

GAHC010018192021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/614/2021

ASSAM (BHOELLI) ANGLING AND CONSERVATION ASSOCIATION(ECO CAMP)
VILL. TARAJAN POTASALI, P.O. GAMANI, DIST. SONITPUR, PIN-784103,
ASSAM, REP. BY ITS AUTHORIZED MEMBERS, SRI BIJOYANANDA
CHOWDHURY, S/O. LT. GIRIJANANDA CHOWDHURY, R/O. CHOWDHURY
TILLA, SARUMOTORIA, OPPOSITE DISPUR CAPITAL COMPLEX, DISPUR,
GUWAHATI, PIN-781006, KAMRUP (M), ASSAM AND SRI TRIDIB PHUKAN,
S/O. LT. SIVA NATH PHUKAN, R/O. 10, CHITRACHAL, NABAGRAHA HILL
ROAD, GUWAHATI-04, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE ADDL. CHIEF SECRETARY, ENVIRONMENT AND FOREST
DEPTT., GOVT. OF ASSAM, DISPUR, GUWAHATI-06.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE

ASSAM
ARANYA BHAWAN
PANJABARI
GUWAHATI-781037
KAMRUP (M)
ASSAM.

3:THE CONSERVATOR OF FOREST

NORTHERN ASSAM CIECLE
TEZPUR
PIN-784001
ASSAM.

4:THE DIVISIONAL FOREST OFFICER

SONITPUR WEST DIVISION
TEAPUR
PIN-784001
ASSAM.

5:THE FOREST RANGE OFFICER

CHARIDUAR FOREST RANGE
CHARIDUAR
PIN
DIST. SONITPUR
ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, FOREST

WP(C)/3745/2021

ASSAM (BHOELLI) ANGLING AND CONSERVATION ASSOCIATION (ECO-
CAMP)
VILLAGE TARAJAN POTASALI
PO GAMANI
DIST SONITPUR
ASSAM
784103
REPRESENTED BY ITS AUTHORISED MEMBERS
SRI BIJOYANANDA CHOWDHURY
AGED ABOUT 56 YEARS
S/O LATE GIRIJANANDA CHOWDHURY
RESIDENT OF CHOWDHURY TILLA
SARUMOTORIA
OPP. DISPUR CAPITAL COMPLEX
DISPUR
GUWAHATI
781006
KAMRUP M ASSAM
AND SRI TRIDIB PHUKAN
AGED ABOUT 64 YEARS
S/O LATE SIVA NATH PHUKAN

RESIDENT OF 10
CHITRACHAL NABAGRAHA HILL ROAD
GUWAHATI 04
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR GUWAHATI 06

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST
FORCE
ASSAM

ARANYA BHAWAN

PANJABARI

GUWAHATI 781038

KAMRUP M ASSAM

3:THE CONSERVATOR OF FOREST
NORTHERN ASSAM CIRCLE

TEZPUR

ASSAM

784001

4:THE DIVISIONAL FOREST OFFICER

SONITPUR WEST DIVISION

TEZPUR

ASSAM

784001

5:THE RANGE FOREST OFFICER

CHARIDUAR FOREST RANGE

CHARIDUAR

784102

DIST SONITPUR

ASSAM

Advocate for : MR. K N CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

30.03.2023.

Judgment & Order

The extra-ordinary jurisdiction of this Court vested by Article 226 of the Constitution of India has been sought to be invoked by means of these writ petitions. Both the writ petitions have been instituted by the same petitioner with a common cause of action. The second writ petition i.e., WP(C)/3745/2021 had to be instituted, as, after filing of the first writ petition, the impugned offence report came to its possession against which a specific challenge has been made.

2. The petitioner has put to challenge an Offence Report No.CH-35, dated 25.01.2020 which has been submitted to the Court of Chief Judicial Magistrate, Sonitpur communicated vide letter dated 03.02.2020 whereby all the members of the petitioner-Association has been termed as accused against the offences under Sections 24 (A) and 24 (B) and 25 of the Assam Forest Regulation (AFR), 1891 and under Articles 2 (a) and 3 (B) of the Forest Conservation Act, 1980.

3. It is the case of the petitioner that apart from there being a jurisdictional error in initiating such a proceeding, there is no material evidence at all which would show that the impugned action is *ex facie* bad in law. The petitioner further alleges that the respondent nos. 4 and 5 are not the authorized persons under the law to prepare and file the offence report and accordingly, the instant writ petition has been filed.

4. Before venturing to adjudicate the dispute, it would be beneficial if the facts of the case are narrated in brief.

5. The petitioner is an association which is primarily engaged in conservation and protection of the wildlife in the North Bank of Assam and has been working in active cooperation and guidance of several Government agencies, both Centre and State. The Association relates back to 1950s when it was started and had undergone change from time to time.

6. The petitioner-Association contends that on 10.03.1993, the North Eastern Council (NEC) had extended financial support to the petitioner-Association for supporting a scheme for development of angling facilities in the North Eastern Region which was directed to be implemented under active supervision of the Chief Conservator of Forests (Wildlife), Assam. In order to properly utilize the funds allotted, a Memorandum of Understanding was executed with the Deputy Commissioner, Sonitpur; Conservator of Forest, Northern Assam Circle, Tezpur; Divisional Forest Officer, Western Assam Wildlife, Tezpur, Dolabari and the representative of the petitioner-Association on 20.06.1995. Accordingly, a Joint Management Committee was formed which was permitted to establish an Eco Camp at Nameri. The plot of land was, accordingly provided by the Divisional Forest Officer, Western Assam Wildlife Division vide order dated 30.03.1994.

7. It is the case of the petitioner that it has successfully established a hatchery to save and protect the endangered Golden Mahseer fish with fund and scientific assistance made available by the National Research Centre on Coldwater Fisheries (ICAR). The petitioner-Association contends that in spite of all the actions of the petitioner being in accordance with law, the respondent nos. 4 and 5 have initiated a Forest Offence Case No. CH/35 of 2019-20. Thereafter, a forest offence case was initiated leading to drawl of the impugned Report No. CH/35, dated 25.01.2020 which was communicated on 03.02.2020, as indicated above. It is the validity of the said order dated 25.01.2020 which is the subject matter of challenge in the present writ

petitions.

8. I have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri G Rahul, learned counsel for the petitioner in both the petitions. Also heard Shri PK Tiwari, learned Senior Counsel assisted by Shri AR Gogoi, learned counsel for the respondents.

9. Shri Choudhury, learned Senior Counsel for the petitioner has drawn the attention of this Court to the map depicting the Eco Camp at the entrance of the Nameri National Park and Tiger Reserve. Reference has been made to an intra-department communication dated 12.08.1993 followed by a permission letter dated 30.03.1994 issued by the Divisional Forest Officer, Western Assam Wildlife Division to the petitioner permitting use of 5000 square metre of land to set up temporary camping facilities. The matter was also discussed and an understanding was arrived at between the petitioner and the Department of Forest for the purpose of development of angling facilities. The Advisory Committee amongst others, had the Deputy Commissioner, Sonitpur district and the Conservator of Forest, North Assam Circle, besides the President of the petitioner-Association and representative of the North East Counsel. A Joint Management Committee was also constituted. Subsequent thereto, the petitioner has been holding Angling-cum-Rafting Competition which has been appreciated in all sectors. The Regional Deputy Director, Ministry of Environment and Forest had also issued a letter of appreciation dated 04.06.1996.

10. Shri Choudhury, learned Senior Counsel for the petitioner has submitted that the minutes of the meeting dated 20.06.1995 would show that the NEC has granted an amount of Rs. 3,92,00/- for the purpose of equipments for promotion of angling and adventures sports in the North Eastern Region, particularly in reference with the Jia Bharali river. There is an acknowledgement by the Ministry of Environment and Forest

which has been recorded in a letter (Annexure-M) that the angling and the sports activities in the river are not only protecting and preserving the present stock of Mahseer but is also keeping away the poachers. The learned Senior Counsel has drawn the attention of this Court to the observation made by the Regional Deputy Director to the following effect:

“To my opinion to conclude, I would opine that the ABAA has been associated in sports fishing activities in this river for a long long time and they are doing it very sincerely and seriously towards and not only for protection and preservation of the present stock of Mahseer but also they are trying to develop the scientific Mahseer stocking in the river and development of the habitat and for over all conservation of the WLS. I would appreciate their level of various kinds of active cooperation including helping the PA authority in scientific management of the river and park. I believe Govt. of Assam has duly recognized their efforts in this regard and issued the said order in authorizing CWLW to permit to do innocent fishing not to kill and only to feel and have joy/adventure of the sports. I am sure association of such NGO/Society/Association in proper perspective will go a long way in protection and preservation of wildlife protection area in future.”

The learned Senior Counsel for the petitioner emphasizes that there is no felling of trees at all and the steps taken by the petitioner-Association and its members are only towards the preservation of the environment.

11. It is the case of the petitioner that on 25.01.2021 certain officials of the Forest Department came to the Eco Camp and took over the possession of certain items which were seized. In this regard, a report of taking over the seized property

25.01.2021 was issued to the petitioner-Association. The temporary structures were also locked. At that stage, the petitioner had filed a writ petition before this Court, being WP(C)/614/2021 and this Court, after hearing the parties, while issuing notice, had directed that in the meantime, the authorities would allow entry to 10 persons at a time and further directed that the hatchery be maintained and no coercive action be taken by the respondents. Subsequently, on 03.02.2020, the Offence Report was submitted by the Range Forest Officer, Chariduar Forest Range.

12. It is the contention of the petitioner that the Ministry of Environment and Forest, Government of Assam had issued a notification dated 01.10.2003 whereby the Central Government has authorized the Chief Conservator of Forests, Regional Office to have regional jurisdiction over the forest land in respect of which any offence under the Forest (Conservation) Act, 1980 is alleged to have been committed and to file complaints against persons *prima facie* found guilty of such offence in the Court having jurisdiction. It is submitted that the offence report is in the teeth of the aforesaid notification dated 01.10.2003 and suffers from jurisdictional error. Alternatively, the learned Senior Counsel for the petitioner argues that Rule 9 of the Forest (Conservation) Rules, 2003 (Rules of 2003) deals with the power to authorize. The same also provides pre-hearing and a requirement of 60 days notice in writing. Rule 9 (2) of the Rules of 2003 gives a role to the State Government to aid. However, in the instant case, the complaint has been filed by the Forest Range Officer which is wholly without jurisdiction and therefore, is unsustainable in law. Reliance has also been placed upon a communication dated 07.10.2014 issued by the Director, Ministry of Environment and Forest clarifying that temporary activity in any forest land which does not involve breaking up or clearing of forest land or portion thereof or assigning by way of lease or otherwise to a firm, person or organization using such forest land temporarily will not require prior approval of Central Government under the Act of 1980. Reference has also been made to the communication dated 10.01.2020 issued

by the Government of India, Ministry of Forest. The learned Senior Counsel for the petitioner submits that to maintain certain extent of accountability and responsibility towards maintenance of the environment, any person who wishes to visit the Eco Camp is required to take temporary membership, as a result of which, all such persons have been named in the impugned Offence Report. He further submits that the petitioner has been singled out, as there are about 13 numbers of resorts in the area against whom, no such action has been initiated. By referring to the Act of 1980, the learned Senior Counsel for the petitioner submits that under Section 2 thereof, prior approval of the Central Government is required for four kinds of activities which are as follows:

- “(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 organization not owned, managed or controlled by government;*
- (vi) 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 reafforestation.”*

13. Regarding the two writ petitions, the Shri Choudhury, learned Senior Counsel submits that at the time of filing of WP(C)/614/2021, though the offence report was a subject matter of challenge, the same could not be annexed and therefore, as and

when the same was made available, the second writ petition, being WP(C)/3745/2021 had been filed, specifically challenging the offence report.

14. In gist, the argument made on behalf of the petitioner can be stated briefly as follows:

- i) The impugned action is bad in law, as the same is without jurisdiction;
- ii) The procedural safeguards which are necessary to be given have been grossly violated; and
- iii) The action is bad, as it reflects *malice* in law.

15. Per *contra*, Shri Tiwari, learned Senior Counsel for the State respondents, at the outset, submits that though the offence report is against a number of persons, the names of some persons who are not members of the petitioner-Association can be and would be deleted from the purview of the same. By referring to the Act of 1980, more specifically, Sections 2 and 3B which cover the State and its agencies, the learned Senior Counsel submits that the Rule 9 of the Rules of 2003 has been framed laying down the procedure regarding proceedings against persons guilty of offence under the Act. Responding to the ground of jurisdictional error, the learned Senior Counsel for the State has referred to Regulation 49 of the AFR which lays down the procedure for seizure which should not be below the rank of Forester. Reference has also been made to Regulation 49 (4) regarding authorized officer and Regulation 68 (1) whereby the State Government has been authorized to give powers to any Forest Officer. The definition of Forest Officer and forest offence as appearing in Regulations 3 (c) and 3 (s) have been referred to. He submits that there is no jurisdictional error in the action impugned.

16. By referring to the Annual Angling Competition, the learned State Counsel has submitted that it all started in the form of a meet which generally got converted into intrusion in the forest area whereby destructions have been caused. He submits that when the show cause notice dated 24.09.2019 has been issued to the Manager of the Eco Camp at Nameri, the same amounts to notice to all concerned as, according to him, individual notice is not necessary. The learned Senior Counsel, Shri Tiwari by referring to the affidavit-in-opposition filed on 28.09.2021 in WP(C)/3745/2021 submits that the photographs annexed would show that there has been, indeed construction of permanent structures and also demonstrate running of a commercial hub. He further submits that though initially only 5000 square metres was allocated, there has been encroachment beyond the said area and about 1 hectare of land has been encroached. Refuting the allegation of discrimination *qua* other nearby resorts, the learned Senior Counsel appearing for the State has submitted that similar actions have also been taken against others and in this connection, a communication dated 20.09.2018 has been referred to, which has been annexed as Annexure-R/14 to the said affidavit-in-opposition with regard to the four resorts. By referring to IA(C)/1007/2021 filed by the State for recalling the interim order passed in WP(C)/614/2021, the learned Senior Counsel has referred to the communication dated 12.03.2020 wherein, certain Officers of the Forest Department have also been named, against whom legal action has been recommended for not taking action against the petitioner. He submits that the action of the petitioner amounts to breaking of forest and clearing of forest.

17. By referring to the Act of 1980, the learned State Counsel has submitted that the restrictions envisaged by Section 2 thereof, would be only against the State or State authorities and therefore, the Rules have been framed thereunder prescribing a competent authority which would apply only to offence against the State or State

authorities. He submits that the expression 'whoever' appearing in Section 3A of the Act of 1980 would be restricted only to State and State authorities.

18. In support of his submission, Shri Tiwari, learned Senior Counsel places reliance upon the following case laws:

i) *TN Godavarman Thirumulkpad Vs. Union of India & Ors.*, (1997) 2 SCC 267,

ii) *Narinder Singh & Ors. Vs. Divesh Bhutani & Ors.*, 2022 SCC OnLine SC 899,

iii) *Union of India & Ors. Vs. Kamath Holiday Resorts Pvt. Ltd.*, (1996) 1 SCC 774,

iv) *Social Action for Forest and Environment (Safe) Vs. Union of India & Ors.*, 2015 SCC OnLine NGT 843.

19. Rejoining his submission, Shri Choudhury, learned counsel for the petitioner has again referred to Rule 9 of the Rules of 2003 which specifically states that proceedings against persons guilty of offences under the Act of 1980 can be drawn by an Officer not below the rank of the Conservator of Forests or the concerned Forest Officer having territorial jurisdiction over the forest land which is to be authorized by the Central Government by notification. He draws the attention of this Court to the communication dated 01.10.2003 whereby the Central Government has authorized the Chief Conservator of Forests as the competent officer. He submits that in view of such notification, the impugned proceeding is *ex facie* illegal. The learned Senior Counsel for the petitioner submits that even otherwise, the show cause notice is bad in law, as only a period of 3 days have been afforded whereas the statutory requirement for reply is 60 days. Shri Choudhury, learned Senior Counsel submits that none of the case laws relied upon on behalf of the State is applicable in the facts and

circumstances of this case.

20. The rival submissions advanced by the parties have been duly considered and the materials placed before this Court carefully examined.

21. The issue involves in this two petitions is the legality of the proceedings initiated vide the impugned Offence Report dated 25.01.2020 communicated by the order dated 03.02.2020. The said order is, admittedly issued by the Range Forest Officer, Chariduar Forest Range wherein, 3 days time has been given. Without even going to the factual aspect as to whether any offence appears to be *prima facie* committed, the statutory requirement holding the field cannot be overlooked or ignored. Rule 9 of the Rules of 2003 read as follows:

“9. Proceedings against persons guilty of offences under the Act.—

(1) The Central Government may, by notification, authorise any officer not below the rank of Conservator of Forests or the concerned forest officer having territorial jurisdiction over the forest land in respect of which the said offence is said to have been committed, to file complaints against the person (s) prima facie found guilty of offence under the Act or the violation of the rules made thereunder, in the court having jurisdiction in the matter:

Provided that no complaint shall be filed in the court, without giving the person(s) or officer(s) or authority(ies) against whom the allegations of offence exist, an opportunity to explain his or their conduct and to show cause, by issuing a notice in writing of not less than sixty days, as to why a complaint should not be filed in the court against him or them for alleged offences.

(2) The officer authorised by the Central Government in sub-rule (1) may require any State Government or its officer or any person or any other authority to furnish to it within a specified period any reports, documents, statistics and any other information related to contravention of the Act or the rules made thereunder, considered necessary for making a complaint in any court of jurisdiction and every such State Government or officer or person or authority shall be bound to do so.”

22. This Court finds force in the argument of the learned Senior Counsel for the petitioner that in exercise of such powers, the Central Government authorised the Chief Conservator of Forests as the competent officer vide its communication dated 01.10.2003. In view of the said fact, the impugned proceedings clearly suffer from jurisdictional error as the Forest Range Officer, Chariduar does not have the competence and authority to initiate such proceedings. This Court is further of the opinion that the proceedings being penal in nature, strict compliance and adherence to the requirement of law is a *sine qua non*. No deviation from the procedure prescribed would be permissible in a matter where the consequence is penal.

23. That apart, this Court is also of the view that in the wake of availability of a number of communications by none other than the Ministry of Environment and Forest, Government of India regarding the efforts taken by the petitioner-Association to protect the environment and forest and also for increasing the numbers of Mahseer in the hatchery and by making awareness camps in the form of competitions, the present action impugned in this two writ petitions appears to be an outcome of a mechanical exercise which also indicates *mala fide* on the part of certain officers of the Department. The official communications also indicate that the activities of the petitioner-Association have also reduced the poaching activities. The said observation is a very significant one made by none other than the Central Government

representative which, this Court, gives due importance.

24. The petitioner has also raised the question of violation of the procedural aspect regarding the period of time for such show cause. Though the aforesaid grounds appear to have merits, this Court is not required to go to that aspect of the challenge, as this Court has interfered on the issue of jurisdiction itself to initiate such proceedings.

25. The learned State Counsel has placed reliance on a number of case laws. However, none of those would come to the aid of the State. In the case of ***TN Godavarman Thirumulkpad*** (*supra*), a general observation was made for taking adequate steps against deforestation. In the instant case, the materials placed before this Court would not suggest that there had been any activities by the petitioner against the environment.

26. In the case of ***Kamath Holiday Resorts Pvt. Ltd.*** (*supra*), the facts would make it clear that a snack bar and restaurant was inside the reserved forest and the authorities had come to a conclusion that the same was affecting the forest.

27. In the case of ***Narinder Singh & Ors.*** (*supra*), the Hon'ble Supreme Court was dealing with a matter wherein marriage halls were running on a forest land and the facts of that case is wholly different from the case in hand.

28. In the case of ***Social Action for Forest and Environment (Safe)*** (*supra*), there is a clear finding that the haphazard and unregulated rafting camps operating in river Ganga at Rishikesh was causing serious pollution to the pristine river and, therefore, the interference was made.

29. There was no jurisdictional issue in any of the aforesaid cases referred to by the State Counsel.

30. In that view of the matter, this Court is of the considered opinion that the impugned action of issuing the Offence Report No. CH-35, dated 25.01.2020 issued by the Divisional Forest Officer, Sonitpur and forwarded by the Range Forest Officer, Chariduar Forest Range is unsustainable in law and accordingly set aside.

31. The interim order operating is, accordingly made absolute.

JUDGE

Comparing Assistant