

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA**

.....

**ORIGINAL APPLICATION No. 15/2015/EZ**

**With**

**MISCELLANEOUS APPLICATION NO. 28/2015/EZ**

**IN THE MATTER OF:**

**Tseten Lepcha,  
Chungthan PO,  
North Sikkim-737120**

**.....Applicant**

**V e r s u s**

- 1. Union of India  
Through the Secretary,  
Ministry of Environment, Forest  
& Climate Change,  
Indira Paryavaran Bhawan,  
Jorbagh Road,  
New Delhi-110 003**
- 2. The State of Sikkim,  
Through the Chief Secretary,  
Development Area Road,  
Gangtok, Sikkim, PIN CODE: 737 101.**
- 3. The Chief Wildlife Warden,  
Forest Secretariat Chief Wildlife Warden,  
Government of Sikkim,  
Deorali, Gangtok, Sikkim-737 102**

**.....Respondents**

**COUNSEL FOR APPLICANT:**

**Mr. Ritwick Dutta, Advocate  
Ms. Sreeja Chakraborty, Advocate**

**COUNSEL FOR RESPONDENTS :**

**Ms. Chandreyi Alam, Advocate for Respondent No.1**

**Mr. A. Mariaputham, Advocate General, State of Sikkim**

**Mrs. Aruna Mathur, Advocate**

**Mr. Avneesh Arputham, Advocate for Respondents No. 2 & 3**

## J U D G M E N T

### PRESENT:

Hon'ble Mr. Justice S.P.Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

---

Reserved On: 17<sup>th</sup> July, 2017

Pronounced On : 21<sup>st</sup> August, 2017

---

1. Whether the Judgment is allowed to be published on the net? **Yes**

2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

### Per Hon'ble Prof(Dr.) P.C.Mishra, Expert Member :

This application was filed under Section 18 read with Section 14 of the National Green Tribunal, Act 2010 (in short the Act 2010) by the applicant, Mr. Tseten Lepcha, who according to him, is a former honorary Wild Life Member and a member of the Sikkim State Wildlife Advisory Board and working President of Social/Environmental Group "Affected Citizens of Teesta" which is involved in creating awareness amongst the common people of the social and environmental impacts due to Mega Hydro Electric Power Projects. The Applicant has challenged the notification issued by the Ministry of Environment, Forest and Climate Change (in short MOEF), the respondent No. 1, on dated 27.8.2014 declaring the following protected areas as Eco-sensitive Zones (in

short ESZs) in the State of Sikkim in violation of all legislative policies :-

1. Barsey Rhododendron Sanctuary
2. Fambonglho Wildlife Sanctuary
3. Kitam Bird Sanctuary
4. Maenam Wildlife Sanctuary
5. Pangolakha Wildlife Sanctuary
6. Khangchendzonga National Park
7. Kyongnosla Alpine Sanctuary
8. Shingba Rhododendron Sanctuary

It is stated that the Eco-sensitive Zones which usually serve as shock absorbers, have been notified keeping a mere 25-200 metres width in violation of Environment (Protection) Act, 1986 (in short EP Act), the Biological Diversity Act, 2002, the Precautionary Principle, the Principle of sustainable Development, Intergenerational Equity and Principle of Eco-centrism.

2. The applicant would further state that the State of Sikkim has a rich biodiversity and is one of the biological hotspots in the eastern Himalayas with 80% of its geographical area under forest cover harbouring many endangered and rare mammalian species like Snow Leopard, Red Panda, Himalayan Black Bear, Flying

squirrel, Musk deer, Tibetan Wolf, Red Fox, Indian Wild Hog, Hog Badger, Tibetan Sheep, Seros, Goral, Tiben Wild Ass, etc. including many high altitude rare and endangered medicinal Plants. The notifications issued by the MOEF under the provision of Section 3 of the EP Act in respect of 8 ESZs keeping a mere 25-200 metres will completely thwart the legislative intent as a meagre distance of 25 meters would not serve as “shock absorbers” and act as buffer zones to protect the areas. Thus, according to the applicant, the purpose of declaring eight ESZs in the State has been a blatant disregard of all legislative, judicial and technical discourse and policies, particularly in respect to -

- i) The guidelines of dt. 9.2.2011 issued for identification of ESZs
- ii) Procedural *ultra vires* while issuing the notifications,
- iii) Non-consideration of objections raised by the people to the draft notifications before issuing final notifications.

3. The applicant would further contend that ESZs are notified in order to provide and strengthen the buffer zones and corridors around the protected areas in order to check the negative impact of industrialization and unplanned development around the protected areas. According to him, the MOEF, in the present case, has clearly made an arbitrary and unreasonable

demarcation of ESZs in violation of the policy laid down by the Apex Court declaring 10 Km around protected areas as ESZs, policy of the National Board of Wildlife as well as its own policy. Therefore, prayer has been made by the applicant for quashing the Notifications dated 27<sup>th</sup> August, 2014 as the Honourable NGT has enough powers of judicial review as cited in the matter of **Weifred J. & Anr –vs- Union of India** (M.A. No. 182 of 2014 and MA No. 239 of 214 in Appeal No. 14 of 2014.

4. It is also alleged by the applicant that the prime consideration while identifying the ESZs was only developmental activities, not protection and conservation of environment for which the eco-sensitive zone was not extended upto a natural barrier, i.e., the river Tolung/Rangyong Chhu river, which flows in close proximity to the Khangchendzonga National park in the Dzongu region of Sikkim in order to ensure the establishment of a 300 MW Panan Hydroelectric Project. It is also the case of the applicant that the major focus of the State while considering the Eco-sensitive Zones was based on anthropocentric considerations rather than eco-centric considerations. Reliance was placed on various judgements i.e. **T.N.Godaverman –vs- Union of India & Ors** (2012) 3 SCC 277 and **World Wide Fund India –vs- Union of India & Ors** (2013) 8 SCC 234.

5. The State of Sikkim, the Respondent No. 2 and 3 in their reply, while admitting on the richness of the State in terms of forest and wildlife, would submit that the State Government is very conscious of its responsibility towards protection of the environment and have taken various steps from time to time to preserve and protect the forests and environment of the State. In addition to the National park and seven sanctuaries notified by the State as ESZs under the provisions of Wildlife Protection Act, 1972, there are substantial area of Reserve Forests adjoining such Park and Sanctuaries and existence of such reserve forests around the protected areas automatically and effectively act as buffer zones in view of the restriction under the provision of existing laws. They would further contend that in terms of Govt. of India Guidelines, 2011 for identification of ESZs, there is an outer limit of 10 Km with no fixed minimum boundary of an ESZ. The parameters laid down in the said guidelines put emphasis on regulation of activities around the National Park and Sanctuaries and not prohibition as such. There is no mandate of the Apex Court for an area of 10 Km around the boundaries of National parks and Sanctuaries as ESZs as clarified in ***Goa Foundation –vs- Union of India***, (2014 ( 6) SCC 590, para 50).

6. It was further stated by the Respondents No. 2 and 3 that the applicant has not raised any grievance on deterioration of the environment pertaining to the National Park and Sanctuaries in the State over a period of time. After declaration of these National Park and Sanctuaries the State has undertaken proactive steps in protecting and preserving the forest and wildlife by expanding the area of Kanchendzonga National Park, Fambonglho Wildlife Sanctuary, Singba Rhododendron Sanctuary and Kyongnosla Alpine sanctuary.

Therefore, according to the Government Respondents, there has been no violation of the order of the Hon'ble Apex Court, the EP Act, the Biological Diversity act, 2002, the Precautionary Principle, the principle of Sustainable Development, Intergenerational Equity, the Principle of Eco-centrism and even any legislative policy, as alleged by the applicant.

7. The State Respondents would further argue that the reliance placed by the applicant on ***Indian express Newspapers (Bom) Ltd. –vs- Union of India*** (1985) 1 SCC 641, ***Secretary, Ministry of Chemicals and Fertilizers –vs- Cipla Ltd.*** (2003) 7 SCC1, ***Tata Cellular Co. –vs- Union of India*** (1994) 3 SCC 651, ***Wilfred J. & Anr –vs- Union of India***, MA No. 182 of 2014 and M

A 239 of 2014 in Appeal No. 14 of 2014 is misplaced as those judgements are not applicable to the present case. Similarly, the reliance placed by the applicant on **Raj Narain Singh –vs- Chairman, Patna Administration Committee**, AIR 1955 SC 567 is also misplaced as the same is not applicable to the facts of the present case as the objections against the draft Notifications were taken into consideration before issuing the final Notifications declaring the ESZs of the State and the State has followed the 2011 Guidelines issued by the MOEF as well as Rule 5(3)(b) of EP Act. The contention of the applicant that the Notifications in question are liable to be struck down on the ground of absence of relevant reasons for which reliance has been placed on **Utkarsh Mandal –vs- Union of India**, 2009)10) SD (Delhi) 365 WO (C) No. 934401 of 2009 is also misplaced and not applicable to the facts of the present case as there is no such requirement in law.

8. The respondent No. 1, the MOEF in their reply affidavit would substantiate that –

- (i) the Notifications declaring ESZs in the State of Sikkim were issued pursuant to the Rules, Guidelines and Regulations under the EP Act for the conservation and



protection of environment, the objective of which, inter alia includes –

a) to maintain the response level of an ecosystem within the permissible limits with respect to environmental parameters.

b) to notify the area as an Eco-sensitive zone based on its need for special protection because of its landscape, wildlife, historical value, etc. and to regulate the developmental activities in order to maintain the carrying capacity of that area and to ensure sustainable development taking into consideration the needs and aspiration of the local people.

(ii) The MOEF has the powers under Section 3 of the EP Act to take all such measures as deemed necessary and expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution.

(iii) Under Section 5(1) of the Environment (Protection) Rules, 1986, it is provided that “the Central Government can prohibit or restrict the location of industries and carry on certain operations or processes on the basis of conditions

like the biological diversity of an area (clause-v), maximum allowable limits of concentration of pollutants for an area (clause-ii) and environmentally compatible land use (clause vi), proximity to protected areas (clause viii),

iv) The proposals received are scrutinised in consultation with the Wildlife Institute of India. The declaration of Eco-Sensitive Zones around National Parks and Sanctuaries, involves examination by expert institutions and consultation with concerned State and seeking comments of the public after issuing a draft notification giving 60 days period for obtaining views/objections from all stakeholders.

(v) The final notification have been issued by the MOEF after following the due process of scrutinisation, consultation, seeking comments from the public and on the basis of the recommendation of the State Government and also looking into the needs and requirement of environmental protection within the framework of sustainable development. The extent of ESZ were notified based on the slope, contours, gradient, biotic pressure, etc.

9. The applicant in his rejoinder affidavit filed on 15.1.2016 would counter the averments of the State Respondents some of which are reproduced below :-

“5.1. The general state of environment and measures adopted to protect the environment cannot absolve the State its responsibility of notifying the ESZ in a responsible manner.

5.2. The requirement of Eco-Sensitive Zones is in addition to the existence of Reserve Forests.

5.3. There is a legal requirement to have a proper and sufficient buffer zone around Protected Areas.

5.4. The limited geographical area in the State for economic activities cannot remove the legal requirement of notifying ESZ in letter and spirit.

5.5. Non-application of mind in the Notification of ESZ.

Reliance has been placed by the applicant on ***M.C.Mehta –vs- Kamala Nath (1997)1 SCC 288, Pranab Sen Committee Report, 2000, T.N.Godavarman Thirumalpad –vs- Union of India & Ors (2005)*** on implementation of the National Forest Policy, 1988, ***Vellore Citizens Welfare Forum –vs- Union***

*of India & Ors* (1966) 5 SCC 647 on “Economic Imperatives” that cannot override the legal duty of the state to preserve the environment, observation of the Apex court in IA Nos. 1433 and 1477 of 2005 in *T.N.Godavarman Tirumalpad –vs- Union of India & Ors*, WP(C) 202 of 1995.

10. After hearing the parties at length, perusal of the pleadings and examination of the documents annexed with the respective affidavits, we directed the MOEF and the State Respondents to place all records which were considered by the MOEF pertaining to declaration of ESZs in the state which would be essential for effective adjudication of the case. The affidavits filed by the MOEF, rejoinder of the applicant to the affidavit of the MOEF, affidavit of the State Respondents No. 2 & 3 filed on dt. 6.04.2016 were also thoroughly examined by us after hearing the Ld. Advocate General of the state of Sikkim and Ld. Advocate appearing on behalf of the MOEF.

11. Thus, the allegations of the applicant are broadly the following :-

- i) Eco-sensitive Zone notifications of 27.8.2014 with a distance of as low as 25 meters do not serve as shock

absorbers and identification of such areas are largely based on anthropocentric consideration.

- ii) Guidelines of dt. 9.2.2011 by MOEF for identification of ESZs have not been followed and there has been procedural *ultra vires* while issuing the Notifications.
- iii) People's objection to the draft Notifications and their opinion have not been considered and reasons for declaring such ESZs are not evident in the Notifications.

12. We have given our earnest consideration to the respective submissions of the Id. Counsel on either side and perused the materials on record. We are of the considered view that the following points on the issues as alleged by the applicant need our indulgence for adjudication.

a) Whether the Apex Court's ruling for keeping 10 Km distance from the boundary of the protected area as ESZs has been violated and whether a distance of 25 meters do not serve as a 'Shock Absorber'.

b) Whether the Guidelines of 2011 issued by the MOEF for identifying ESZs have not been followed and

there has been procedural lapse while issuing such Notifications.

c) Whether before issuing the Notifications the objections of the people to the draft Notifications and their opinion were not considered by the MOEF and no reasons have been given on the necessity of declaring such ESZs.

13. Before we proceed to analyse the pleadings and arguments advanced by the Ld. Counsel on either side, it is desirable to notice few Sections of the Guidelines issued by the MOEF dt. 9.2.2011 which are as follows :-

“1.2. National Wildlife Action Plan (2002-2016)

1.2.1 The National Wildlife Action Plan (NWAP) 2002-2016 indicates that “Areas outside the protected area network are often vital ecological corridor links and must be protected to prevent isolation of fragments of biodiversity which will not survive in the long run. Land and water use policies will need to accept the imperative of strictly protecting ecologically fragile habitats and regulating use elsewhere.”

1.2.2 The Action Plan also indicates that “All identified areas around Protected Areas and wildlife corridors to be declared as ecologically fragile under the Environment (Protection) Act, 1986.”

1.3. Decision of National Board for Wildlife:

1.3.1 Considering the constraints communicated by the states, the proposal was re-examined by the National Board for Wildlife in its 2<sup>nd</sup> meeting held on 17<sup>th</sup> March 2005 and it was decided that the ‘delineation of eco-sensitive zones would have to be site specific and relate to regulation, rather than



Zone and the extent of regulation may not be uniform all around and it could be of variable width and extent.

5. Need for guidelines:

\*\*\*                      \*\*\*                      \*\*\*

5.3 The Ministry of Environment & Forests had set up a committee under the Chairmanship of Shri Pronab Sen for identifying parameters for designating Ecologically Sensitive Areas in India. The said Committee had identified parameters for declaration of specific units of land/water etc as Ecologically Sensitive Zones based on parameters like richness of flora& fauna; slope; rarity & endemism of species in the area; origins of rivers etc. However, these parameters do not basically apply to the Eco-sensitive zones in the instant context, i.e around Protected Areas. In the instant case, the Eco-sensitive zones are meant to act as a “Shock absorbers”/ “transition zone” to the Protected Areas by regulating and managing the activities around such Protected Areas.

6. The procedure to be adopted :

6.1 As has been indicated in the forgoing paras, the basic aim is to regulate certain activities around National Park and Wildlife Sanctuary so as to minimize the negative impacts of such activities on the fragile ecosystem encompassing the Protected Area. As a first step towards achieving this goal, it is a pre-requisite that an inventory of the different land use patterns and the different types of activities, types and number of industries operating around each of the Protected Area (National Parks, Sanctuaries) as well as important Corridors be made. The inventory could be done by the concerned Range Officers, who can take a stock of activities within 10 km of his range.

6.2 For the above purpose, a small committee comprising the concerned Wildlife Warden, an Ecologist and an official of the Revenue Department of the concerned area, could be formed. The said committee could suggest the:

- (i) Extent of eco-sensitive zones for the Protected Area being considered.
- (ii) The requirement of such a zone to act as a shock absorber
- (iii) To suggest the best methods for management of the eco-sensitive zones, so suggested.



(iv) To suggest broad based thematic activities to be included in the Master Plan for the region.

6.3 Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities is attached as ANNEXURE-1):-

- (i) Prohibited
- (ii) Restricted with safeguards.
- (iii) Permissible

6.4 Once the proposal for Eco-sensitive zones has been finalized, the same may be forwarded to the Ministry of Environment and Forests for further processing and notification. Here, it may be noted that, the State/Union Territory Forest Department could forward the proposals to the respective authority in the State Government with copy to the Ministry of Environment and Forests, as and when the proposals (even if it is for single Protected Area) are complete. An indicative list of details that need to be submitted along with the proposals is at ANNEXURE-2.”

14. As revealed from the pleadings and documents available on record, the National Board for Wild Life has adopted the National Wildlife Action Plan, 2002-2016 which is a policy inter alia providing for identification and declaration of ecologically fragile areas around the protected areas under the EP Act. It was recommended that the land falling within 10 Km of the boundary of the National Parks and Sanctuaries should be notified as Eco-fragile zone under Sec. 3(v) of the EP Act which was in furtherance to adoption of Wildlife Conservation Strategy, 2002 by the Board.

15. According to the Applicant, the Govt. of India has taken a stand that ESZs are to be maintained beyond the “protected area” which is to the extent of 10 KM and it is the duty of the State to follow the same. He would also bring to our notice about the observations of the Hon’ble Apex Court in Goa Foundation case in PIL filed, WP No. 460 of 2004, wherein the Apex court directed the Union Govt. to keep the area of ESZs as 10 Km radius from the boundary of the protected area till ESZ is identified and notified. It is the grievance of the applicant that the State of Sikkim being a hot spot of biodiversity, such casual approach of the Govt. declaring ESZs with a distance of as low as 25 meters is in violation of 2011 Guidelines and the order of the Hon’ble Supreme Court which will definitely affect the natural environment.

16. On examination of the records, we found that the 10 Km range from the boundary of the protected area is not a mandatory requirement as per 2011 Guidelines nor it is to be followed uniformly for each and every ESZ. The procedure indicated is a broad guideline with reasonable flexibility keeping in view the local conditions and nature and extent of protection needed. In fact, in terms of para 1.3.1 of 2011 Guidelines, the declaration of Eco-sensitive Zone would have

to be site specific and relate to regulation rather than prohibition of specific activities. Although one of the requirements of the guidelines is to prepare an inventory for a 10 Km range from the protected areas and sanctuaries, looking to the topography and size of the State, it was not possible to do so. The Notifications dt. 27.8.2014 have identified and specified activities that are prohibited, regulated and those permissible. It is found from the record that the State of Sikkim constituted a Committee on 1.3.2011 to formulate the draft ESZ Notifications and the said committee deliberated and discussed the issues in meetings held on 4.3.2011, 21.3.2011 and 24.3.2011. According to the State Respondents, the process of identification of areas in and around the National Park and Sanctuaries had commenced from as early as 2007 and an affidavit in this respect was filed before the Hon'ble Apex court on 16.2.2007 in Goa Foundation case pointing out that notifying a 10 Km extent as ESZ from boundary of the National Park and sanctuary is not a feasible proposition in the small State of Sikkim.

17. The draft proposals were formulated initially for six ESZs namely, Barsey Rhododendron Sanctuary, Famblonglho

Wildlife Sanctuary, Kitam Bird Sanctuary, Maenam Wildlife Sanctuary, Pangolakha Wildlife Sanctuary (all these five having 500 meters distance from the boundary of the protected area ) and Kanghchendzonga National Park (from 200 meters to 1 Km) after conducting a detailed study to identify the existence of habitations and villages. The proposals for rest two, Kyongnosla Sanctuary ESZ and Shingba Sanctuary ESZ were prepared keeping 1 KM distance. After approval of the State Government, the proposals were sent in two phases to the MOEF for consideration.

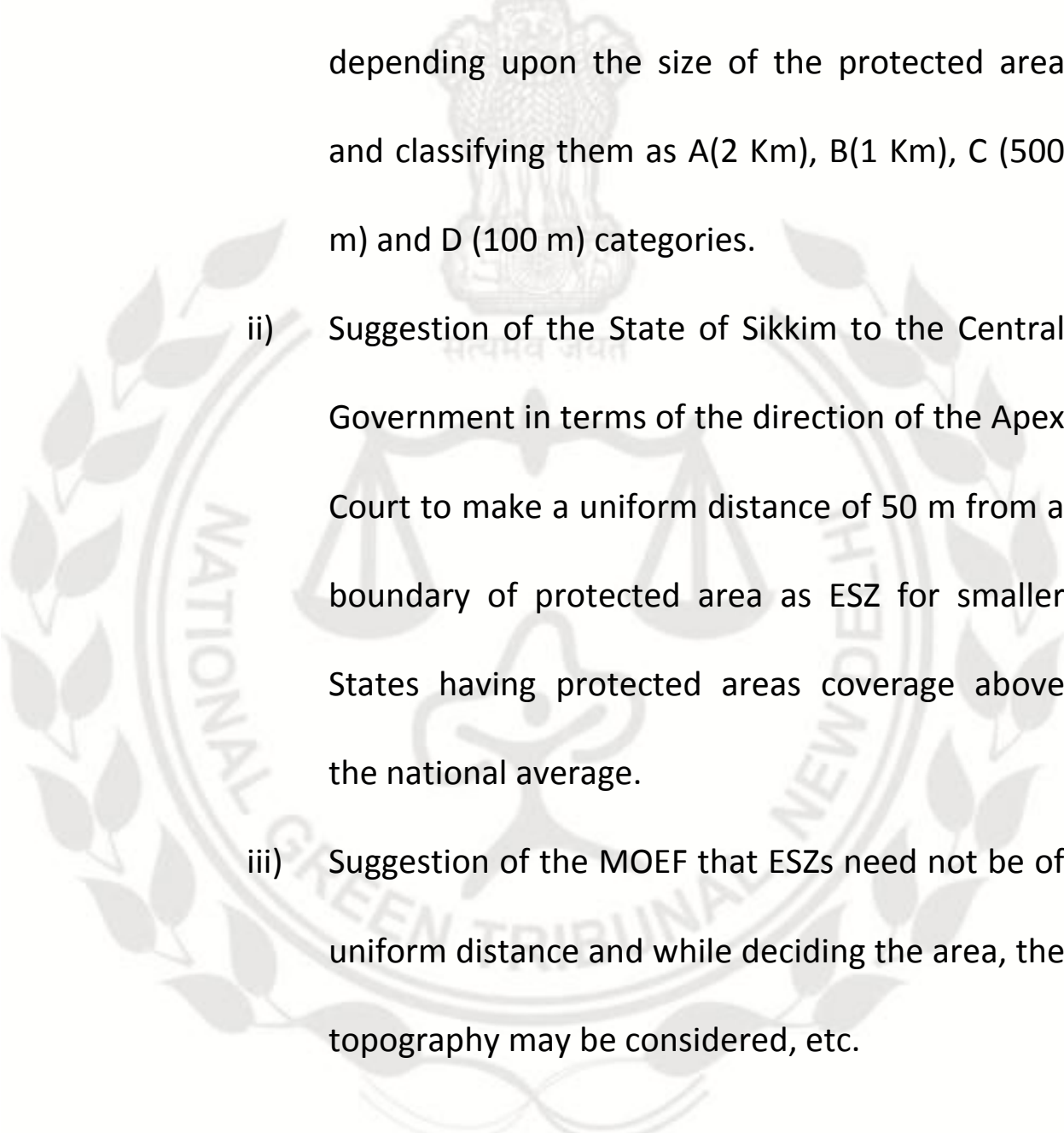
18. The MOEF in its letter dt. 25.01.2012 returned the proposals to the State as they were not in consonance with the 2011 Guidelines and advised the State to fine tune the proposals according to the Guidelines and also to constitute a Committee for identifying and prescribing activities with the ESZs. The State was also advised to include the following details :-

- (i) **The radius/mean radii/range of radius of the proposed eco-sensitive zone clearly indicating the area covered by the ESZ around the Protected Areas along with a clear map for the same in A4 size.**
- (ii) **Natural habitats and important corridors present in the protected areas and the proposed Eco-Sensitive Zone.**

- (iii) Human-induced pressures and threats faced by the region and the requirement of such a zone to act as a shock absorber.
- (iv) Details of land-use pattern of the region within the proposed eco-sensitive zone.
- (v) List of different categories of industries including mines and stone crushing units operating in the proposed Eco-Sensitive Zone.
- (vi) The best methods for arrangement of the eco-sensitive zone.
- (vii) The broad based thematic activities to be included in the Master Plan for the region, which may be in the form of a table as given in the Guidelines of the Ministry of Environment and Forests on Eco-Sensitive Zones, published on 9<sup>th</sup> February, 2011.
- (viii) A detailed boundary description of the proposed Eco-Sensitive zone and list of villages falling within the proposed Eco-Sensitive zone along with the latitudes and longitudes of the same.

19. The State Government constituted a Committee afresh in terms of MOEF letter dt. 25.01.2012 with members from the Forest Department, Land Revenue Department, Rural Management and Development Deptt., experts from G.B.Pant Institute of Himalayan Environment and Sustainable Development in terms of 2011 Guidelines for the purpose of studying ESZs around the eight protected areas. Based on their study and subsequent deliberations, the Committee revised all the eight proposals which were sent to MOEF on 2.8.2012 for their consideration.

20. Subsequently, there were other developments like –

- 
- i) Report of the Central Empowered Committee placed before the Apex Court suggesting the extent of ESZ ranging from 100 meters to 2 KM depending upon the size of the protected area and classifying them as A(2 Km), B(1 Km), C (500 m) and D (100 m) categories.
  - ii) Suggestion of the State of Sikkim to the Central Government in terms of the direction of the Apex Court to make a uniform distance of 50 m from a boundary of protected area as ESZ for smaller States having protected areas coverage above the national average.
  - iii) Suggestion of the MOEF that ESZs need not be of uniform distance and while deciding the area, the topography may be considered, etc.

21. Accordingly, the Committee again deliberated upon all relevant issues on 8.1.2013 and decided to consider three ecological parameters i.e. slope, natural barriers like rivers/settlement, etc. and fragility of the altitude areas for demarcating ESZs. Pursuant to such decision and further deliberations, the proposals prepared earlier were revised and forwarded to the MOEF on 23.1.2013. The MOEF , after

considering the proposals published the draft Notifications inviting objections/suggestions from interested persons. The applicant in the present case suggested no change in the activities mentioned under prohibitory or regulatory category except suggesting the distance to 8000 meters around the protected areas. It is also found from the records that 59 people offered their opinion and MOEF after due consideration of the suggestions of the people issued the final Notifications on 27.8.2014.

22. On the question of consideration of the objections/suggestions of the people, the applicant has annexed a list of people/stake holders numbering 59 who have offered their comments and suggestions on the eight draft Notifications issued by the MOEF (Annexure-A9). It is the contention of the applicant that the objections raised by the stake holders ought to have been taken into account by the MOEF before issuing the final Notifications as per Rule 5(3)(c) of the Environment (Protection) Rules, 1986. But there has been no consideration of any of the objections raised. However, it is the categorical submission of the Respondent No. 1, the MOEF that the final Notifications have been issued after following the due process of

scrutinization, consultation, seeking comments from public and on the basis of the recommendation of the State Government and also looking into the needs and requirement of sustainable development.

23. It is stated by the applicant that both the Guidelines of 2011 and Rules 5(3)(b) of the Environment (Protection) Rules, 1986 put emphasis on providing reasons for declaration of ESZ in order to ensure that affected people could be able to furnish opinion on the same which has been emphasised in the case of ***Utkarsh Mandal –vs- Union of India***, 2009(10)AD (Delhi) 365 WO (C) No. 93401/2009. We find that in each of the draft notifications reasons have been provided under “Natural Habitat and corridors” as well as “Human Induced Pressures and Threat”.

24. While agreeing with the contention of the applicant that the focus for determining the ESZs should be directed towards eco-centric approach and implementing the principle of sustainable development in terms of the judgement of the Hon’ble Supreme Court in ***T.N.Godaverman –vs- Union of India & Ors*** (2013) 8 SCC



234, we should also take a note from the **Pronab Sen Committee** Report which states as follows :-

“11. ....The nuances of ecological sensitivity are such that excessive rigidity on this count could defeat the very purpose of this exercise, which seeks to strike a balance between preservation of our ecological endowments and the needs of development” (See Page 224 of the applicant’s rejoinder marked as Annexure-A). Further, the said Pranab Sen Committee Report also observed in internal page 7 of the Report that “Almost any human activity causes ecological damage to one extent or another, both in terms of loss of life forms and of habitats. An excessively rigid interpretation of the definition may, therefore, lead to a substantial and perhaps unacceptable curtailment in development activities. This is not the intention. Clearly, the loss of a few individuals of a species or even of an entire species in a particular location does not necessarily justify the prevention of human activity, and a reasoned decision has to be taken weighing the benefits of development against the loss of bio-diversity.”

Thus, the need for protecting the ecologically sensitive areas ought to be balanced with the need of development and one cannot be seen in isolation to the other. Because of particular topography of the State and also the size and the necessity of economic development, it is not expected of the State to completely follow the guidelines, which are largely advisory in nature, to facilitate the States to take decision at the cost of development.

25. On the allegation of the applicant that a distance of 50 m will not serve the purpose of acting as Shock Absorber to protect and preserve the protected area from outside interference may not be applicable to the situation

prevailing in Sikkim as in most of the cases the adjoining areas are reserve forests and there are restrictions for use of such forest for non-forests purposes, in terms of the Forest (Conservation) Act, 1980 and the Forest Act, 1927, in reserved forests.

The section 26 of the Indian Forest Act reads as under :-

“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 subsection (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit."

The sole objective of identifying and notifying the ESZs have been dealt in the 2011 Guidelines and keeping the local conditions/situations and ecological factors in view, the areas are identified by an expert committee and we do not find the allegations of the applicant to be true.

26. From the afore-stated discussions and statements of facts it becomes clear that adequate exercise was undertaken both by the state and the Union Government to follow the 2011 Guidelines to the extent possible and there has been no violation of the order of the Hon'ble Apex Court nor any procedural lapses and violation of the existing Acts and Rules. The comments of the people on draft notifications were also considered by the Respondent No. 1 before issuing the final notification.

27. Therefore, we are not inclined to allow the application and quash the notifications as we do not find any illegality or infirmity in issuance of these eight Notifications.

**The OA along with MA stand dismissed.**

**No order as to costs.**

.....  
Mr. Justice S.P.Wangdi , JM

.....  
Prof.(Dr.) P.C. Mishra , EM

Kolkata,  
Dated 21<sup>st</sup> August, 2017.

**NGT**



