

CENTRAL EMPOWERED COMMITTEE

Room No.106, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 Telefax : 24363976

Dated: 7th March, 2003

APPLICATION NO. 46

INTERIM DIRECTIONS

Shri Alok Krishna Agarwal Applicant

vs.

Union of India
State of Orissa
and others Respondent

- i) Chief Secretary, Government of Orissa
- ii) Principal Secretary, Dept. of Forests & Environment, Government of Orissa
- iii) Principal Secretary, Dept. of Fisheries & Animal Resources, Government of Orissa
- iv) Secretary, Ministry of Environment & Forest, Government of India
- v) Director, Defence Research and Devt. Organisation, Ministry of Defence, Government of India.
- vi) Director General, Coast Guard, Government of India
- vii) Marine Products Export Devt. Authority (MPEDA)
- viii) Addl. Director General, Wildlife, MOEF

Date of hearing : 4.3.2003

CORAM : 1. Shri N.K. Joshi Member
2. Shri Valmik Thapar Member
3. Shri Mahendra Vyas Member
4. Shri M.K. Jiwrajka Member Secretary

Special Invitee : Sh. S. K. Chadha, Asstt.
Inspector of Forest, MoEF

On behalf of Amicus Curiae : Shri Sidhartha Chowdhury, Advocate.

For Respondent No. 6 : Commandant M. T. Gore, Deputy
Director (FYS), Indian Coast Guard Head
Quarters

For the Union of India : Sh. A. D. N. Rao, Advocate

INTERIM ORDER

THE ISSUE

1. Application No.46 dated 19.12.2002 has been filed by Mr. Alok Krishna Agarwal, A-56, Gulmohar Park, New Delhi before the Committee raising the issues regarding protection of Olive Ridley Sea turtles, its nesting beaches and costal waters of Orissa where they congregate in large numbers every year. That every year between January and April the turtles display an awesome sight, seen may be in one or two other places in the world, as hundreds and thousands of them come to the beaches in Orissa for nesting – an event called Arribada, named after the Spanish term – Armada, meaning assemblage of naval fleets. Thousands of turtles die after getting tra-pped in the nets of the Fishing Trawlers and gill net fishing boats. The petitioner has alleged that the Orissa Forest Department and the Fisheries Department have done precious little in implementing the provisions of the Wild Life (Protection) Act, 1972 and Orissa Marine Fishing Regulation Act, 1984, thereby threatening the Olive Ridley Turtles, which enjoy the highest

degree of protection by being placed in Schedule-I of the Wild Life (Protection), Act 1972.

SITE VISIT

2. The Committee nominated Shri S. K. Chadha, Assistant Inspector General of Forest, MOEF as a Special Invitee of the Committee, who had earlier worked in the area as Wildlife Warden between September 1993 – October 1994, and December 1999 – September 2002, and Shri R. K. Tuli to make a quick site visit from 31.01.2003 and 03.02.2003 and suggest immediate measure that could be taken to provide favourable conditions for mass nesting during the current season. The Team was to suggest measures that should be taken to prevent their high mortality to which they are prone to. The team has filed its report giving several suggestions after it visited some of the coastal areas where turtles congregate and nest and held meetings with the concerned government officials, NGO's, Fishing Trawler Owners, conservation NGO's and other persons.

ABOUT OLIVE RIDLEY TURTLES

3. The Olive Ridley Sea turtles come to the Orissa Coast every year for mass-nesting mainly at three nesting sites– Gahirmatha, Devi River Mouth and Rushikulaya. The mass nesting or Arribada in a

good year may attract more than half a million turtles on the beaches. A large congregation of turtles remain in the shallow coastal waters from mid - October to April / May. Hundreds and thousands, specially the females who are about to lay the eggs get entangled in fishing nets and die from drown. Their carcasses get washed ashore and one can see dead turtles all along the beaches, miles upon miles on beaches as shown in the photographs filed along with the applications.

THREATS

4. The entry of mechanized fishing trawlers is prohibited up to 10 kms. from the shore under the Orissa Marine Fishing Regulation Act, 1984. The highly vulnerable turtles get entangled in the fishing nets of the fishing trawlers and in gill nets of the fishing boats, in the process suffer high mortality. Due to a lack of infrastructure and required manpower with Forest and the Fisheries Department, the enforcement is poor except in Gahirmatha Marine Sanctuary where the Coast Guard and Forest Department are jointly enforcing the law. The use of Turtle Excluder Device (TED), which is mandatory is not being used by the fishing trawlers. In view of the continuous violation of Orissa Marine Fishing Regulation Act, 1984 (hereinafter referred to as OMFRA) large numbers of turtles will go on dying if immediate preventive steps are not taken.

MEETING WITH THE STAKEHOLDERS:

4. The team met senior officials of the Forest Department, Fisheries Department, Coast Guards, representatives of local fishermen's associations and NGO's. On a meeting on 31.1.2003, the Chief Wildlife Warden of the State explained that the steps taken by the State and the difficulties faced by the department. The Wildlife Warden of Puri Forest Division, was unable not meet the team, however, the Divisional Forest Officer, Rajnagar Division under whose jurisdiction Gahirmatha Coast lies, gave a detail of the steps taken for protection of turtles in Gahirmatha Marine Sanctuary inspite of various difficulties faced by them. The officers of Indian Coastguard, Paradeep District gave a detailed account of the role played by the Coastguard in protecting vulnerable turtles.

5. The representatives of the Fishermen's Associations met and gave their views in a brief note. The Assistant Director of Fisheries of Balasore, Dhamra, Kujang and Puri explained the steps taken by the Fisheries Department over last two years in enforcement of OMFRA jointly with the Forest Department. The Honorary Wildlife Warden of Puri, some NGO's and media representatives also presented their point of view on the matter.

VIEWS OF FOREST DEPARTMENT :

6. The following was the response of the Forest Department on various specific issues raised in the application:-

- i) there is a shortage seaworthy vessels necessary for enforcing protection of turtles in the coastal waters;
- ii) there is a shortage of manpower as large number of Forest Guards level posts are lying vacant;
- iii) large number of unlicensed boats are operating and the problem is aggravated by illegal entry of fishing trawlers water from West Bengal and Andhra Pradesh. A total of about 1,000 mechanised trawlers out of which 80% are operating illegally during the season;
- iv) some steps have been taken to stop raising casuarina plantations on the nesting beaches;
- v) illumination from defence establishments at Wheeler's Islands is affecting the turtles. The hatchlings become disoriented and move shorewards towards the light instead of going seawards, causing heavy mortality to the tiny hatchlings;
- vi) special funds should be provided by the Government of India for Turtle Conservation on the lines similar to the Project Tiger and;
- vii) a sum of Rs. one crore provided by India Oil Corporation, lying in a separate savings account bank since last four years, has not been utilised on the plea that no approval of accounting procedure has been obtained from the Accountant General although State Finance Department has given approval. ;

THE VIEWS OF FISHERIES DEPARTMENT

7. The officers of the Fisheries Department informed the team that the following steps have been taken for protection of turtles.

- i) area of operation of vessels and carrying capacity of harbours has been fixed under OMFRA;
- ii) fishing is prohibited within 5 km. of costal waters under the OMFRA;
- iii) fishing is prohibited up to 20 kms from high tide line from Jatadhar River mouth to Devi River mouth and from Chilika Mouth to Rushikulaya river mouth;
- iv) use of TEDs has been made mandatory and 540 TEDs have been distributed to the trawler owners free of cost;
- v) DFO Rajnagar and the A. C. F. have been declared Authorised Officer under OMFRA;
- vi) model trials for use of TEDs was conducted in the presence of fishermen;
- vii) hoardings have been put up at harbours for creating awareness about turtle conservation;
- viii) three Fisheries Department boats are engaged in turtle conservation work and have seized 20 fishing vessels so far;
- ix) two patrol boats which are under construction would be deployed for patrolling as soon as they are delivered; and
- x) sufficient funds and manpower is required to carry out patrolling along 480 km. long coast.

THE VIEWS OF THE TRAWLER ASSOCIATION

8. The representatives of the Trawler Owner's Association have presented their following views:-
- i) they have been using this trawlers for last 25 years and have made significant contribution of foreign exchange for the country;
 - ii) about 35,000 people are directly and indirectly engaged in this business;
 - iii) turtle Conservation has deprived them of the fishing along large part of the Orissa coast;
 - iv) the area falling within Marine Sanctuary Area should be reduced to 10 km. from 20 km.; and
 - v) 20% fish catch is lost due to use of TEDs which should be compensated by the Government.

HEARING ON 4.3.2003:

9. The Coast Guards are engaged in off shore security, marine safety and national defence, however, the efforts made by them for last two decades in protection of turtles in Orissa jointly with the Orissa Forest Department are laudable. Every year they have been deploying their ships and even their air crafts for turtle conservation work around Gahirmatha and other important beaches. Commandant M. T. Gore, Deputy Director, Head Quarters, explained the steps taken by their organisation for protection of turtles every year. It has been pointed out that their vessels / boats are not in a position to negotiate and move around the shallow waters near Devi and Rushikulaya coasts. Besides,

they are not legally empowered to seize any boats entering the restricted areas under the OMFRA, therefore they can only assist the agencies which have the power of seizure.

10. It has been pointed out that there is no secure and proper place for keeping the boats seized by the Forest Department. In a recent tragic incident the crew of one of the seized boats attacked the staff guarding the boat during which one forest guard was killed and thrown into the sea and the other two seriously injured were rescued just in time.

VIEWS OF NGOs / APPLICANT

11. Soon after conclusion of hearing the Applicant informed the Committee that they could not appear as no notice was received. The applicant and the other NGO's have alleged that the State Government is unable to enforce the existing laws to ensure protection of turtles. The State enforcement agencies also suffer from inadequate infrastructure facility to enforce the laws as a result only the Gahirmatha Sanctuary has been given good protection whereas there is hardly any protection given to other important nesting beaches. One of the important measures of using TEDs has not been enforced by the trawlers. The State Fisheries Department does not recognise gillnet boats in the category of mechanised boats when is one of the main cause for heavy mortality of turtles. The Forest Department has raised casuarina plantations along main nesting beaches reducing the area available for nesting. The

DRDO establishments on the wheelers Islands have put up bright lights causing disorientation to the nesting turtles. The hatchlings get attracted to the bright lights and move towards the shore instead of going to the sea. This causes heavy mortality to tiny hatchlings on account heavy predation by birds, jackals, snakes, monitor lizards and a host of other animals including domestic dogs. They have stressed that immediate steps must be taken to ensure protection of this rare species and prevent it from extinction. The NGO's have requested that following steps should be taken immediately for the protection of Olive turtles.

- i) three fast moving 'sea going' boats which can remain in sea at least for a couple of days should be deployed sea or stationed at Gahirmatha, mouth of the Devi river during turtle nesting season and at mouth of the river Rushikulaya from November to April, every year;
- ii) round the year patrolling should be carried out in Gahirmatha Marine Sanctuary;
- iii) the license of all the fishing trawlers operating without TEDs should be cancelled;
- iv) no further casuarina plantations should be undertaken on nesting beaches;
- v) artificial illumination should be stopped near the nesting beaches.

12. The Committee draws strength and guidance from the judgment dated 14.5.1998 in the case of Centre for Environment Law, World Wide Fund for Nature (WWF), India, Petitioner v. State of Orissa and other, Respondents. (O.J.C. No. 3128 of 1994) reported in

AIR 1999 Orissa 15, wherein in the Hon'ble Mr. Justice. Arijit Parayat and Hon'ble Mr. Justice. P. C. Naik, had given several directions, some of these are reproduced below:

“All possible attempts should be made to curb the influx of migratory human population of the surrounding area. Sea-going vessels with required staff and police should be stationed at vintage points during 1st of November to the end of May, every year to ensure that trawlers do not enter the Gahirmatha area. The points where the staff and police are to be stationed are to be decided by the Forest Department in consultation with the police authorities. Though the Committee has suggested the restriction period to be from October 15 to May 15, considering the fact that the nesting session is normally between December to April, we have modified the period suggested.

More check gates and additional staff with equipment be provided to the concerned D.F.O for having effectively strengthened protection net-work.

It is matter of grave concern that there is large scale unauthorised fishing in the high turtle congregation of Gahiramatha. It is pointed out that during the period from 13.12.1997 to 26.1.1998, 55 trawlers and 23 gill centers were apprehended. On 30.1.1998, 6 trawlers and 3 gill neters were apprehended from the core area of the Garhramatha (Marine) Wildlife Sanctuary. It would be appropriate if the State Government and the Central Government take statutory measures for conferring powers of confiscation of vehicles, vessels, tools, weapons etc. connected with wildlife of offences.

Immediate steps be taken to evict the unauthorised occupants of forest land, including rivers and creeks within the boundary of Bhitarkanika Wildlife Sanctuary. The encroachers should be legally dealt with, and if any lease has been granted it should not be renewed after expiry of the period of lease.

No new leases for land, and water bodies should be granted within the Sanctuary.

The aquaculture farms (semi-intensive the intensive should not be allowed within the Sanctuary boundary.

All trawlers operating in the area shall be required to use devices like Turtle extrusion Device (TED) to avoid entanglement to sea turtles. Poaching or netting of sea turtles should be seriously dealt with. The coast guard operation system should be strengthened to prevent poaching and netting the sea turtles.”

OBSERVATIONS AND CONCLUSIONS:

13. The legal position of the Orissa Marine Fishing Regulation Act, 1984 and the Wildlife (Protection) Act, 1972 is very clear. Fishing in restricted areas within 5 km. is prohibited. Illegal fishing being done in this area is causing immense damage to the population of Olive Ridley turtles even though it has been given the highest degree of protection under the Wild Life (Protection), Act, 1972.

14. The Committee is of the view that sufficient steps have not been taken by the State Government for safeguarding the turtles. Unfortunately, the detailed directions given in the judgment of the Orissa High referred to above, have by and large remained uncomplished. But for the involvement and dedication shown by the Coast Guards, the turtles would have been in a precarious situation. Under these circumstances immediate steps are required to be taken in order to safeguard the present congregations of turtles at Gahirmatha, Devi river mouth and Rushikulaya mouth and favourable conditions should be created to facilitate the mass nesting which we are informed - has already begun. Meanwhile media reports about deaths of about 8,000 turtles this season is disturbing. The following interim steps shall immediately be taken:-

INTERIM DIRECTIONS

15. All the directions given in the Judgment dated 14th May, 1998 delivered in the CEL – WWF case by the Orissa High Court should be strictly enforced. A copy of judgment of the Orissa High Court is annexed here to at **Annexure – A** for ready reference. In overall conformity to the said directions the State Government is directed to immediately take the following measures:

- i) the Forest Department shall establish permanent camps one each, at Devi river Mouth and Rushikulaya Mouth within 15 days and provide all necessary equipments such temporary tented accommodation, communication, etc.
- ii) a sum of rupees one crore land earmarked exclusively for turtle conservation in a is lying unused with the Chief Wildlife Warden since last four years. The expenditure for establishment of camps, hiring of boats, protection of beaches etc., should be met from the fund without any further delay and progress should be reported to the Committee within ten days of receipt of the directions;
- iii) one sea worthy boat shall be hired out of the funds lying with the Chief Wildlife Warden for each of the above mentioned camps with immediate effect;
- iv) at least 10 Armed Police Personnel drawn from the Orissa State Armed Police should be posted at each camp for patrolling in restricted areas along with staff of the Forest and the Fishers Department. This should be a continuous coordinated operation;
- v) the Coast Guard is requested to intensify patrolling in the coming three months and arrange to establish two boat stations between Paradeep and Rushikulaya suitable for shallow water patrolling. These stations are vital for the protection of turtles in the next few months.

- vi) the officers of the Coast Guard at Paradeep should be notified as Authorised Officer under the Orissa Marine Fishing Regulation Act, 1984 within with in 7 days. The application in this regard is already pending with the Orissa Fisheries Department. This would empower the Coast Guards to seize and impound trawlers operating in restricted zone;
- vii) the State Government shall provide land for boat stations , helipads and such other facilities to the Coast Guards at the earliest, to the extent feasible;
- viii) the Fisheries Department should suspend the licenses of the boats found not using TEDs . Besides, hundreds of mechanised boats including gill net boats are operating without valid documents. Immediate action should be taken against such defaulting boats as per the law;
- ix) all seized trawlers, boats should be kept in a secure well guarded place on dry land and confiscation proceedings initiated against them. Armed guards should be placed around the area to prevent owners from escaping with their boats away as had recently happened. Places for parking the seized boats must be identified within 3 days of the receipt of these directions and follow up action to make these sites usable be immediately taken;

- x) in view of the excessive fishing being done in the area, for the next 3 months all gill net boats operating within 5 km. of the three nesting sites should be banned;
- xi) wireless communication must be enhanced between Coast Guard and the Forest Department for ensuring better enforcement. Base sets from the forest department can be given to the Coast Guard boats immediate meetings between them should held to streamline communications;
- xii) in order to protect the turtle eggs being incubated on the beaches, extra volunteers and daily wagers should be appointed;
- xiii) The Chief Wildlife Warden should immediately consider providing adequate facilities and incentives to the staff engaged in patrolling.

The Action Taken Report shall be made available to the Committee within 15 days.

(M. K. Jiwrajka)
Member Secretary

CENTRAL EMPOWERED COMMITTEE

CONSTITUTED BY THE HON'BLE SUPREME COURT OF INDIA
IN WRIT PETITION No.202/95 AND 171/96

Room No.106, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 Telefax: 4363976

File No. 1-26/CEC/2003

Dated 7th March 2003

To

The Chief Secretary
Government of Orissa
Bhubneshwar

Director General
Coast Guards
Government of India

Repeat

Principal Secretary Forests
Government of Orissa
Bhubneshwar

Principal Chief Conservator of Forests
Government of Orissa
Bhubneshwar

Sub: Interim directions on Application No. 46 regarding Olive Ridely turtles.

Sir,

I am enclosing herewith copy of interim directions dated 7th March 2003 issued by the Central Empowered Committee on Application No. 46 filed before the Committee regarding Olive Ridley turtles. You are requested to ensure that the interim directions are immediately complied with. Action Taken Report may kindly be sent to the Committee positively within 15 days.

Yours faithfully,

(M.K.Jiwrajka)
Member Secretary

Copy to:

- i) **Secretary to Government of India, MoEF.**
- ii) **All applicants / respondents**

- iii) **Regional Chief Conservator of Forests, Bhubneshwar**
- iv) **Shri S.K.Chaddha, AIGF, MoEF & Special Invitee**