

on dated 5.3.2013 of SLP (C) 12125-2010 in the matter matter of LG, A&N islands & Ors -vs-Ms Barefoot
ITEM NO.6 COURT NO.3 SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).12125/2010

(From the judgement and order dated 02/07/2009 in MAT No.31/2009 of The
HIGH COURT OF CALCUTTA)

LG, ANDAMAN & NICOBAR ISLANDS & ORS.

Petitioner(s)

VERSUS

M/S BARE FOOT INNS & LEISURE PVT. LTD.

Respondent(s)

(With appln(s) for directions, extension of time and leave to file affidavit
and office report)

Date: 05/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. GOKHALE
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s)

Mr. Paras Kuhad, ASG.
Mr. Aman Ahluwalia, Adv.
Mr. R. Bala, Adv.
Ms. Sadhana Sandhu, Adv.
Mrs. G. Idira, Adv.

For Respondent(s)

Mr. Mahabir Singh, Sr. Adv.
Ms. Madhusmita Bora, Adv.

Mr. Kuber Dewan, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against order dated 2.7.2009 passed by the Division Bench of the Calcutta High Court whereby the appeal filed by the petitioners was dismissed and the order passed by the learned Single Judge quashing notification dated 30.10.2007 issued by Special Secretary (Tribal Welfare) and order dated 6.11.2007 issued by Tehsildar were quashed.

During the pendency of the special leave petition, several interim orders were passed by the Court. On 2.7.2012 the Court passed the following order:

"On 11.5.2012, arguments were heard in the context of letter dated 10.5.2012 sent by the Principal Secretary (Tribal Welfare), Andaman and Nicobar Administration to the Additional Solicitor General and the order was reserved.

In the main petition, the petitioners have questioned the judgment of the Division Bench of the Calcutta High Court, Circuit Bench at Port Blair whereby the appeal preferred by them against the order of the learned Single Judge, who quashed notification dated 30.10.2007 issued under section 3(1) of the

on dated 5.3.2013 of SLP (C) 12125-2010 in the matter matter of LG, A&N islands & Ors -vs- Ms Barefoot Andaman and Nicobar Islands (Protection of Aboriginal Tribes), Regulations, 1956 (for short, 'the 1956 Regulations') declaring an area upto five km. radius around the Jarawa Tribal Reserve as Buffer Zone and prohibiting entry in the Buffer Zone of any person other than a member of an aboriginal tribe was dismissed.

Notice in the special leave petition was issued on 8.3.2010 and operation of the judgment impugned therein was stayed.

On 3.12.2010, this Court expressed the view that the petitioners have not taken steps to implement the notification and directed their counsel to make a statement on the issue of closure of all commercial and tourist establishments within the Buffer Zone. Thereafter, several interim orders were passed by the Court for ensuring faithful compliance of the prohibition contained in the notification issued under section 3(1) of the 1956 Regulations.

On 3.2.2012, the Court appointed S/Shri T. S. Doabia, Senior Advocate and Sanjay Upadhyay, Advocate, whose names were suggested by the counsel for the parties, as Court Commissioners with the direction that they shall visit the Island mentioned in the notification and submit report. In compliance of the directions given by the Court, the two Commissioners visited the Island and submitted their separate reports. On 23.4.2012, the Court noted the submission made by learned counsel for the respondent that the Commissioners had not focused on the issue mentioned in order dated 4.11.2011 and directed the counsel for the petitioners to seek comprehensive instructions on the question of stopping commercial and tourism related activities within the Reserved Area and the Buffer Zone.

In compliance of the aforementioned direction, the learned Additional Solicitor General produced letter dated 10.5.2012, the relevant portions of which are extracted below:

"This is in continuation to our letter dated 3/5/2012 referred to above and discussion held today with you, the following brief may kindly be placed before the Hon'ble Supreme Court in the hearing of 11/5/2012 as directed by the Hon'ble Court in its order dated 23/4/2012,

1. No tourist establishment such as resorts, hotels, restaurants, bars and paying guest accommodations except the government run Guest Houses will be permitted within the Buffer Zone.
2. No commercial establishment/activities which may employ more than 20 persons or have annual turnover of Rs. One Crore or more will be allowed in the Buffer Zone.
3. Visits of tourists during day time to Lime Stone Cave and Mud Volcanoes existing in Baratang Island in the Buffer Zone may be allowed to be continued.

Yours faithfully,

(Ajai Saxena)
Principal Secretary (Tribal welfare)"

Learned counsel for the parties made their submissions mainly on the issue of continuance of commercial and tourism related activities within the Reserved Area and the Buffer Zone. While Ms. Indira Jaising, learned Additional Solicitor General submitted that till a decision is taken by the competent authority on the issue of allowing commercial and tourism related activities within the Buffer Zone, the Court may permit the activities specified in paragraphs 2 and 3 of the letter of the Principal Secretary, Shri S. Ganesh vehemently opposed the continuance of any such activity in the Reserved Area and the Buffer Zone by pointing out that the prohibition contained in Notification dated 30.10.2007 and order dated 6.11.2007 issued by Tehsildar, Ferrargunj is absolute. Shri Ganesh submitted that after forced closure of the respondent's resort, the petitioners can neither undertake nor allow any commercial or tourism related activity in contravention of Notification dated 30.10.2007.

We have considered the respective submissions. Notification dated 30.10.2007 which was challenged before the High Court and which is under consideration in the special leave petition reads as under:

"EXTRAORDINARY Published by Authority No. 243, PORT BLAIR,
TUESDAY, OCTOBER 30, 2007
ANDAMAN & NICOBAR ADMINISTRATION
Directorate of Tribal Welfare
NOTIFICATION

Port Blair, dated the 30th October, 2007

No. 234/2007/F.No. 1-752/2007-TW - In exercise of the power conferred by Sub-Section (1) of Section 3 of the Andaman and Nicobar Islands (Protection of Aboriginal Tribes), Regulation, 1956 (Regulation No. 3 of 1956), the Lt. Governor, A & N Islands, is pleased to declare the area up to five km. radius around the Jarawa Tribal Reserve notified vide No. 159/2004/F.No. 1-752/2002-TW (PF) dated 15th September, 2004 from the Boundary Line starting from Constance Bay in South Andaman to Lewis Inlet Bay in Middle Andaman, as a Buffer Zone. Any/person other than a member of an aboriginal tribe is prohibited from entering the Buffer Zone for any commercial and/or tourism activities."

In our view, the prohibition contained in the above reproduced notification and order dated 6.11.2007 passed by Tehsildar, Ferrargunj is unconditional. Therefore, till the notification is rescinded or amended, no commercial or tourism related activity can be allowed within the Reserved Area or the Buffer Zone and it is not possible for the Court to approve the suggestions contained in paragraphs 2 and 3 of letter dated 10.5.2012 sent by the Principal Secretary (Tribal welfare), Andaman and Nicobar Administration. We, therefore, direct that henceforth no commercial and tourism related activities shall be carried out by the administration or any private individual in violation of the prohibition contained in notification dated 30.10.2007 and order dated 6.11.2007.

It shall be the duty of the Principal Secretary (Tribal welfare) and other officers of the Administration of Andaman and Nicobar to ensure total compliance of the prohibition contained in notification dated 30.10.2007 and this order. Any breach of

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this order will entail punishment under the Contempt of Courts
Act, 1971."

On 21.1.2013, the Court passed the following order:

"At the commencement of the hearing learned Additional Solicitor General produced before the Court xerox copy of the Notification dated 17.1.2013 issued by Lieutenant Governor (Administrator), Andaman and Nicobar Islands and a site map indicating the Jarawa Reserved Area.

The documents produced by the Additional solicitor General are taken on record.

The learned Additional solicitor General should instruct the officer-in-charge of the case to file an additional affidavit along with the detailed plan of Reserved Area as far as Buffer Zone indicating therein particular spots of settlement, if any, in the reserved area.

For further consideration, the case is adjourned to 26.2.2013.

Till the next date, the petitioners may allow entry of the Government officials and the persons who are settled within the Reserved Area. The movement of the vehicles required for transportation of essential commodities meant for Jarawa Tribe and other communities living in the Reserved Area may also be permitted. However, no private individual or tourists shall be allowed to pass through the road by using a vehicle or otherwise for going to the caves."

In compliance of the aforesaid order an additional affidavit has been filed by Shri Kuldip Singh Thakur, Deputy Resident Commission, Andaman and Nicobar Administration, paragraphs 3 to 6, 17 to 19 and 21 of which read as under:

"3. That in pursuance of order dated 9.4.2001 of the Hon'ble High Court of Calcutta passed in WP No.048 of 1999, (Annexure P/1 at Pg 194-196 of the SLP Paper book) the Government of India, Ministry of Home Affairs, in consultation with the Government of India, Ministry of Tribal Affairs and Andaman and Nicobar Administration finalized a policy on Jarawa Tribe of Andaman Islands, taking into consideration the recommendations of the Experts, National and International Anthropologists, Socialists and other experts in various fields.

4. That exercising the powers under sub section (1) of Section 3 of the Andaman and Nicobar Island (Protection of Aboriginal Tribes) Regulation, 1956 and taking into consideration the recommendations of Andaman Adim Janjat Vikas Samiti to increase the resource base of Jarawas, the Lt Governor, Andaman and Nicobar Islands notified the Jarawa Reserve Area in the specified areas in South and Middle Andaman District vide Notification No 165 dated 15.09.2004 published in Andaman and Nicobar Gazette, Extraordinary (Annexure P/2 at Pg 197 of the SLP Paper book). That the Jarawa Reserve area is covering an extent of 1028 Sq.km. That it is clarified that there is no one residing within Reserve Notified Area. In fact no one is permitted to reside in the Reserved Area other than the Jarawa Tribe. There are no settlement villages in Reserve Notified

on dated 5.3.2013 of SLP (C) 12125-2010 in the matter matter of LG, A&N islands & Ors -vs- Ms Barefoot Area.

5. That simultaneously, the Policy on Jarawa Tribe of Andaman Islands was notified on 21st December, 2004, vide Andaman and Nicobar Gazette Notification No. 210 dated 21.12.2004 (Annexure P/4 at Pg 118-132 of the SLP Paper book) and the same is being implemented strictly to ensure protection and welfare of Jarawas. Based on this policy, the Andaman and Nicobar Administration has taken inter alia the following measures for protection and welfare of the Jarawas:-

i) Exclusive Medical wards in primary Health Centers, located near the Jarawa Reserve at Tushnabad in South Andaman and Kadamtala in Middle Andaman alongwith one at GB Pant Hospital, Port Blair have been set up for treatment of Jarawas. Such wards are also declared as Tribal Reserve, to prevent non tribals from interacting with them vide A&N Gazette Notification No. 113/2004/F.No.1-752/2002-TW (PF) dated 8.6.2004.

ii) In order to provide the resource base of Jarawas, the Jarawa reserve area has been increased from 847 sq.km to 1028 sq.km in the year 2004 vide A&N Gazette Notification No. 159/2004/F.No. 1-752/2002-TW (PF) dated 15.9.2004. Further along the western coast, towards seaward side, upto 1km radius, reserve area has been notified vide A&N Extra Ordinary Gazette Notification No.16 dated 17.1.2013, considering the fact that Jarawas do shallow fishing for their consumption.

iii) The Jarawa Tribal Reserve has been demarcated taking into account natural features like hill ranges, peaks, creeks etc and boards have been erected to educate the non tribals and to prevent them from interacting into the reserve.

iv) The Andaman Trunk Road (ATR) belt has been decreased from 200 meters on either side of the road to only 30 meters from the central line of the road on either side vide A&N Gazette Notification No. 159/2004/F.No. 1-752/2002-TW(PF) dated 15.9.2004.

v) That enforcement measures have been intensified by the Police and Forest to protect the jarawa resource based in the Forest and coastal water.

vi) That sites of Police, Forest and PWD camps were reviewed and camps in the Jarawa reserve have been closed and shifted out of the Reserve Area. Workers on road maintenance work etc go inside the reserve during the day, as and when required under proper escort and watch ward staff.

vii) The Deputy Director (Health) alongwith Paramedical staff of Directorate of Health Services visit the jarawa area regularly to make the assessment of health conditions and provide required care in the Jarawa area itself to the extent possible. In serious cases only jarawa patients are shifted to Hospital for further investigation and treatment.

viii) The Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956 makes adequate provision of the land and its protection for the benefit of Jarawas in the Island territory. The areas inhabited by the Scheduled

Tribes of these islands have been declared as Tribal Reserve. The entry into such area by non tribal is not only prohibited, unless, permitted by the Statutory Authority under the said law but acquiring any land is also prohibited. Besides the A&N Administration is making all efforts to enforce the restrictions against persons who illegally enter the Jarawa Reserve area by registering cases against them under the PAT Regulation as well as SCs & STs (Prevention of Atrocities) Act, 1989. This has created a deterrent and intrusion into the Jarawa areas have reduced considerably in recent times. In this connection necessary amendment in section 8 of PAT Regulation has been promulgated by the President of India to enhance penalties and punishments for the offences committed by the non-tribal to make the law more stringent vide A&N Gazette Notification No. 24/2006/F. No. 1-467/2001-TW dated 31.1.2006. Further, the A&N Islands (Protection of Aboriginal Tribes), Regulation, 1956 which protects the interest of the aboriginal Jarawa tribe in these islands has been amended by the Govt of India and brought into force w.e.f. 9.7.2012, provides stringent penal provisions for various violations. Besides anti-poaching exercises are regularly carried out by Navy in the high seas, Coasts Guard in the Coastal areas and by Police on the Coast line.

ix) That to protect the food resources in reserved area, three tasks Force Committees comprising of officials of AAJVS, Police and Forest Department have been constituted at Tirrur, Middle Strait and Kadamtala vide AAJVS order No. 200 dated 27.9.2006. They conduct regular anti poaching patrolling in the Jarawa Reserve Area.

RE REVIEW OF JARAWA POLICY

6. That consequent upon the recent behavioral changes seen in the Jarawa Tribe, the A&N Administration felt the need to review the present Jarawa Policy 2004. The Government of India, Ministry of Tribal Affairs constituted a Sub Committee of the Experts under the Chairmanship of Secretary Govt. of India, Ministry of Tribal Affairs to review the Jarawa Policy, 2004. The Meeting of the Sub-Committee was held on 7.6.2011 and it was decided to constitute a Group of Experts by Andaman & Nicobar Administration to assess the actual perceptions, needs and expectations of the Jarawa Tribe. Accordingly, the Administration constituted a Group of Experts consisting of Anthropologists, Social activists and other experts. The report submitted by the Group of Experts was forwarded to the Government of India, Ministry of Tribal Affairs. The Sub-Committee in its meeting held on 14.10.2011 accepted the report which inter-alia includes:-

i) That there is no need for a change in Jarawa Policy. However it was recommended to reduce the number of convoys on the ATR and develop alternate sea route for Baratang and North Middle Andaman.

ii) Restructure Andaman Adim Janjati Vikas Samiti (AAJVS) for effective implementation of Jarawa Policy, proper and adequate medical help/intervention to Jarawas, proper awareness programme for settlers and communities using ATR.

iii) Listen and facilitate Jarawas, rather than "provide and

deny', due to the changes being experienced by this community. Policy / actions to be research based. Some suggested area for time bound research include Socio Impact Assessment, Study on Movement Pattern and Calenderics Identifying Jarawa 'Hotspots' and Study on Nutritional and health aspects.

iv) The Administration has already implemented some of the recommendations namely, Daily Convoy frequency between Jirkatang to Middle Strait reduced from 8 to 4 w.e.f 25.9.2011 vide circular dated 13.9.2011. An officer of the rank of DIG of Police has been designated as Nodal Officer to monitor day to day activities on ATR and strict vigil in the Jarawa Reserve.

v) AAJVS reconstituted, Experts included, 22 contractual employees regularized, and post of Development-cum-Research Officer created. PAT Regulation 1956 got amended and notified on 2.7.2012 by the Government of India. Periodic training is being given to staff for field implementation. First training was held on 12-13 July 2012 and sensitization of villagers residing in Buffer Zone was conducted. As suggested by the Ministry of Tribal Affairs, in order to review the Jarawa Policy, 2004, empirical data is being collected by engaging field functionaries of AAJVS under the guidance of Group of Experts. A three day orientation workshop from 13th to 15th October, 2012 was organized for the field functionaries of AAJVS for skill up-gradation.

vi) The Group of Experts constituted by the Administration has already taken up research Project, to study livelihood pattern, health issues etc of the Jarawas so as to assess the perception, the will & the preparedness of the tribe to interact with the outside world on an equal footing and make informed decisions. This work is being carried out with the assistance of staff and officers of AAJVS. It is expected that the report of the group will be made available within six months.

17. That thereafter, the report was carefully examined by the Administrator, A&N Islands who approved on 16.1.2013 a revised Buffer zone notification invoking his power under section 3(A) of the A&N Islands (Protection of Aboriginal Tribes) Regulation. The revised Buffer zone notification has been notified in the Official Gazette of Andaman & Nicobar Administration on 17.1.2013, and a copy of which has already been taken on record by this Hon'ble Court during the hearing held on 21.01.2013. A sketch showing the reserve area, the buffer zone and ATR as per the revised Buffer Zone Notification issued on 17.1.2013 is annexed herewith and marked Annexure P/2.

18. That in the notification dated 17th Jan, 2013, the Administrator has declared the area upto 5 km radius adjacent and contiguous to the Jarawa Tribe Reserve area, (notified on 15.9.2004), starting from Constance Bay in South Andaman to Lewis inlet Bay in Middle Andaman, as a Buffer Zone except the areas specified in the Schedule to the Notification subject to the condition set out in the said Schedule. In the Schedule, 34 settlement villages in the districts of South Andaman and North & Middle Andaman, the entire island of Baratang and seaward side of the western and eastern boundary of Jarawa tribe Reserve area have been mentioned, thereby removing them from the operation of Buffer Zone, notified in 2007. However, the Administrator

on dated 5.3.2013 of SLP (C) 12125-2010 in the matter matter of LG, A&N islands & Ors -vs- Ms Barefoot declared that no person should carry out any activity directly or indirectly which might be prejudice to the safety and interests of the Jarawa tribe in any of the settlement villages falling in the Schedule. In order to remove any ambiguity it has been clarified in the Schedule that the normal day to day activities being carried out by the persons residing in the Revenue settlement villages who earn their sources of their livelihood should however remain unaffected. A statement showing the list of 34 revenue settlement villages and the present economic and historical background of the settlers living therein has been annexed.

19. That the A&N Administration simultaneously through appropriate administrative measures has put in place mechanism to monitor/regulate activities in the settlement villages now excluded from the Buffer Zone to ensure that the safety, security and interest of Jarawa tribes are protected. The Administration by its revised Buffer Zone notification has addressed not only the issue of protection of Jarawas but also the livelihood concerns of the settler population. The field level functionaries like Tribal Welfare Officers and Janjati Sevaks of AAJVS have been deployed at different contact points to safeguard the interest of the Jarawa and ensure that they are not exploited in any manner. Besides the field staff of AAJVS alongwith the Jarawa Protection Police, Forest officials carry out joint patrolling in the Jarawa Reserve area to prevent their exploitation by any one, which has proved effective.

21. That it is submitted that the orders passed by this Hon'ble Court on 21.01.2013 is being implemented and standing instructions to various authorities to stop movement of tourists on the ATR passing through Jarawa reserve area and to regulate the movements from Police Check Post established at Jirkatang No-2 to Middle Strait. No vehicles carrying tourists are allowed to ply through the stretches of ATR passing through the Jarawa reserve area in South and North & Middle Andaman. However, vehicle used by the Government Departments on govt duty are exempted. Also public goods carriers and other public service providers are exempted. The residents of North and Middle Andaman intending to travel by STS or private buses on ATR from either side between Jirkatang-Middle Strait & Kadamtala have to produce their Identity cards for issuance of tickets at the Ticket Counters or to the Transport official in the Bus. The suggested documents include any of the following namely - Islanders Identity Card, Local Certificate, Driving License, PAN Card, Bank Pass Book, Electoral Photo Identity Card, AADHAR Card etc. of A&N Islands. The Transport Authorities and Private Bus owners shall not issue any tickets without verifying the above documents. In case of visit of relatives and friends of the residents of North and Middle Andaman the visitor has to provide declaration form with the details viz., name, address, with phone number of the visiting relative and their own details for the purchase of tickets in case of traveling by buses. The private bus owners shall follow the same procedure and keep records of all these forms for future reference. Passengers are advised to carry with them the required identity document which was shown at the time of purchase of tickets. The various orders/instructions, press releases issued by the Administration are annexed wherewith and marked Annexure P/3 (Colly) to this affidavit."

(reproduced from the SLP paper book)

on dated 5.3.2013 of SLP (C) 12125-2010 in the matter matter of LG, A&N islands & Ors -vs- Ms Barefoot

We have gone through the latest affidavit of Shri Kuldip Singh Thakur and the accompanying documents and are satisfied that the order passed by the learned Single Judge and the Division Bench of the Calcutta High Court, which became subject matter of challenge in the special leave petition, have become ineffective.

With the above observations, the special leave petition is disposed of as infructuous. However, it is made clear that the petitioners shall strictly comply with the amended regulations and the orders issued for implementation thereof.

As a sequel to the above, the application for intervention is dismissed.

(Parveen Kr. Chawla)
Court Master

(Phoolan wati Arora)
Court Master