Central Government, the following directions to the effect:

b. *that any reserved forest or any portion thereof, shall cease to be reserved;*

c. *that any forest land or any portion thereof may be used for any non-forest purpose;*

d. that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

e. that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion thereof, for the purpose of using it for re-forestation.

Explanation to Section 2 clarifies the meaning of "non forest" purpose. According to the explanation, it means breaking up or clearing of any forest land or portion thereof for-

i. the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants;

ii. any purpose other than re-forestation.

The Explanation further goes on to clarify that 'non forest' purpose does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing-bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

13. As is apparent from the aforesaid explanation, work relating or ancillary to conservation, development and management of forest and wildlife does not attract the provisions of Section 2 of the Forest (Conservation) Act, 1980. The setting up of the interpretation center is for educating the visitors and creating awareness in them about the importance of wildlife. Conservation of wildlife and preservation of forest is possible only when the people are alive to the fact that conservation, protection and development of wildlife and forests are essential for the sustenance of human life and they are part of the nature's grand plan in which they have a role to play. Unless the people are educated and interest is created in them in the

beauty and usefulness of the forests and wildlife, the forests and wildlife will not be safe. Forests, birds, animals, human beings etc. are all strands of one composite web of life and the same is liable to disintegrate in case any of the strands is not preserved and protected and is allowed to be destroyed. The words "other like purposes" occurring in the Explanation are wide enough to cover all the activities, which are meant to educate the people regarding the importance of conservation and preservation of wildlife and forests. Therefore, it cannot be said that land for setting up of the Interpretation Center has been used for a "non-forest" purpose. Since the land has not been used for "non-forest" purpose, Section 2 of the Forest (Conservation) Act, 1980 does not apply and, therefore, the permission of the Central Government to construct the Interpretation Center is not required.

14. The learned counsel on the assumption that Section 2 of the Forest (Conservation) Act, 1980 applies, submitted that for seeking approval of the Central Government for use of the land for "non forest" purposes, the proposal is to be transmitted to the Central Government in the form appended to Forest Conservation Rules, 1981 (for short "the Rules"). According to the learned counsel, proposal ought to have been sent by the State Government to the Central Government as is mandated by Rule 4 of the Rules. He also submitted that the Central Government after it receives proposal is required to seek the advice of the Committee constituted as per Rule 2A of the Rules. The learned counsel further contended that according to Rule 6, the Central Government can grant approval to the proposal or reject the same only on receipt of the advice of the Committee and after holding such further inquiry as it may consider necessary.

15. We find no force in the aforesaid submission since we have already held that Section 2 of the Forest (Conservation) Act, 1980 was not applicable in the instant case. Therefore, there was no requirement compelling the State to forward the proposal for setting up of the Interpretation center to the

Central Government. Since Section 2 does not apply, therefore, Rule 4(1), 5 and 6 of the Rules are also inapplicable.

13) The aforementioned facts and the accompanying explanation unambiguously establish that the construction of tiger enclosure and the interpretation centre is a forestry activity and, therefore, the obligation of obtaining Stage-II/final approval from MoEF& CC under FC Act to begin their construction was not applicable. Such permission of the Government of India would be mandatory for beginning any activity covered under the 15% proviso as laid down for non-forestry activities. Even then, for the establishment of Pakhro Tiger Safari, works covered under forestry components viz. the construction of the tiger enclosure with objective of ex-situ conservation and the construction of the interpretation centre, for nature education were sanctioned by the State Government as part of the forestry components of the Tiger Safari with due diligence, only after getting the In-principle (Stage-1) approval by MoEF&CC.

14) As such, in this case no violation of the Forest Conservation Act 1980 is made out and the committee's observations on this count are clearly misplaced and contrary to the observations of the FAC in similar situations. Thus, various paras of the report that draw inference of wrongdoing based on this flawed interpretation also need to be suitably amended.

15) It is further submitted that in case the committee has felt that an offence under FC Act 1980 is made out here, it should have also taken note of the provisions of section 3(b)(1) quoted as below:

3 (B): Offences by the Authorities and Government Departments

1) Where any offence under this Act has been committed –

(a) by any department of Government, the head of the department; or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

It is evident that the committee has not taken due note of this.

16) The committee on page 25 of its report with regard to construction of buildings at Sanah observed that in one case DFO Kalagarh was allowed to execute works in the area under jurisdiction of DFO, Lansdowne by Chief Conservator of Forest, Garhwal in spite of strong reservations by DFO, Lansdowne. For such propositions neither there is any administrative provision or rule **nor there is any precedence in the country**. It is not sure how the committee has arrived at such a sweeping conclusion. In Uttarakhand alone, there are several instances where assets located inside the territorial jurisdiction of one forest division are managed by another, based on administrative exigencies. In fact in the same area, assets such as the Visitor Centre of Kalagarh Tiger Reserve Division at Kotdwar are located within the territorial jurisdiction of the Lansdowne Division.

The government does not agree to the observations of the committee on this. Thus, the observations of the committee need to be suitably amended based on the above explanation.

17) The committee has commented on the construction of the Chief Wildlife Warden hut at Dhikala and additional two storey block at Gairal (Para 9, Page 35). This was never part of the mandate of the committee and seems a case of unwarranted overreach. The committee has unilaterally arrived that the construction of this building at Dhikala was "illegal", even though no specific reasons have been laid as to why this building has been considered "illegal" and no specific view of the state government has been solicited or considered on this. This is also not related to any tree felling.

18) Further the report in Para 9, Page 35 goes on to state that a show cause notice was issued against the then Director, Corbett for Dhikala only and that too was disposed at the level of Additional Chief Secretary Forests, Uttarakhand without going into the details/merits of the case (para 9 Page 35). This observation of the committee is unfortunate, incorrect, disrespectful and strongly denied. It is not clear on what basis such insinuation is being made by the committee here. It was rightful for the Additional Chief Secretary Forests, Uttarakhand to take a decision in this matter based on the facts/records duly placed before him and the committee has no basis to make such a sweeping statement that such decision was taken without going into the details/merits of the case. The committee has neither examined any records of the government nor held any discussion at the appropriate levels of government in this regard to arrive at such an observation.

19) Reference has also been made in this para to an Audit letter dated 8/12/2022 and further stated that the Govt. of Uttarakhand has not taken any action in this regard (para 9 Page 35). This observation is also unfortunate and incorrect and hence strongly denied. The Government of Uttarakhand is currently examining the Audit Memo submitted to it recently by the Principal AG and will submit its considered response to the same. As mentioned earlier, several actions including arrest and chargesheet against several officials has

already been taken in this matter by the Govt. of Uttarakhand and any further action, if so required, will also be taken by the Government. Any insinuation to the contrary is strongly denied.

20) Further, the committee has made the surprising comment that, at the Uttarakhand Government level, all the officers working in government including the then Hon Minister who issued financial sanction before final Stage II clearance was issued, are responsible for various violations of the Forest Conservation Act 1980 (Para E (1), Page 30). This is strongly denied as completely erroneous as it does not take into account the very basic framework of functioning of state government in such financial matters. It is unfortunate that the committee has chosen to make such a sweeping remark without due diligence on its part. It seems the committee has deliberately chosen to ignore the role of the HoFF and other senior officials of the forest department who were directly mandated to control such illegalities and to advise government on appropriate action in this regard.

21) The committee has chosen to hold an unknown number of officers across unspecified ranks at the Government level responsible for violation of the Forest Conservation Act under Section 3A&3B. As mentioned above, the construction of tiger enclosure and the interpretation centre being forestry works do not violate the Forest Conservation Act 1980, hence the provisions of Sec 3A/3B are not applicable. For further elucidation, it is important to revisit Section 3B of the Forest Conservation Act, 1980 reproduced once again below for ready reference:

3 (B): Offences by the Authorities and Government Departments

1) Where any offence under this Act has been committed –

(a) by any department of Government, the head of the department; or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

22) The Uttarakhand Forest Department, a fully government department, is headed by the PCCF(HoFF), an IFS officer. As the name suggests, being the Head of Forest Force(HoFF), he is the head of the department and all financial proposals, pertaining to the establishment of tiger safari, are submitted to the Government from his office and budget for various projects, including in this instance for the Pakhrau Tiger Safari is released by the Government to the PCCF(HoFF) only. The then PCCF (HoFF) also attended a meeting of expenditure committee held in this matter on 08-03-2021. As such he was fully aware of the nuances of this matter and at no stage did he ever record or raise any contrary observations to this. As the PCCF(HoFF), he is the technical advisor of the Government on forestry matters. Government took its decisions primarily based on the proposal submitted by the PCCF(HoFF) who himself released such budget to the Divisional Forest Officer Kalagarh on 31-03-2021 and in August 2021.

23) As such, the government has only acted on the basis of well-established governance norms and as per advise rendered to it by the highest functionary of the state forest department. Further it is to be placed on record that the IRO, Dehradun of the MoEF&CC who is the competent

authority for taking cognizance of such offences under the FC Act 1980 has, in this case already after duly examining the matter, filed a case against the then DFO. Thus, the sweeping comments of the committee against various officers at the Government level as violators of the Forest Conservation Act 1980 are not proper, devoid of any merit and uncalled for. These are strongly objected to and need to be reviewed and set aside.

24) To further address the issue whether an activity undertaken under the written permission of the Divisional Forest officer but without the approval of a competent authority in a forest area can be termed as a violation of Section 26 (1) (f) and (h) of the Indian Forest Act 1927, it is important to read Section 26 (1) (f) and (h) of the Act 1927, which is as follows-

Section 26. Acts prohibited in such forests.-(1) Any person who

- (a) makes any fresh clearing prohibited by section 5, or
- (b) sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest-
- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf,
- (d) trespasses or pastures cattle, or permits cattle to trespass;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) ***fells, girdles, lops, or bums any tree or strips off the bark or leaves from, or otherwise damages, the same;***
- (g) quarries stone, bums lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
- (h) ***clears or breaks up any land for cultivation or any other purpose;***

(i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit

(a) any act done by permission in writing of the Forest-officer, or under any rule made by the state Government; or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

25) Most of the forestry operations undertaken in reserved forest areas involve breaking/clearing of land and felling of trees. If such operations are treated as violation of Section 26(1) of the Indian Forest Act 1927, then no activity can be taken up in forest areas. Due to this reason, Section 26(2) of the said Act clearly states that any act done by permission in *writing of the Forest-officer, or under any rule made by the state Government* will not attract provisions of Section 26(1). The merit of the work order issued by the forest officer without budgetary provision or administrative/financial approval can be examined and debated as a violation of administrative and financial rules but the order as such will not attract provisions of Section 26(1) due to the proviso of Section 26(2).

For reasons as stated above, the government does not agree to the observations of the committee on this. Thus, the observations of the committee need to be suitably amended based on the above explanation.

26) The committee in its report (Para 11, Page 36) has mentioned that *"one of the main conditions of FC approval was that the State Government shall ensure that the infrastructure of the tiger safari is created mainly from bamboos and other natural materials. This was totally ignored. Hence this is a violation of provisions of FC Act 1980."*

The Forest Advisory Committee had recommended that mainly bamboo and other natural materials would be used in the establishment of Tiger Safari. It would be evident to even the most casual observer that a Tiger Safari cannot be constructed of bamboo as that would not be sufficient to restrain tigers or deter wild elephants. As such this condition itself seems to be prescribed more in routine as a copy paste rather than in actual sense of compliance. The Uttarakhand Government is not aware of any such buildings constructed in a tiger safari using 100% bamboos or other natural fibers. Also, the relevant CZA guidelines do not suggest to use bamboos or other natural materials for the construction of tiger enclosures.

27) In conclusion, for reasons mentioned in some detail above, a thorough perusal of the report submitted by the three-member committee as constituted by the Hon. NGT explicitly establishes that the committee while deviating from the core mandate assigned to it by the Hon NGT has completely ignored any meaningful examination of the same. In one instance, the committee has also chosen to level serious allegations against an unnamed and unspecified number of officials of the State without properly verifying the applicable legal position, facts and more significantly, contrary to the stand taken earlier by MoEF&CC itself in similar matters. In

other instances, it seems to have selectively applied the yardstick of liability for various persons.

It is thus clear that the committee has been in a hurry to submit this report and has not been fair in its assessment of the various roles and responsibilities of the concerned officials. It also appears that the committee has shielded the role of certain senior officials of the Forest Department for reasons best known to them. As such, this report lacks merit and is liable to be ignored in its present form.

As such, it is requested that the report may be revisited and suitably in light of the above. In case any further clarification is needed on any point as above, the undersigned may be contacted for the same.

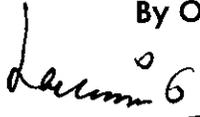
Finally, it is reiterated that ever since this matter first came to light, the state government has acted decisively and taken strong action including suspensions, charge sheets and vigilance enquiry against various erring officials. It is also further committed to set things right with the support and guidance of the MoEF&CC and its various agencies including CZA, NTCA & IRO and further seeks your guidance and support towards this.

Yours sincerely,


(Ramesh Kumar Sudhanshu)
Principal Secretary.

Copy To:

Registrar general National Green Tribunal New Dehli for information and necessary action.

By Order,

(Ramesh Kumar Sudhanshu)
Principal Secretary.
12/04/2023