

**WHO IS DESTROYING THE FORESTS AND LIVELIHOOD OF TRIBALS? :**  
**A CASE OF SHOOLPANESHWAE SANCTUARY**

Trupti Parekh, ARCH-Vahini - 4 Feb 2004

The Central Empowered Committee (CEC) constituted by the Supreme Court restrained the Government of Gujarat from removing any forest produce from any national park and sanctuary in the State following ARCH Application No. 209/2003. ARCH had filed the application complaining about the removal of bamboo from the Shoolpaneshwar Sanctuary despite the clear-cut orders of the Supreme Court (orders in WP No. 202/1995) forbidding removal of any forest products including bamboo. After deliberations, on 21-10-2003, the CEC reconfirmed its interim order of 19-8-2003 putting an immediate stay on the extraction of bamboo from the Shoolpaneshwar Sanctuary (SS). The CEC told the Gujarat Government that any violation would be held as contempt and strict action would be taken against those found guilty.

In so far as the CEC order puts a complete stop to the large-scale bamboo cutting in the sanctuary, it is good news. But, it leaves out basic legal issues raised in ARCH's application and it overlooks corruption- propelling onslaught on the bamboo stock and the livelihood of the local tribals. It is pertinent to note that ARCH's application to the CEC is an offshoot to ARCH's Writ Petition (Sp.C.A. 2952/ 2001) pending before the Gujarat High Court. The legal issues raised by ARCH before the High Court as well as the CEC seem to have remained unattended.

1. The CEC order has simply ignored the issue of violation of the Wild Life (Protection) Act raised in the application.
2. The CEC has not dealt with the legalities of the lease agreement extended by the GOG.
3. The CEC has ignored the willful act of the GOG and not initiated any contempt proceedings against the GOG or the erring officers. It is satisfied merely by warning the GOG that contempt proceedings would be initiated in future if the order is violated.

Let us go into the details of the issues.

About 61,000 hectares of land, covering 100 villages of Dediapada and Rajpipla, district Narmada, Gujarat, where around 40,000 tribals live, was declared as Shoolpaneshwar Sanctuary in 1989. A lease agreement had been entered in 1960 between the Government of Gujarat and a paper mill, Central Pulp Mills Ltd. The lease gave rights to the latter to cut and remove bamboos from South Gujarat till 2000. The leased area includes the Sanctuary. When the sanctuary was declared, no care was taken either to remove the sanctuary from the leased area, nor was lease declared void with regards to the sanctuary area.

Hence, after the declaration of the sanctuary, the government continued giving permission to the paper mill (taken over by the J K Paper mill in 1991) to cut thousands of tones of bamboo from the sanctuary. There were strong protests of the local tribals against the bamboo extraction by the mill. ARCH and the tribal representatives challenged the legalities of the lease agreement and yearly permissions granted by the GOG in the Gujarat High Court. Even the CBI inquiry, initiated by a single-judge bench of the Gujarat High Court in 1995, indicted and filed FIRs against the government and mill officials for violating various laws. It is a sad commentary that the Gujarat High Court not only threw away the CBI report merely on technical grounds, but also took little trouble to go into the legal and other vital issues involved in its final order (dated 23 January 1998 in Sp. C A No. 616/ 1995 and others), even though the matter remained pending for more than 3 years. The Court apparently accepted the government claim that annual large-scale bamboo cutting was required for the welfare of the wild life. The order gave no reason for accepting the government claim, which ARCH had strongly contested. On the basis of a one-page affidavit by the GOG that the mill would not be allowed to cut bamboo from the Sanctuary and all the extraction would be done departmentally, the court disposed off the matter. The bamboo extraction continued and the mill continued to get enough quantities of bamboo from within the sanctuary.

However, the story does not end in November 2000, when the lease expired. The Government of Gujarat extended the lease agreement for one year in November 2000 and then for further period of 10 years in January 2001 and cutting and removal of the

bamboo stock from within the sanctuary continued unabatedly and uninterruptedly. The extension was unusual, unexpected and alarming, because it happened in the background of the SC orders of 14 February 2000 and 28 February 2000 in the Godavarman case (WP 202/95), which restrained and prohibited all state governments from removing any dead, diseased or dying trees or drift wood or grass etc. from any sanctuary or national park.

The 14<sup>th</sup> February 2000 order reads as follows:

“Issue notice to all the respondents. In the meantime, we restrain respondents Nos. 2 to 32 (all state governments) from ordering the removal of dead, diseased, dying or wind-fallen trees, driftwood and grasses, etc. from any National Park or Game sanctuary or forest. If any order to this effect has already been passed by any of the respondent- States, the operation of the same shall stand immediately stayed.”

The order was further clarified on 28<sup>th</sup> February 2000. (It turned out that the order dated 14<sup>th</sup> February 2000 was immediately brought to the notice of the State Forest Department by Gujarat Government's Advocate in the SC. Consequent to this development, the Principal Chief Conservator of Forests (PCCF), Gujarat State, directed all concerned vide his letter dated 25/2/2000 to ensure scrupulous compliance of the orders and directions issued by the Hon'ble Supreme Court. This letter was addressed to Mr. G.A.Patel, the then Chief Wild Life Warden and Chief Conservator of Forests, Wild Life (CCF, WL).

It is, thus, both shocking and surprising that after all these developments in February 2000, in November 2000, the Government of Gujarat extended the period of the expired lease agreement for one year. It went even further and in January 2001 and extended the company's earlier agreement for further period of 10 years. The government gave permission to the mill to cut and remove bamboo as per the agreement, which gave rights to take away thousands of tonnes of bamboo. Meanwhile, the Chief Wild Life Warden Mr. G A Patel, whom the letter of PCCF to observe strict compliance of the SC orders was addressed, filed an affidavit in the SC in April 2000, which made an astounding claim that the GOG was fully complying with the SC orders of February 2000 of not removing any “dead, diseased, dying or wind fallen trees, drift wood”, except “bamboo

and MFPs, which were not barred by the Hon'able Supreme Court's order dated 12.12.1996", even though this, in fact, was superceded by the 14 February order.

ARCH filed a Writ Petition (SP. C A No. 2952 of 2001) in April 2001. The Gujarat High Court at first appeared to be in great hurry to dispose off the petition. The GOG in its affidavit in May 2001 chose to rely on the highly ambiguous affidavit of the Chief Wild Life Warden to support its claim that there was no violation of the SC order. The state government even claimed that even "the Hon'able Supreme Court has accepted the stand of the state government and has not issued any further directions in the matter".

Then the matter came to a head when the Union of India, one of the respondents in the ARCH petition filed an affidavit on 14 August 2002 before the Gujarat High Court. In the affidavit, it categorically states: "... the Hon'ble Supreme Court has vide orders dated 14/2/2000 and 28/2/2000 in Writ Petition No. 202/95, imposed specific ban on removal of dead and dying trees including grass from National Parks and Sanctuary. I therefore submit that before undertaking or permitting such removal, the State Government is required to approach the Hon'ble Supreme Court and seek relaxation in their favour in the peculiar facts of each case and till then, no felling or removal of bamboo from the National Parks and Sanctuaries is permissible." ...Further, "I do admit that the lease in question before this Hon'ble Court was given by the State Government without any intimation to the respondent No. 4 (the Union of India)... I may however clarify that the harvesting of bamboo from the sanctuary can not be considered an activity for better management of wildlife."

All of a sudden the furious pace of the final hearing in the High Court came to a sudden halt. The matter has not been listed for final hearing thereafter, nor have any strictures been passed against the erring officers or the GOG, nor has the lease agreement been declared null and void, as far as the sanctuary area is concerned.

Thus, the said acts of the government were not only in blatant disregard of the wild life laws and forest laws, but also were violative of the Hon'ble Supreme Court's orders,

which banned all the activities of removal of any dead, diseased or dying trees or drift wood or grass etc. from the sanctuary.

The illegalities, acts of commissions and omissions of the concerned forest officials have been confirmed in a report of the then Principal Chief Conservator of Forests, Gujarat State, 'A Note on the PIL regarding Bamboo Cutting from Shoolpaneshwar Wild Life Sanctuary'. It has categorically brought out all the illegalities committed with regards to the lease agreement, permission and activities of cutting and removing bamboo stock from the Shoolpaneshwar Sanctuary.

The farce of "preserving wild life" in the sanctuary under the spurious legal cover continued, while bamboo stock was plundered away by the powerful vested interests for more than a decade and almost all traditional rights of the tribals inhabiting in the sanctuary for generations were curtailed. The tribals have been reduced to live as second-class citizens in their own land, where seemingly the wild life has been given more primacy and status than the local inhabitants. Not only all the developmental activities like roads, electricity, etc. are suspended, but also the activities like watershed development or Joint Forest Management, which are meant to improve soil cover and forests, are not allowed. Their right to get ownership titles to their years' long occupations of lands, long before the area was declared sanctuary, remains in jeopardy. The Ministry of Environment and Forests have categorically denied them the regularization of their possessions of lands. The area remains depressed and least developed as ever and even more denuded as a consequence of further alienation of the local tribals.

The lessons are being learnt all over the world that giving the local communities property rights over the resources and making them partners in the management of them improves the resources. The state and other institutions have ignored these lessons and the state has decisively moved in direction of the wholesale destruction of the resources without regards to the future and the economic and social welfare of the local tribals.

Here is a case of how the wide discretionary powers vested in the state under the Wild Life (Protection) Act can be grossly misused. Instead of preserving the wild life, they act in connivance with the powerful paper mill. The Public Choice theory aptly explains how public servants also act for self-interest like normal human beings and how they could exploit the resources in a wasteful and inefficient manner, because they have no incentives whatever to manage the resources in an efficient manner, nor their mismanagement and waste invite any material punishment to them. This, more than anything else, brings about environmental disaster and inflicts poverty on the inhabitants of the forests.

Here is a case of how the highest judiciary of the state can look the other way when the constitutionality and legality of the state's acts of omissions and commissions were to be examined and adjudicated.

Here is a case of how the Committee specifically constituted by none other than the apex court of the country precisely to see to it that all the orders of the Court are scrupulously followed fails in its duties. This is more surprising when the committee consists of the forest officials and renowned wild lifers and environmentalists and the case is regarding the destruction of the sanctuary!

It is also interesting to juxtapose with this the way the Committee has handled and is continuing to handle the issue of "encroachment" on the forest land by the tribals. The less said of the forest department and the state apparatus, the better.