
JUDICIAL ANALYSIS OF PRADEEP KRISHEN V. UNION OF INDIA & OTHERS (1996): A PIVOTAL CASE IN ENVIRONMENTAL JURISPRUDENCE

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SYNOPSIS:

This case analysis of Pradeep Krishen v. Union of India (1996) examines the balancing act performed by the Supreme Court between forest livelihoods and environmental conservation. The Court directed Madhya Pradesh to finalize acquisition proceedings in protected regions, weighing tribal rights against future environmental obligation.

1. INTRODUCTION

The concept of 'environmental sensitivity' emerged when mankind acknowledged that the environment is not dependent on him but rather, he is dependent on the environment. The environmental constitutionalism in India is notably underscored by the explicit inclusion of environmental duties in the Constitution, coupled with a robust tradition of public interest environmental litigation. India's legal framework and judicial system demonstrate a keen awareness of the critical role played by wildlife in maintaining ecological balance.

A pivotal Supreme Court decision contributing to the promotion of environmental consciousness is *Pradeep Krishen v. Union of India*³. In this landmark case, the Supreme Court meticulously assessed the environmental and livelihood considerations of forest-dwelling tribal communities, exemplifying the delicate balance required between the preservation of the environment and the sustenance of a minority group.

2. BACKGROUND OF THE CASE

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³ *Pradeep Krishen v. Union of India* (1996) 8 SCC 599

The petitioner, driven by public interest as an environmentalist, has invoked Article 32 of the Constitution to challenge the legal and constitutional validity of an order⁴ issued by the State of Madhya Pradesh, Department of Forest, dated March 28, 1995. This order allows the collection of tendu leaves from Sanctuaries and National Parks by villagers residing around their boundaries, purportedly to uphold their traditional rights. On April 20, 1995, the Court issued a notice summoning the respondents.

TIMELINE OF MADHYA PRADESH GOVERNMENT ORDERS REGARDING COLLECTION OF MINOR FOREST PRODUCE (MFP) FROM SANCTUARIES AND NATIONAL PARKS:

- **September 16, 1982** : The Government of Madhya Pradesh imposed a **ban on the commercial exploitation of Minor Forest Produce (MFP)** from sanctuaries and national parks.
- **September 1, 1983** : The government **permitted tribals to collect certain specified types of MFP**, but strictly **for their personal consumption and not for commercial purposes**.
- **May 7, 1990**: The state **allowed the departmental collection of tendu leaves**, which are a significant form of MFP used in bidi-making.
- **April 16, 1992** : Locals were **permitted to collect and sell tendu leaves in local markets**, as well as to use them for their **bona fide personal purposes**.
- **December 13, 1994** : A **blanket ban was imposed on the collection of all MFP** from sanctuaries and national parks.
- **March 28, 1995** : The government **reopened certain areas** for the collection of tendu leaves by locals, but only in **those areas where no final notification had been issued under Section 26A and Section 35 of the Wildlife Protection Act**.

3. RELEVANT PROVISIONS INVOLVED

I. Wildlife Protection Act, 1972⁵

⁴ No. F.14/154/91/10/2.

⁵ The Wildlife (Protection) Act, No. 53 of 1972, INDIA CODE (1972)
<https://www.indiacode.nic.in/handle/123456789/1726#>

Section 18: Empowers the State Government to declare by notification any area to be a sanctuary if the area is of adequate ecological, faunal, floral, geomorphological, natural, or zoological significance.

Section 26A: The state Government must establish the boundaries of a sanctuary within a reserve forest or territorial waters deemed ecologically significant for wildlife protection or development.

Section 35: Allows the State Government to designate an area as a National Park, even if it falls under a sanctuary, to protect, propagate, or enhance wildlife and its ecosystem.

Section 27: Outlines the restrictions on entering sanctuary premises, recognizing several categories to permit or restrict individuals under the Act.

II. Constitution of India, 1950⁶

Article 32 ensures constitutional redress, allowing citizens to approach the Supreme Court for the execution of their fundamental rights.

Article 14 forbids any sort of discrimination based on caste, gender, religion, or place of birth. It promotes equality and equal protection before the law.

Article 21 provides the right to life and discourages any snatching of personal liberty except the one vested by the law.

Article 48A directs the State to conserve and protect the environment with its biodiversity.

Article 51A(g) addresses the Fundamental Duty to protect the environment and the ecosystem.

4. ISSUES RAISED

The Petitioner has raised two contentions, articulated as follows:

(I) Whether an area declared as a sanctuary and national park u/s 18 and u/s 35, respectively, of the WP Act, 1972, can be exploited for the gathering of minor forest produce in violation of the restrictions contained in the said Act?

(II) Whether the state government has the right to exploit minor forest produce from the sanctuaries and national parks which have been so declared for the protection and preservation of ecology, flora, fauna, geomorphologies, natural or zoological significance?

⁶ INDIA CONST. arts. 14, 21, 32, 48A, 51A(g) <https://shorturl.at/AmXGo>

5. PETITIONER'S CONTENTIONS

1. The petitioner had disclosed that National Parks and Sanctuaries in Madhya Pradesh, comprising 12.4% of the total forest area, were undergoing continuous degradation due to factors like overgrazing, excessive tree cutting, and forest fires.
2. He raised concerns about the destructive impact of tendu leaf collection on ecology, emphasizing potential harm to the regeneration of trees and overall environmental balance and anticipating adverse effects from the implementation of the impugned order.
3. He stated that the State Government's permission for tendu leaf collection from Sanctuaries and National Parks violated the Wildlife (Protection) Act, 1972, and infringed upon the petitioner's fundamental rights under Articles 14 and 21 of the Constitution. It was also inconsistent with the Directive Principle in Article 48A, and the Fundamental Duty outlined in Article 51A(g).
4. Petitioner argued that while ostensibly aimed at providing employment and livelihood, the order neglected the crucial need to safeguard the flora, fauna, and wildlife in National Parks and Sanctuaries.
5. Petitioner alleged that indiscriminate tree felling, leading to a depletion of the forest area in Madhya Pradesh, resulted from the State yielding to pressure from business interests, as evident in the impugned order of March 28, 1995 and contended that the Impugned order was driven by malafide intention and went against the public interest.

Rejoinder Affidavit - Petitioner:

In response to the counter affidavit,

1. The Petitioner stressed that he was not challenging the right of tribal inhabiting close to National Parks and Sanctuaries to collect minor products for their own legally genuine use, rather than the commercial exploitation by the contractor. He claimed this was contrary to the Act's very purpose and spirit.
2. The petitioner criticized the counter-affidavit for misunderstanding the grievance and failing to address the challenge adequately.
3. The petitioner asserted that Sanctuaries declared under Section 18 retained their status post-amendment.

4. Furthermore, he argued against the necessity of a second notification under Section 26A for these Sanctuaries, emphasizing continued protection under Sections 27 to 34 of the act.

6. RELIEFS SOUGHT IN WRIT PETITION

The petitioner sought two principal reliefs in the writ petition, namely:

- i. To quash the notification dated 28.3.1995 issued by the Government of Madhya Pradesh.
- ii. To direct the State Government to strictly enforce the provisions of Sections 27 to 33 of the Act to National Parks and Sanctuaries notified under Sections 18 and 35 of the Act.

COMMENTS:

The petitioner effectively outlined the contributing factors to gradual deterioration, emphasizing the urgency of addressing ecological harm. Legal contentions adeptly navigated constitutional aspects, invoking Articles 14, 21, 48A, and 51A(g) to highlight legal infringements. Though the petitioner initiated this petition in the public interest to protect the environment, he failed to notice the plight of the tribals who are largely dependant on the minor forest produce for their bare sustenance of life. Also, his allegation about the deterioration of forest cover as a consequence of fire caused by the tribals was not substantiated with conclusive evidence.

7. RESPONDENTS' CONTENTIONS

1. The respondents asserted that the petitioner lacked the locus standi to invoke Article 32, contending that no fundamental rights violation had occurred.
2. Further, they argued that traditional rights of villagers around National Parks and Sanctuaries were valid until the final notification under Sections 26A and 35 of the Wildlife Protection Act was issued, compensation was paid, and rehabilitation was completed.
3. They highlighted the procedural necessity for notification before acquiring rights, the respondents emphasized the State's commitment to compensation and rehabilitation provisions.
4. The respondents stressed on the State government's legitimate power to utilize minor forest produce and referred to previous orders allowing tribals to collect specific forest produce for bonafide use only.

5. They informed the Court that a special cell comprised of police and forest authorities, overseen by the Inspector General of Police, had been established to manage and control the forest region.
6. They refuted the petitioner's apprehension about tendu bushfires, stating that the practice had discontinued, and only supervised pruning operations occurred.
7. They asserted that the State Government, was vigilant in protecting the forest from fire, ensuring the ecology's well-being, and managing biodiversity.
8. Respondents finally contented that the entire petition was based on suspicion and misconceived apprehension.

COMMENTS:

The respondents, as a preliminary objection, failed to properly contest the locus standi of the petitioner to invoke Article 32. Meanwhile, they rightly pointed out the procedural prerequisites for acquiring rights over the proclaimed lands outlined in the Act. It was indeed clear that only 1 Sanctuary and 3 National parks were notified under the amended 1991 Act, whereby the respondents failed to justify their delay in effectuating the procedures outlined in the Act and issue a final notification. Positively, the mention of a special cell, overseen by law enforcement authorities, is a practical move to demonstrate a proactive approach to managing and controlling the forest region.

8. INTERVENORS' CONTENTIONS – TRIBALS

1. Three individuals claiming tribal status sought to intervene, asserting that their tendu leaf collection had minimal impact and was crucial for basic needs.
2. They argued that denying this advantage would jeopardize the tribe's survival, emphasizing the petitioner's neglect of indigenous tribal rights.
3. They contended that no fundamental right of the petitioner was violated, urging the court to reject the petition.

COMMENTS:

By highlighting the deep roots of this activity in their community's well-being, the interveners aim to garner sympathy and underscore the potential adverse consequences of dismissing their longstanding practice without providing compensation or rehabilitation.

9. COURT'S OBSERVATION

- The Court re-examined the object of the Wildlife Protection Act, 1972 to aid in the interpretation of the instant case and thereby opined that the Act was inclined toward the protection of wildlife, birds and certain plants through the prohibition of hunting, restricting trade practices on wildlife and forest produce, and also by penalising violations. On a similar note, it also pointed out that Articles 48A and 51-A(g) of the Constitution should be kept in mind in interpreting laws dealing with environmental issues.
- The Court observed that the petitioner solely contested the government's authority to permit the commercial exploitation of Minor Forest Produce (MFP), explicitly disavowing any challenge to the villagers' rights to collect such produce for personal use within National Parks and Sanctuaries. Consequently, the Court opined that the petitioner's stance indicated a non-objection to the limited use of MFP by villagers, thereby alleviating concerns about their potential role in causing forest fires.
- Additionally, the Court noted that, despite references to forest fires in Panna National Park and Udayanti Sanctuary, there was no conclusive evidence linking these incidents to the activities of villagers. Furthermore, the Court highlighted the cessation of the practice of setting fires to tendu bushes since 1989 and also the precautionary measures taken by the State government. Given the dearth of substantiated evidence, the apprehension regarding villagers causing fires was declared unfounded and consequently dismissed by the Court.
- The Court after referring to the Forest Survey of India 1993⁷, commented that the actual forest cover has increased and not decreased, setting aside the interpretational correction in the marginal depletion from 1991-1993.

10. DECISION OF THE COURT

The Hon'ble Supreme Court in order to meet the ends of justice did not quash the impugned order dated 28.03.1995 but rather directed the Madhya Pradesh government to comply with the proclamation and acquisition proceedings of the rights in and over the lands to be included in the Sanctuaries and National Parks as outlined in Chapter IV of the WP Act 1972 as expeditious as possible.

11. RATIO DECIDENDI

- The Court deliberated that earlier u/s 18, the State government could explicitly declare any area to be a Sanctuary through a notification whereas after the 1991 amendment to the WP

⁷ Ministry of Environment & Forests, THE STATE OF FOREST REPORT (1993), at page 22.

Act, the State should declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary.

- Further, it examined various provisions of the Act such as Sections 19, 20, 21, 22, 23, 24, 25, 26-A, 27 – 33, and 35(1) in its entirety which dealt with the proclamation and acquisition proceedings of notified lands and restrictions concerning Sanctuaries and National parks. Thereby, the Court acknowledged that these procedural aspects regarding the acquisition of rights over proclaimed Sanctuary lands or National parks must be mandatorily followed by the State before issuing a final notification u/s 26-A or 35(1) of the said Act.
- In the instant case, since no such acquisition proceedings were followed by the State, and consequently no final notifications under the aforementioned provisions were issued, the Court concluded that the order dated 28-3-1995 allowing the entry of villagers does not violate any provision of law and refused to quash it.
- In addition to that, the Court after taking into consideration the rising concerns over the shrinkage in the forest cover in India and assuming the possibility of depletion due to the entry of tribals, directed the State government to initiate action under Chapter IV of the Act and to expeditiously inquire and acquire the rights over the proclaimed lands and thereby issue final notifications u/s 26-A and 35 of the Act declaring those areas as Sanctuaries and National parks respectively.

COMMENTS:

The Court's decision of not to quash the impugned order of the State government was just and life-saving for the forest-dwelling tribal communities whose livelihood is based on the minimal income generated through the selling of minor forest produce. These tribal communities are often seen as those who lack legal consciousness and indeed they are largely succumbed to political, social, and environmental concerns. It is frightening to ponder the abuse of power that could happen to the tribal people under the garb of rehabilitation and compensation to be done in line with the said Act. Therefore, the only caveat is that the Hon'ble Supreme Court while urging the State government to perform its duties under the Act expeditiously, could have also issued guidelines by the power vested to it under Article 142 for the time being to prevent any violations of fundamental rights of the tribal people during the acquisition proceedings.

12. IMPACT AND WAY FORWARD

- Out of a catena of similar cases, this judgment rightly stroked a balance between environmentalism and humanitarianism. This judgment laid a proper path for the conservation of the forest while protecting the rights of forest-dwelling tribal communities. The very crux of this judgment could have very well inspired the enactment of 'The Forest Rights Act 2006' which recognized the rights of forest-dwelling tribal communities to forest resources.
- Consequently, in response to a petition filed by the WWF⁸, the Supreme Court extended the directions that initially required Madhya Pradesh in this case to complete the procedure before declaring sanctuaries and national parks, to all states.
- Similarly, the Andhra Pradesh HC directed the state to issue a final notification u/s 26A within six months and permitted fishing operations in the meantime⁹, thereby protecting the environment and also the dwellers for the time being.
- It is also noteworthy that complying with this judgment, the MP government subsequently issued final notifications bringing a few sanctuaries under the purview of the WP Act between 1997¹⁰ and 1998¹¹.

⁸ *Centre for Environmental Law, WWF-India v. Union of India*, (1998) 9 SCC 623 (India).

⁹ *Kunapuraju Rangaraju v. Government of Andhra Pradesh*, 1998 (3) ANDHRA L.T. 215 (India).

¹⁰ See eg., No. F. 14-33-94-X-2.

¹¹ See eg., No. F. 14-XX-88-10-2.