

Item No. 02

Court No. 1

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

Original Application No. 347/2016
(I.A. No. 471/2019)

Chandra Bhal Singh

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

(Report filed in O.A. No.347/2016, I.A. No. 471/2019 filed for exemption of personal appearance on 09.08.2019 of the Special Principal Chief Conservator of Forest and Member Secretary of Assam State Biodiversity Board)

Date of hearing: 09.08.2019

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

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

For Respondent (s): Mr. Leishangthem Roshmani Kh., Ms. Anupama Ngangom, Ms. Maibam Babina, Advocates for State of Manipur
Mr. Ayush Acharjee, Ms. Ishita Sachdeva, Advocates for PCC-DD&NH
Mr. Shurodeep Roy, Mr. Vinayak Gupta, Advocates for State of Assam
Mr. Shurodeep Roy, Mr. Kabir Shankar Bose, Advocates for State of Tripura
Ms. Ruchira Gupta, Mr. Anurag Sharma, Advocate for Goa State Bio Diversity Board
Mr. Rahul Khurana, Advocate for Haryana State Bio-Diversity Board
Mr. Edward Belho, Ms. Hoineithiam, Advocates for State of Nagaland
Mr. G. Indira, Mr. K.V Jagdishvaran, Advocates for Andaman and Nicobar Administration
Mr. Nishe Rajen Shonkar, Mr. Alim Anvar, Advocate for State of Kerala

Mr. Raja Chatterjee, Mr. Piyush Sachdev, Ms. Runamoni Bhuyan, Advocates for State of West Bengal

Mr. Devraj Ashok, Advocate for Karnataka State Bio Diversity Board

Mr. Darpan K.M, Advocate for State of Chhattisgarh

Mr. Devashish Bharuk, Mr. Justine George, Advocates for State of Bihar

Mr. Siddhesh Kotwal, Ms. Arshiya Ghose, Advocate for State of Mizoram

Mr. C. Kannav, Advocate for State of Uttarakhand

Mr. D. Bharathi Reddy, Advocate for R-26

Mr. Chirag Reddy, Mr. Nishanth Patil Advocate for State of Chhattisgarh for State of Uttarakhand

Mr. Guntar Prabhakar, Mr. Guntar Pramod Kumar, Advocates for State of Andhra Pradesh

Mr. Nishant Talwar, Mr. Sakya Singla Chaudhari, Advocates for State of Punjab

ORDER

1. The issue for consideration is 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.¹ The Act also contains provision for establishment of State Biodiversity Boards to advise the State Government on the subject.² The Central Government has to develop national strategies, plans and programmes for conservation and promotion and sustainable use of biodiversity.³ 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.⁴

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.

¹ Section 18(3) of the Biological Diversity Act, 2002.

² Section 23 of the Biological Diversity Act, 2002.

³ Section 36 of the Biological Diversity Act, 2002.

⁴ Rule 22(6) of the Biological Diversity Rules, 2004, Article 8(j) of the Convention on Biological Diversity.

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.

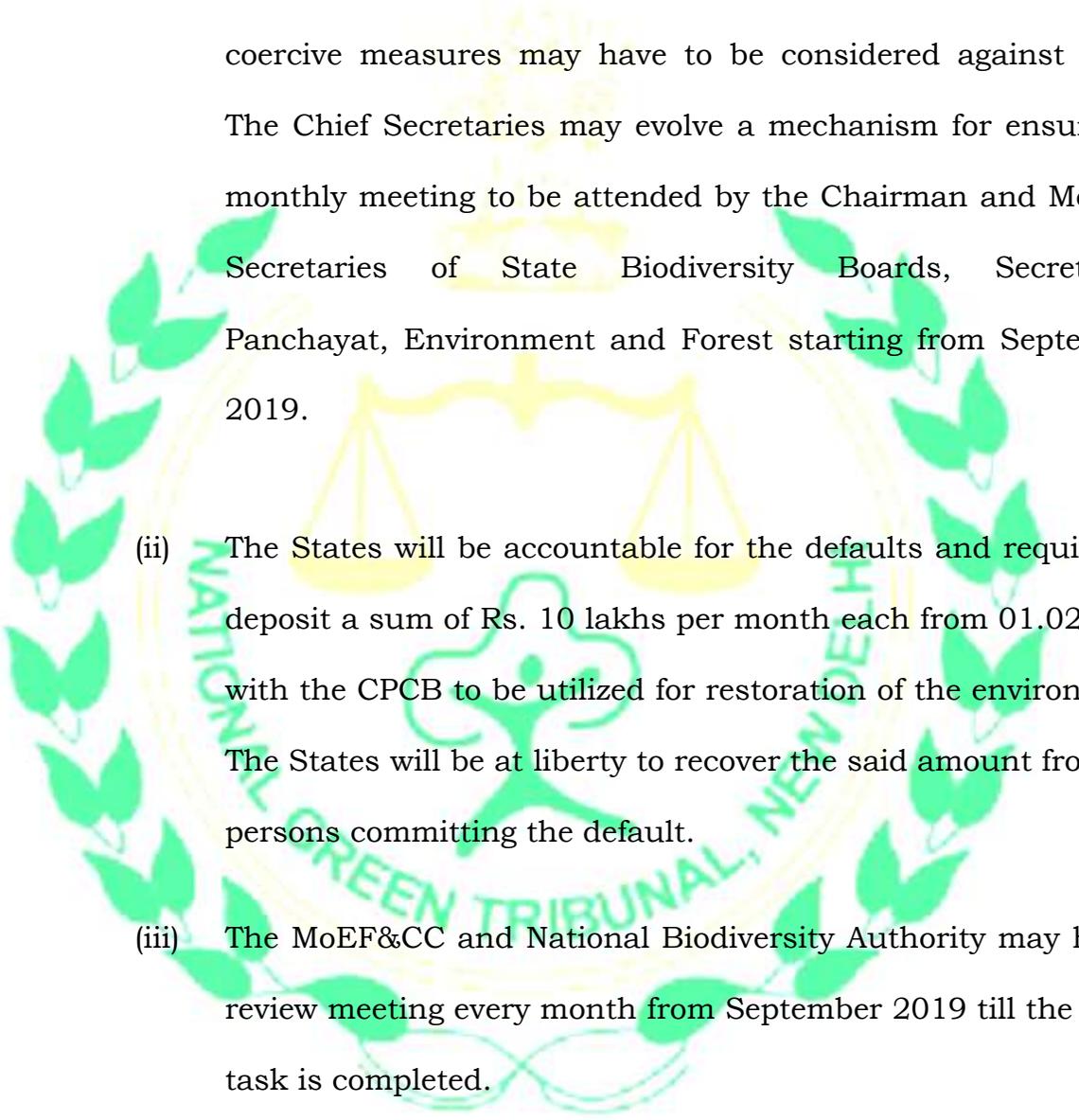
11. In above background, having considered the submissions made by the learned counsels, we direct as follows:

⁵ <https://www.cbd.int/countries/profile/default.shtml?country=in#facts>

⁶ Some examples of the cases of biopiracy in India are the Neem Case, the Basmati Case, the Tulsi case and the Turmeric Case in which the biological resources and traditional knowledge of the indigenous people in India were misappropriated and patents were obtained in relation to them in foreign countries without any prior approval from the Government of India.

⁷ **Madhav Gadgil, People's Biodiversity Register: Lesson Learnt,** http://repository.ias.ac.in/64107/1/13_PUB.pdf,

⁸ Refer: Pepsico Seaweed Case and the Kani Tribe case

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- (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.

List for further consideration on 18.03.2020.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 09, 2019
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