

ASSAM appearing for THE UNION OF INDIA AND 16 ORS.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

27.01.2022

Heard Ms. P. Sarma, holding the brief on behalf of Mr. T. J. Mahanta, learned Standing Counsel, Gauhati High Court; Mr. D. K. Das, learned counsel for the petitioners in PIL 29/2020, and PIL 36/2020; Mr. V. Rajkhowa, learned counsel for the petitioners in PIL 30/2020 as well as Ms. D. Ghosh, learned counsel for the petitioners in PIL 45/2020. We have also heard Mr. P. N. Goswami, learned Additional Advocate General, Assam; Mr. R.K.D. Choudhury, learned Assistant Solicitor General of India; Mr. M.Z. Ahmed, learned Standing counsel, Coal India Ltd. as well as Mr. B. D. Goswami, learned counsel appearing for the respondents.

Vide our order dated 05.02.2021 passed in the present set of PILs, we had sought certain instructions/information from learned Assistant Solicitor General of India as to what measures the Central Government has taken under section 36 of the Biological Diversity Act, 2002. Section 36 of the Biological Diversity Act, 2002 reads as under:

“36. Central Government to develop National strategies plans, etc., for conservation, etc., of biological diversity.—

(1) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of

areas rich in biological resources, promotion of in situ, and ex situ, 14 conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

(4) The Central Government shall undertake measures,—

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local,

State or national levels, and other measures for protection, including sui generis system.

Explanation.— For the purposes of this section,—

(a) "ex situ conservation" means the conservation of components of biological diversity outside their natural habitats;

(b) "in situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties."

The matter relates to sustainable use of biological resources in the country. The Biological Diversity Act, 2002 is concerned with (a) conservation of biological diversity, (b) sustainable use of its components and (c) fair and equitable sharing of the benefits arising out of the use of biological resources. Section 36, therefore, mandates that the Central Government shall develop national strategies, plans and programmes for conservation and promotion of sustainable use of biological diversity and, in this regard, shall coordinate with the State Government under sub-section (2) of section 36 of the Act.

Even though almost a year has passed since we had made our query requesting the Assistant Solicitor General of India to apprise this court regarding the measures taken by the Central Government under section 36 of the Biological Diversity Act, this court has not been apprised, nor has any affidavit been filed in this regard by the Central Government.

Today the learned Assistant Solicitor General of India has made a statement before this court that in spite of his repeated queries and requests in this regard he has not received any answer or instructions from the Central Government.

We, therefore, presume that the Central Government has not taken any measure as has been mandated under section 36 of the Biological Diversity Act, subject to what the Central Government may have to say on the next date fixed.

Meanwhile, to a query made by this court whether the areas having biological diversities in Assam have been identified by the State Government and, if so, whether such information have been forwarded to the Central Government, Mr. P. N. Goswami, learned Additional Advocate General, Assam, has informed that he would like to file an affidavit in this regard.

Let such affidavit be filed by the State respondents within three weeks.

List again on **24.02.2022**.

JUDGE

CHIEF JUSTICE

Comparing Assistant