
CASE ANALYSIS OF ANIMAL AND ENVIRONMENT LEGAL DEFENCE FUND V. UNION OF INDIA, AIR 1997 SC 1071

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ABSTRACT

The case of Animal and Environment Legal Defence Fund V. Union Of India was a Public Interest Litigation filed by an Association of Lawyers, who are concerned about the protection of environment. In this, the Supreme Court declared that the State Governemnt must always consider the right of tribals before an action is taken to acquire an area and declare it as a National Park Area.

In this case, The Supreme Court laid down directions for economic sustainability and environment protection. This case emphasised that every effort should be made to ensure that the rights of livelihood of tribal villagers must be protected and simultaneously the damage or destruction to the environment must be strictly prohibited.

In this article, the case analysis of Animal And Environment Legal Defence Fund V. Union of India, AIR 1997 SC 1071 is made by the case details, background, facts, judgment, importance, precedent, critical analysis of this case, and conclusion.

Keywords: Environment, Fishing, Livelihood, Permit holder, Tribal villagers

INTRODUCTION

There is a dramatic increase in the illegal wildlife trade in INDIA. Wildlife trade is now well entrenched and wide spread in India. To check and control wild life trade in India, the Wildlife(Protection) Act,1972 was passed on requests form state. The Act makes it possible to constitute a wildlife board with powers of regulation in every state or union territory. For the purpose of protecting, propagating or developing wildlife and its environment, the power is conferred on the State Governments and Central Government to proclaim wildlife sanctuaries and national parks.

The State Government,for the purpose of protecting, propagating or developing wildlife may by a notification declare that an area, by reason of its ecological, faunal , flora, geomorphological or zoological association or importance, needed to be constituted as a National Park according to sec.35, The Wildlife (Protection) Act, 1972. Once a National Park is declared, no alteration of the boundaries shall be made except on the resolution passed by the Legislature of the State.

The following activites are prohibited in a National Park:

1. Destroying, exploiting or removing any wild life,
2. Destroying, damaging the habitat of any wild animal,
3. Deprive any wild animal of its habitat,
4. Grazing of any livestock.

Animal And Environment Legal Defence Fund V. Union Of India¹ was Public Interest Litigation filed by an Association of Lawyers, who are concerned about the protection of environment.²

CASE DETAILS

CAUSE TITLE

¹ A.I.R. 1997 S.C. 1071

² S SHANTHAKUMAR,INTRODUCTION TO ENVIRONMENTAL LAW 293 (LEXIS NEXIS 2023).

Animal And Environment Legal Defence Fund V. Union Of India and Ors.

YEAR

1997

CITATION

A.I.R. 1997 S.C. 1071

PETITIONER

Animal And Environment Legal Defence Fund

RESPONDENT

Union Of India and Ors.

DATE OF JUDGMENT

05/03/1997

BENCH

A.M. Ahmadi C.J ; Sujata V. Manohar ; K. Venkataswami,

Judgment delivered by Sujata V. Manohar, J.

REFERRED CASES

In the case of **Pradeep Krishen v. Union of India & Ors.**³, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land.⁴

BACKGROUND OF THE CASE

In this case (Animal And Environment Legal Defence Fund V. Union Of India and Ors.), the petitioner was an Association of Lawyers and other persons who were concerned with the protection of environment. They filed the petition in public interest challenging the order of the Chief Wild Life Warden, Forest Department, Government of Madhya Pradesh granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the reservoir situated in the heart of the Pench National Park Tiger Reserve. The Supreme

³ AIR (1996) SC 2040

⁴ <https://indiankanoon.org/doc/1031762/>

Court observed that the State Government must always consider the right of the tribals before an action is taken to acquire an area and declare it as a National Park area. Every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the instant case, though the tribal villagers were residing in the villages falling within the area notified as National Park under sec.35 of the Wild Life Protection Act, 1972 but they had not made any claim pursuant to proclamation that their traditional right of fishing was their only source of livelihood. The tribals were neither provided with other suitable fishing areas nor given any land for cultivation. The court held that issuance of fishing permits did not fall under sec.33 of the Act as they were issued before the final notification declaring an area as National Park. Accordingly, the State Government was directed to issue the final notification under sec.35(4) with the sense of urgency in the matter in view of the constitutional mandate contained in Articles 48-A and 51-A(g).⁵

SUMMARY OF FACTS

The petitioner is an association of lawyers and other persons who are concerned with protection of the environment. They have filed the present petition in public interest challenging the order of the Chief Wildlife Warden, Forest Department, Government of Madhya Pradesh (second respondent) granting 305 fishing permits to the tribals formerly residing within the Pench National Park area for fishing in the Totladoh reservoir situated in the heart of the Pench National Park Tiger Reserve.

The Collector, Chhindwara similarly issued a proclamation under Sections 19 and 21 inviting claims. As no claims were received, a final order under Section 24 was issued by the Collector, Chhindwara on 27.12.1986. However, no notification under Section 35(4) has yet been issued by the Government of Madhya Pradesh declaring the said area as a National Park.

As per the counter-affidavit filed on behalf of the second respondent it has been stated that although the necessary proclamations were issued earlier nobody came forward to claim their rights on account of illiteracy and unawareness. However, recently three applications regarding claims had been received pertaining to the traditional rights of villagers residing in 8 villages within the notified area which have now been relocated outside the National Park area. These

⁵ Dr. PARAMJIT S. JASWAL, Dr. NISHTHA JASWAL, VIBHUTI JASWAL, ENVIRONMENTAL LAW 303 (ALLAHABAD LAW AGENCY 2015)

villagers are tribals. The villagers claim that they had a traditional right of fishing for their livelihood in the Pench river.

Under an order dated 30.5.1996 these tribals have now been given permits to fish in the Totladoh reservoir which came into existence in 1986-87 on Construction of a dam across the Pench river as a part of the Pench Hydro Electric Project. Under an order dated 30.5.1996 these tribals have now been given permits to fish in the Totladoh reservoir which came into existence in 1986-87 on Construction of a dam across the Pench river as a part of the Pench Hydro Electric Project. Apparently, fishing activity has been started in this reservoir by the Fisheries Development Corporation of the State of Madhya Pradesh despite protests from the forest department.⁶

ISSUES

1. Whether the granting of permits for fishing to 305 tribal families in reservoirs within the “Pench National Park” (Madhya Pradesh) valid?
2. Whether it will affect the bio-diversity and ecology?

PROVISIONS

Secs. 5, 26(1)(i) of the Indian Forest Act, 1927.

Secs.19, 20, 21, 22, 24, 25, 26, 33, 33(e), 35(1)(4), 35(1), 35(3), 35(4), Wildlife (Protection) Act, 1972

Arts. 19(1)(g), 21, 32, 48A, 51A(g), Constitution of India

CONTENTIONS

(i) PETITIONER

It continued to remain as a Reserved Forest under the Indian Forest Act of 1927, Under Section 5 of the Indian Forest Act of 1927, once a notification is issued declaring any land as a reserved forest no right shall be acquired in or over such land, except by succession or under a grant Or

⁶ <https://indiankanoon.org/doc/1031762/>

contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued.

Under Section 26(1)(b) of the Indian Forest Act, 1927, any person who in contravention of any rules made in this behalf by the state Government hunts, shoots, fishes, poisons water or sets traps or snares, shall be punishable in the manner provided in that section.

Under Section 26(1)(b) of the Indian Forest Act, 1927, any person who in contravention of any rules made in this behalf by the state Government hunts, shoots, fishes, poisons water or sets traps or snares, shall be punishable in the manner provided in that section.

If fishing is permitted in the heart of the National Park and as many as 305 fishing permits are issued, the bio-diversity and ecology of the area will be seriously affected.

It will be humanly impossible to monitor 305 licensees, their ingress and egress and to ensure that these licensees do not indulge in poaching and other ecologically harmful activities.

Fishing activity is a potential source of danger to the National Park because it may also lead to illegal felling of trees or poaching.

STATE OF MAHARASHTRA

The petitioner as well as the State of Maharashtra have pointed out that if fishing is permitted in the heart of the National Park and as many as 305 fishing permits are issued, the bio-diversity and ecology of the area will be seriously affected.

(ii) RESPONDENT

STATE OF MADHYA PRADESH (SECOND RESPONDENT)

As per the counter-affidavit filed on behalf of the second respondent it has been stated that although the necessary proclamations were issued earlier nobody came forward to claim their rights on account of illiteracy and unawareness.

These permits are issued in settlement of these rights prior to the final notification under Section 35(4) notifying the area as a National Park. Hence these do not fall under Section 33.

The permissions which have been given are subject to conditions.⁷

JUDGMENT

The Supreme Court declared that the State Government must always consider the right of tribals before an action is taken to acquire an area and declare it as a National Park Area.

The court held that issuance of such permits did not fall under sec.33 of Act as they were issued before the final notification under sec.35(4) for notifying the area as national park. Therefore, the State Government was directed to issue the final notification under sec.35(4) with a sense of urgency in the matter enjoined by Art.48-A of the Constitution, keeping in mind the duty enshrined in Art.51-A(g). The court also directed that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in the notified area.⁸

The court directed that:

- (1) Only the persons named in Annexure R-XVI to the affidavit of respondent No. 2 shall be given individual permits for fishing in Totladoh reservoir.
- (2) The permit holder will be entitled to enter the National Park area only at Thuepani and shall be entitled to travel through the National Park only on the Highway joining Thuepani to Totladoh.
- (3) The wildlife Warden and/or any other authority nominated by the Madhya Pradesh Government shall demarcate the area of the reservoir over which these permit holders are allowed to fish.
- (4) It shall be made clear that the permit holders shall not be entitled to have any access to the islands in the reservoir.
- (5) The State of Madhya Pradesh shall maintain check posts along the route of these fishermen to ensure that the fishermen do not transgress into any other part of

⁷ <https://www.casemine.com/judgement/in/5609ad0fe4b0149711410693>

⁸ S.C. SHASTRI, ENVIRONMENTAL LAW 401 (EBC 2018)

the National Park.

- (6) A daily record of the entry and exit of each permit holder and the quantity of fish carried by him out of the National Park shall be maintained.
- (7) The fishermen will be prohibited from lighting fires for cooking or for any other purpose along the banks of the reservoir nor shall they throw any litter along the banks of the reservoir or in the water.
- (8) The Madhya Pradesh State Government shall sanction an adequate number of personnel as also vehicles and boats for the purpose of monitoring the activities of these 305 permit holders.

The intervenor organisation which has intervened in this petition, namely, Jan Van Andolan Samiti, Totladdh shall explain to the concerned fishermen, the conditions, subject to which they are allowed to fish in the Totladoh reservoir and shall impress upon these fishermen their obligation to carry on the fishing activity in a manner which does not damage the ecology of the National Park or disturb its environment.

Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible.

The petition is disposed of with these directions.

IMPORTANT PRECEDENT

In the case of **Pradeep Krishen v. Union of India & Ors.**⁹, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of 1/3rd of the total land. Therefore, cannot, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent Steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wild life in those areas. The State Government is, therefore, expected to act with a sense of urgency in

⁹ AIR (1996) SC 2040

matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Article 51A(g). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.¹⁰

In **Pradeep Krishen case**, the petitioner, an environmentalist actuated by public interest, filed the petition for the protection of ecology, environment and wild life in sanctuaries and national parks. In this case, a notification of the Madhya Pradesh Government permitting collection of tendu leaves from sanctuaries and national parks by villagers and tribals living around the boundaries thereof with the object of maintenance of their traditional right was challenged. The Supreme Court refused to quash or set aside the notification and thus protected the traditional rights of the tribals.

This case has been relied upon by the Supreme Court in the subsequent case of **Animal And Environment Legal Defence Fund V. Union Of India, A.I.R. 1997 S.C. 1071**.¹¹

RELEVANCY OF THIS CASE

The Supreme Court adopted a humanitarian approach keeping in mind economic sustainability and environment protection. The Supreme Court directed the forest authorities and wildlife authorities to take adequate measures to protect the environment and at the same time keep watch on the villagers. The villagers were also directed not to enter other areas other than the reservoir.

This is a case where the Supreme Court protected the right to livelihood of the tribal villagers and at the same time showed its concern for the protection of the environment. The Supreme Court once again showed its concern for the right to livelihood of the tribal villagers and while balancing this traditional right of the tribal villagers with the need for development and preservation of ecology, held that while every attempt must be made to preserve the fragile ecology of the forest area, the right of the tribals formerly living in the area to keep their body and soul together must also receive proper consideration. Every effort should be made to ensure

¹⁰ https://jkhighcourt.nic.in/upload/judgments/2023/sci/1997_2_728_737%20English.pdf

¹¹ Dr. PARAMJIT S. JASWAL, Dr. NISHITHA JASWAL, VIBHUTI JASWAL, ENVIRONMENTAL LAW 216 (ALLAHABAD LAW AGENCY 2015)

that the tribals, when resettled, are in a position to earn their livelihood. In this case, the Supreme Court also observed that it could have been more desirable, had the tribals been provided with suitable fishing areas outside the National Park or if land had been given to them for cultivation.

THEORIES

The Supreme Court in this case declared that the State Government must always consider the rights of tribals before an action is taken to acquire an area and declare it as a National Park Area.

The observation in the aforesaid case is relevant in assessing the symbiotic relationship between the tribal people and forest.¹²

Thus, the maintenance and preservation of forests and its produce need balancing of interests and rights of Tribals residing in the forests.¹³

SUBSEQUENT REFERENCES

In **Tata Housing Development Company Limited vs Aalok Jagga**¹⁴, Animal and Environment Legal Defence Fund case was cited, that the court in order to protect wildlife, forest, tiger reserve, fragile ecology, dealt with public trust doctrine thus :

“11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration....¹⁵

CRITICAL ANALYSIS

This case emphasized the right to livelihood of the tribal villagers and at the same time showed its concern for the protection of the environment.

The Supreme Court through this judgment directed to take adequate measures to protect the

¹² P LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA 47 (LEXIS NEXIS 2021)

¹³ Dr. H.N.TIWARI, ENVIRONMENTAL LAW 111 (ALLAHABAD LAW AGENCY 2022)

¹⁴ 2019 INSC 1203

¹⁵ <https://www.casemine.com/judgement/in/5ebcf1af3321bc77b82dceab#>

environment and at the same time keep watch on the villagers.

This case made the provisions of the Constitution such as Arts.48A, 51A(g), 32, 21, 19(1)(g), to come into effect and to act in accordance with these Articles.

It is also important that these directions laid down by the Supreme Court is strictly followed and enforced.

The permit holders must be made to comply with the directions issued by the Supreme Court and to act accordingly with it without any destruction or damage to the environment.

The rights of the tribal villagers shall be also protected.

CONCLUSION

In *Animal And Environment Legal Defence Fund V. Union Of India*¹⁶, the Supreme Court had to resolve a dispute between two neighbouring states on the rights of tribal people. In that case, the Government of Madhya Pradesh allowed fishing permits to the displaced tribal people in Totladoh reservoir within Pench National Park. The Government of Maharashtra objected on environmental grounds, such as potential danger of felling trees, harm to crocodiles and turtles in the reservoir, disturbance to water birds and migratory birds, and the possibility of lighting fires and throwing garbage and polythene bags around and into the reservoir.

The Court observed:

... while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood.¹⁷

¹⁶ A.I.R. 1997 S.C. 1071

¹⁷ *Animal And Environment Legal Defence Fund V. Union Of India*, AIR 1997 SC 1071, p 1073.

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