

Supreme Court of India

I.A.Nos.1433 & 1477 of 2005 in Writ Petition (C) No. 202 of 1995. Judgment dated 13th February, 2012. Reported in 2012 (3) SCC 277, 2012 AIR(SCW) 1644, AIR 2012 SC 1254, 2012 (4) ALD 47, 2012 (4) LW 911, 2012 (2) SLT 446: CDJ 2012 SC 133

THE HONOURABLE MR. JUSTICE K.S. RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE
CHANDRAMAULI KR. PRASAD

T.N. Godavarman Thirumulpad Versus Union of India & Others

JUDGMENT

K.S. Radhakrishnan, J.

1. Asiatic Wild Buffalo is reported to be the most impressive and magnificent animal in the world. Often it is found in the Western and Eastern Ghats of the country. Learned Amicus Curiae has moved this Court seeking a direction to the Union of India and the State of Chhattisgarh to prepare a rescue plan to save Wild Buffalo, an endangered specie from extinction and to make available necessary funds and resources required for the said purpose and also for a direction to take immediate steps to ensure that interbreeding between the wild and domestic buffalo does not take place and the genetic purity of the wild species is maintained. Direction was also sought for to prepare a scheme in consultation with the villagers for relocation of villagers from the Udanti Sanctuary to ensure the survival of the endangered wild buffalo. Direction was also sought for that all research and monitoring inputs including scientific management of the wild buffalo and its habitat be made available on long term basis by involving institutes such as the Wildlife Institute of India, the Bombay Natural History Society etc.

2. The State of Chhattisgarh filed its reply affidavit on 30.01.2006 explaining the steps taken to conserve and preserve the endangered species which was declared as a State Animal. Along with the affidavit, a comprehensive operational Management Plan for Udanti Wildlife Sanctuary was also enclosed stating that the execution of the said Management Plan had suffered setbacks due to acute financial shortage for its implementation. Further, it was stated that the funds allotted under Central Assistance from the Government of India, Ministry of Environment and Forests was not in tune with the budget requirement for development of the sanctuary and the conservation of the endangered species. A chart showing shortfall in funds for the development of the sanctuary has also been annexed with the affidavit, so also a table showing the census figures of wild buffalos. The reasons for the decline of the wild buffalos have also been explained. In order to overcome

those hurdles, it was stated that an MoU was entered into with the Wildlife Trust of India on 21.03.2005 which included special efforts for maintaining the genetic purity of those species and for breeding thereof. Steps taken to relocate the villagers residing within the sanctuary area has also been highlighted.

3. This Court on 08.09.2006 passed an order directing the Central Empowered Committee (CEC) to conduct an enquiry and submit a report. Affidavit filed by the State was also placed before the CEC and it had detailed discussions with the officials of the State of Chhattisgarh and MoEF. State of Chhattisgarh constituted a task force by its order dated 24.05.2007 for suggesting steps and formulating an action plan for the conservation and increasing the number of wild buffalos in the State. Proposal made by the Chief Wildlife Warden to replace the domestic buffalos reared by the villagers with cows and bullocks it was stated, was also given active consideration. CEC after consultation with the MoEF as well as the officials of the State Government submitted its report on 10.09.2008.

4. Steps taken by the State of Chhattisgarh to preserve and conserve the wild buffalo which was declared as a State Animal is far from satisfactory. When the matter came up for final hearing, the counsel appearing for the MoEF made available a copy of the Centrally Sponsored Scheme of 2009 (CSS) titled "Integrated Development of Wildlife Habitats". The Scheme was formulated during the Eleventh Five Year Plan. The Scheme has also incorporated additional components and activities for implementing the provisions of the Wildlife (Protection) Act, 1972 [for short the Act], National Wildlife Action Plan (2002- 2016), recommendations of the Tiger Task Force, 2005, and the National Forest Commission, 2006 and the necessities felt from time to time for the conservation of wildlife and biodiversity in the country.

5. Before coming into force of the Act, the scheme which was in force was "Assistance for the Development of National Parks and Sanctuaries" which used to support only National Parks and Wildlife Sanctuaries. However, following the amendment to the Act, in 2003, two more categories of Protected Areas (PAs) i.e. the Conservation Reserves and Community Reserves have been recognized. Conservation Reserves, which are government land, but do not require acquisition of rights, nor the curtailment of activities as envisaged in National Parks and Wildlife Sanctuaries are stated to be the most appropriate strategy for connecting protected areas, by providing corridors. Community Reserves are entirely based on efforts of the local people on privately owned lands which require financial and technical assistance for their future management. The Central Government before the Act came into force did not have much control over the States and the

Union Territories for implementation of its various schemes and the Parliament, in order to give effect to Article 51A(g), enacted the Act for the protection of wild animals, birds and plants and for matters connected therewith, with a view to ensure the ecological and environmental security of the country. Article 48A of the Constitution of India imposes a duty on the State to protect and improve the environment and to safeguard the forest and wildlife of the country.

6. Article 51A(g) states that it is the duty of every citizen of India to protect and improve the natural environment including the wildlife and to have compassion for the living creatures. By the 42nd Amendment Act 1976 of the Constitution "Forests" was added as Entry 17A in the Concurrent List and the "protection of wild animals and birds" was added as Entry 17B. Consequently, both the Central and State Governments/UTs are mandated with the responsibility of protection and conservation of wildlife and its habitat. Chapter IV of the Act deals with the "protected areas." Earlier headings 'Sanctuaries', 'National Parks' and 'Closed Areas', was substituted by the words "protected areas" by Act 16 of 2003. Section 18 of the Act empowers the State Government to declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment. Chapter IV also confers various other powers upon the State Government like acquisition, initiation of acquisition proceedings, declaration of areas as sanctuary, restriction on entry to the sanctuaries etc. It is unnecessary to refer to those provisions for the purpose of the instant case.

7. Section 36A of the Act empowers the State Government, after consultations with the local communities, declare any area owned by the Government, particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, as a conservation reserve for protecting landscapes, seascapes, flora and fauna and their habitat. The Act also empowers the State Government, where the community or an individual has volunteered to conserve wildlife and its habitat, declare any private or community land not comprised within a National Park, Sanctuary or a Conservation Reserve, as a Community Reserve, for protecting fauna, flora and traditional or cultural conservation values and practice. The management of Community Reserves shall primarily be done by the communities/individuals themselves. The Centrally Sponsored Scheme (CSS), therefore, intended to bring these two categories of PAs also under the ambit of the Scheme along with the existing National Parks and Wildlife Sanctuaries.

8. The State of Forest Report 2005 states that the forest and tree cover in the country is around

23.39%, of which forests constitute around 20.64%. However, the PA network covers only 4.8% of the geographical area of the country with most of the PAs forming part of the forest area. At present, India has a network of 99 National Parks, 515 Wildlife Sanctuaries, 43 Conservation Reserves and 4 Community Reserves in different bio- geographic zones. Protected Areas, i.e. Conservation Reserves and Community Reserves have an important role to play in maintaining geographical integrity of the Nation. Fact is that many important habitats still exist outside those areas which require special attention from the point of view of conservation. Habitat of Sandalwood, red sanders, white cedar, rhododendrons, Southern Tropical Montane forests, grasslands, alpine meadows of Himalayan region, corridors connecting PAs and crucial wildlife habitats, deserts, tropical swamps, rivers, estuaries, bamboo and reed breaks, mangroves, coral reefs, deserts etc. are examples of such habitats existing outside conventional PAs. The tenurial status of such habitats ranges from government-controlled Reserved Forests to Protected Forests, revenue forests, interspersed vegetation in plantation sector, revenue lands, village forests, private forests, religious forests, territorial waters, Community Conserved Areas etc. Such habitats also act as corridors for wildlife between PAs thus ensuring connectivity in the landscape.

Human-wildlife conflict

9. Human-wildlife conflict is fast becoming a critical threat to the survival of many endangered species, like wild buffalo, elephants, tiger, lion etc. such conflicts affect not only its population but also has broadened environmental impacts on ecosystem equilibrium and biodiversity conservation. Laws are man-made, hence there is likelihood of anthropocentric bias towards man, and rights of wild animals often tend to be of secondary importance but in the universe man and animal are equally placed, but human rights approach to environmental protection in case of conflict, is often based on anthropocentricity.

10. Man-animal conflict often results not because animals encroach human territories but vice-versa. Often, man thinks otherwise, because man's thinking is rooted in anthropocentrism. Remember, we are talking about the conflict between man and endangered species, endangered not because of natural causes alone but because man failed to preserve and protect them, the attitude was destructive, for pleasure and gain. Often, it is said such conflicts is due human population growth, land use transformation, species habitat loss, degradation and fragmentation, increase in eco-tourism, access to natural reserves, increase in livestock population, etc. Proper management practices have to be accepted, like conservation education for local population, resettlement of villages, curbing grazing by livestock and domestic animals in forest, etc., including

prey-preservation for the wild animals. Provision for availability of natural water, less or no disturbance from the tourists has to be assured. State also has to take steps to remove encroachments and, if necessary, can also cancel the patta already granted and initiate acquisition proceedings to preserve and protect wildlife and its corridors. Areas outside PAs is reported to have the maximum number of man- animal conflict, they fall prey to poachers easily, and often invite ire of the cultivators when they cause damage to their crops. These issues have to be scientifically managed so as to preserve and protect the endangered species, like wild buffalo and other species included in Schedule 1 Part 1 of the Wildlife Protection Act, as well as other species which face extinction.

11. Management plan for Udanti Wildlife Sanctuary (2002-2003, 2011-2012) published by the Forest Department of Government of Chattisgarh, paragraph 3.6.2 of the Report reveals much more than what meets the eyes which reads as follows:- "Prior to declaration as sanctuary this area was part of East Raipur Division in which rules to regulate illegal poaching and hunting existed.

Before declaration of Govt. forest it was under control of Bindrawagrah Zameendar.

In those days shooting was allowed after receiving a fee of Rs.25/- at that time. Shooting of wild buffalo was prohibited after Govt. Notification no.1905-1517-4 dt. 27.08.1935 but in this zameendari one shooting licence holder was entitled to shoot one Bison, one Barasingha, Two spotted deer and one Sambhar. Game rules of C.P. and Bear Game Act, 1935 and CP & Bear Bird game 1942 were existing in this are during past.

After end of Zameendari system when these forest became Govt. forest rules were enforced to regulate hunting vide notification no.788-2319 DT.19.8.53. In these shooting rules of 1953 shooting of wild Buffalo was allowed after formal permission of Govt. But shooting of bison was prohibited. In shooting rules of 1955 different fee was decided for hunting. Shooting of Bison, wild buffalo, Barasingha, Tiger, Sambhar, Leopard, Sloth Bear and Cheetal were allowed.

These hunting rules were not very effective for regulation of shooting and hunting and therefore shooting was stopped by Govt. of M.P. completely vide notification no. 6036-10(2)-71 dt. Govt. of India in this regard started 11.11.1971. Effective steps after enforcement of wildlife protection act 1972."

12. Paragraph 3.6.3.2 deals with encroachment and other illegal activity, which reads as follows :-

Encroachment and other Illegal activity

In UWLS encroachment for land hunger is not common practice. Sometime due to lack of clearcut demarcation live or boundaries, cases of encroachment have been observed. Therefore, village boundary should be development of villages and for the betterment of villagers in the revenue villages inside and around the sanctuary. These department are revenue, ICDS, Veterinary Health Services, Medical Department, State Electricity Board etc., semi Govt. village institutions like village and Janpad Panchayat are also working for development activities.

More development activity causes more interference in forest and the privacy of wild life. These ultimately cause conflict with wildlife.

Conflict with wildlife to the abnormal behaviour of wild animals like aggressiveness of monkey, cattle lifting by carnivore, injury by bears during Mahua season etc.

Development of people is always welcome but not in the cost of negative ecological in the ecosystem.

13. Report clearly states that development activities causes more interference in forest and also the privacy of wildlife and these ultimately cause conflict with wildlife. Man-animal conflict often takes place when wild animals cause damage to agricultural crop and property, killing of livestock and human beings. Human population growth, land use transformation, species loss of habitat, eco-tourism, too much access to reserves, increase in livestock population bordering the forest, depletion of natural prey base etc., often stated to be reasons for such conflict. Central Govt. the State Governments, and the Union Territories should evolve better preservation strategies, in consultation with Wildlife Boards so that such conflicts can be avoided to a large extent. Participation of people who are staying in the Community Reserves is also of extreme importance. The necessity of implementing proper management measures for preserving the wild buffalo has also been elaborately stated in the Report.

14. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and non-human has only instrumental value to humans. In other

words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature centred where humans are part of nature and non-human has intrinsic value. In other words, human interest do not take automatic precedence and humans have obligations to non- humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature include both human and non-humans. National Wildlife Action Plan 2002-2012 and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centred on the principle of ecocentrism.

15. The National Wildlife Action Plan (2002-2016) is intended to provide adequate protection to wildlife in multiple use areas such as Government forests outside PAs, various Community Conserved Areas like sacred groves, community and panchayat forests, identified private forests such as interspersed forests in tea, coffee and cardamom gardens and other protection landscapes, farm lands, wastelands, wetlands, coastal habitats, heronries, wintering wetlands of birds, catchment forests, turtle nesting sites, pastures for livestock and wild herbivore, deserve ecosystems etc.

Recovery Programmes

16. The Centrally Sponsored Scheme also deals with Recovery programmes for saving critically endangered species and habitats. It was noticed that, due to variety of reasons, several species and their habitats have become critically endangered. Consequently, the scheme intends to extend support to such recovery programmes for saving critically endangered species and their habitat based on the requirement felt from time to time. The objective of this recovery plan of saving critically endangered species/ecosystems cannot be covered under the components of Conservation of PAs and protection of wildlife outside PAs as disjunct population across a wider landscape/seascape. Several programmes are proposed under the recovery plan, of which one is to save the critically endangered species of Asian Wild Buffalo and grasslands and riverine forests of central and north India. Several other components were also included in the recovery plan such as Dolphin and River Systems, Nilgiri Tahr, Asiatic Lion etc. The scheme envisages that the Director, Wildlife Preservation, Government of India, in consultation with the Wildlife Institute of India or the relevant scientific institute/organization and with the approval of the Standing Committee of the National Board for Wildlife can initiate other recovery programmes or wind up the ongoing programme. The Director, Wildlife Preservation, is also authorised to undertake assessment of the effectiveness of any `recovery programme' already undertaken or being undertaken. The Integrated Development of Wildlife Habitats scheme specifically highlighted the necessity to preserve and

conserve the habitat of wild buffalo. The scheme states as follows:

“Wild buffalo is one of the worst affected mammalian species in the recent times. Domestication of the species and continuous interbreeding with domestic buffalo has led to inbreeding, genetic disorders, competition and mortality due to disease. Apart from this, habitat fragmentation, degradation, and poaching are the main threats to the conservation of this globally threatened species. Urgent and concerted efforts are needed to recover this species from the brink of extinction.”

17. Conservation and Management of Wildlife, as per the Act, is primarily vested in the States / UTs who are in physical possession of the area. It was noticed that many States/UTs have set up various regular wildlife wings within the States/UT Forest Departments and implemented a scheme as to be done in accordance with a work programme covering the 11th Plan period. The Centrally Sponsored Scheme, therefore, envisages that the State/UTs are required to submit Annual Plan of Operations (APOs) to the Central Government detailing the proposed course of action, which consists of management planning and capacity building, anti-poaching and infrastructure development, restoration of habitats, eco-development and community oriented activities etc. so as to qualify for the financial assistance under the scheme. The concerned State/UTs have to follow certain conditions which have been enumerated in the scheme.

18. The State of Chhattisgarh, in the instant case, has pointed out that they could not effectively give effect to some of the programmes for preservation and conservation of wild buffalo due to lack of funds. The scheme envisages 100% assistance. It is relevant to extract the Pattern of Funding and the same reads as follows:

Pattern of Funding

7 Under the Scheme, 100% assistance is provided for non-recurring items of expenditure for National Parks, Wildlife Sanctuaries, Conservation Reserves and Community Reserves.

7 50% cost of recurring expenditure is provided for National Parks, Wildlife Sanctuaries, Conservation Reserves and Community Reserves where the State Government provides for the balance 50% as the matching share.

7 National Parks, Wildlife Sanctuaries, Conservation Reserves and community Reserves in

mountain regions, coastal zones, deserts, or those areas which support highly endangered species i.e. Snow Leopard, Red Panda, Rhino, Sangai Deer, Phayre's leaf monkey, Musk Deer, Hangul, Great Indian Bustard, Great Indian Hornbill, Siberian Crane, Chinkara, Chowsingha,

Black Buck, Marine Turtles, Nilgiri Tahr, Lion Tailed Macaque, Bustards, Floricans, Pelicans, Gyps Vultures, Wild Ass, Grizzled Giant Squirrel, Clouded Leopard, Wild Buffalo, Hoolock Gibbon and Lion are eligible for 100% central assistance for both recurring and non-recurring items of expenditure.

7 In the case National Parks, Wildlife Sanctuaries, Conservation Reservation and Community Reserves falling in the high mountainous, snow clad regions (where working season is limited to a few months) in the States of Jammu and Kashmir, Himachal Pradesh, Uttarakhand and Sikkim, the central assistance shall be given in one instalment. For other States, the approved allocation shall be released in two instalments (80 per cent as 1st instalment and balance as 2nd instalment.)

7 Similarly, subject to site-specific adjustments, as a guiding principle, a 40:40:20: proportion of financial sharing shall be ensured between Centre, State as owners of the privately held land, when such areas are involved in the case of Community Reserves.

19. State of Chattisgarh has maintained the stand that they do not have sufficient funds to undertake various programmes for protection of wild buffalo within the national parks, sanctuaries and also at conservation reserves and community reserves. This stand cannot be countenanced now, especially after the introduction of the Scheme.

20. Wild buffalo has been included as Item No. 41, Part I of Schedule I of the Act. Once it is included in Schedule I, the State Board for Wildlife has to advise the State Government in the selection and management of the areas to be declared as protected areas, in the formulation of policy for protection and conservation of the wildlife etc., as per Section 8 of the Act. Section 9 of the Act states that no person shall hunt any wild animal specified in Schedule I to IV, except as provided under Sections 11 and 12.

21. The International Union for Conservation of Nature (IUCN) has calculated the percentage of endangered species as 40% of all organisms. IUCN Red List refers to specific categories of endangered species and includes critically endangered species. IUCN Red List of Threatened Species uses the term endangered species as a specific category of imperilment, rather than as a

general term. Under the IUCN Categories and Criteria, endangered species is between critically endangered and vulnerable. Wild water buffalo is included in the category of endangered species. Apart from the human-animal conflict, the most important threat to wild buffalo is inbreeding with feral and domestic buffalo, habitat loss/degradation and hunting. Diseases and parasites (transmitted by domestic livestock) and competition for food and water between wild buffalo and domestic stock are also serious threats. Habitat loss is also a major concern for species endangerment. When wild buffalos' eco- system is not maintained, they lose their home and either forced to adopt new surroundings or human habitat. Eminent ecologists have proposed biological corridors, biosphere reserves, ecosystem management and eco-regional planning as approaches to integrate biodiversity conservation and socio-economic development at increasingly larger spatial scales.

22. We have seen the subjects `forest' and `protection of animals and birds' are in the concurrent list of the Constitution and it is the fundamental duty of every citizen of India under Article 51A(g) of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wildlife. It is to achieve the above objective and also to give effect to the purpose of the object of the Act that the Central Government has sponsored "the Integrated Development of Wildlife Habitats". As per the Scheme and the Act, the State Government is empowered to notify conservation reserves and community reserves for protecting the landscape, seascapes, flora and fauna and their habitat. The Act also empowers the State Government to declare any private and community land not comprised within the national parks, sanctuaries or conservation reserves or community reserves for protecting fauna, flora and traditional or cultural conservation values and practice.

23. We are, therefore, inclined to dispose of this application with the direction to the State of Chhattisgarh to give effect fully the Centrally Sponsored Scheme - "the Integrated Development of Wildlife Habitats", so as to save wild buffalo from extinction. The State also would take immediate steps to ensure that interbreeding between wild and domestic buffalos does not take place and genetic purity of the wild species is maintained. The State is also directed to take immediate steps to undertake intensive research and monitor the wild buffalo population in Udanti Wildlife Sanctuary and other areas, where the wild buffalo may still be found, including preparing them their genetic profile for future reference. The State is also directed to take appropriate steps to initiate wildlife training programmes for the officials of the State Forest Department, especially for managing the above sanctuary and other areas where the wild buffalos are found. The State is also directed to submit Annual Plan of Operations to the Central Government detailing the proposed course of action, if not already done, as per the "Integrated Development of Wildlife Habitats" scheme, within

a period of three months from today. All effective steps should be taken by the State to protect the Asian wild buffalo (*Bubalus bubalis*), which is declared as a State animal by the State of Chattisgarh.

24. The applications are disposed of as above.