

RAJASTHAN HIGH COURT

Forest Friendly Camps Pvt. Ltd.

Vs.

State of Rajasthan

Civil Special Appeal (W) No. 62 of 2001 in Civil Writ Petn. No. 4924 of 2000
(P.P. Naolekar and A.C. Goyal, JJ.)

19.02.2002

JUDGEMENT

P. P. Naolekar, J.

1. Appellant Forest Friendly Camps Private Limited is the owner of hotels and is running the business of arranging tours of the tourists from all over the country and the world. The State of Rajasthan has established a Tiger Project in the vicinity of Ranthambore National Park with a view to attract the tourists of the country and the world to see the tigers in the sanctuary. Up to 1997 any person was entitled to enter or reside in the Park area for the purpose, inter alia, of tourism by merely obtaining permit on payment of prescribed fees. There was no restriction on the entry of vehicles but there was regulation. During this period, the Government of Rajasthan as also the Central Government encouraged eco-tourism and helped in setting up of various Hotels and Resorts around the Park area. Consequently, many hotels and resorts have been set up nearby the Park area.

2. The Government of Rajasthan under the Wild Life (Protection) (Rajasthan) Rules, 1977 (for short 'the Rules of 1977') introduced Roster System" for regulating tourism business by controlling vehicular entry of private vehicles. The Roster System was operated for two seasons viz. 1997-98 and 1998-99. Later on, on 24-11-1999 the Roster System was revoked and the authorities after full discussion, framed the guidelines vide order dated 20- 11-1999 and the decision was taken after recognizing that number of tourists visiting the Ranthambore National Park was increasing and on account of the increased numbers, tourists had to face difficulties on numerous occasions; such difficulties pertained, inter alia, to non-availability of vehicles, extraction of higher rates by the vehicle drivers, shortening of journeys inside the

Park, misbehavior by the Guides with tourists and tourists are left at their own fate without making proper arrangements for safari trips.

3. The policy also recognize that the tourism in the Park should be eco- friendly; that number of vehicles on one particular route ought to be limited; the system of reservation of vehicles and provision for Guides for tourists must be substantially improved and that tourism within the Park must be encouraged by providing sufficient staff. Accordingly, by the said decision, seven routes were identified upon which the tourist vehicles like Maruti Gypsies and Minibuses were permitted after registration with the Office of the competent authority. A fee of Rs. 5000/- (Rs. five thousand) was prescribed for such registration and a further amount of Rs. 5000/- (Rs. five thousand) was to be kept as deposits. Several safeguards in respect of the type and quality of the vehicles were also prescribed and in particular the vehicle was compulsorily required to have pollution control certificate. In regard to Hotel industry, it was expressly required that entry of their own guests/tourists in the Park was their responsibility and not the responsibility of the Forest or Tourism Department and the provision of Maruti Gypsies and Canters has to be made by them. The reservation of the vehicles was the responsibility of the Tourism and Forest Department.

4. The Assistant Conservator of Forests, the In-charge of the Tiger Project, issued a notice inviting applications for registration from Hotel establishments and Tour Operators for the purpose of advance/urgent group bookings for tourists arriving in the Ranthambore National Park. By this arrangement, the Roster System of entry was abolished and Hoteliers and Tour Operators have been allowed their own vehicles for tourists staying in their Hotels. This arrangement continued until the orders have been issued on 1-9- 2000 which was passed on the decision of the Standing Committee dated 22-4- 2000 whereby the Roster System was again reintroduced and as per the decision only the registered vehicles were allowed in the Ranthambore National Park as per roster with effect from 1-10-2000. It is this decision of the Government introducing the Roster System for carrying tourists in the Ranthambore National Park at Sawai Madhopur was challenged by the appellants by filing the writ petition. The writ petition was dismissed by the learned single Judge vide order dated 5-1-2001.

5. What exactly the Roster System is -Under the Roster System the Forest Department requires the owners of the vehicles, Jeeps and Canters, to register their vehicles with the Department. The owner is required to pay Rs. 5000/- (Rs. five thousand) for registration of the vehicle and another Rs. 5000/- (Rs. five thousand) for registration of the driver. According to the Roster System only those vehicles which are registered

with the Department, are permitted to enter the Park. Once the vehicles are registered thereby forming a common pool of vehicles, the Department draws up a list of the registered vehicles. Since the number of vehicles permitted to enter the Park are not limited, the Department permitted a batch of limited number of vehicles to enter the Park for the morning shift and another batch of vehicles for the evening shift and so on down the line. Since the number of vehicles which are registered with the Department are not limited, generally a vehicle that has gone on one shift either in morning or evening, does not get another turn for one or two days. It is for the Department to take a decision as to which vehicle shall enter the Park and in which shift. It does not permit Hoteliers or Tour Operators to carry tourists booked by them in their own vehicle registered and tourists booked by them have to visit Park in the vehicle then available or allocated to them.

6. The challenge to this system by the appellant is that - it hampers the tourism and consequently results in affecting the earning of the foreign exchange. Apart from the fact that it causes difficulties for the Hoteliers and Tour Operators to provide the accommodation in their vehicles to the tourists booked by them for entry in the sanctuary which also affects the tourism. Some of the difficulties mentioned by the petitioner in operation of the Roster System at the ground level are that the owners of the vehicles are absolutely in dark whether and when their turn will come on which day and thereafter, and, therefore, they are obliged to wait at the forest department office and to enquire repeatedly about their turn, which tends to keep the vehicles stranded at the office. Sometime the Drivers and the owners are not informed about the fact that from where they have to pick up the tourists for visit to the Park which causes great inconvenience; since the Drivers are not informed in advance either they do not show up or turn up late to pick up the tourists and this affects enjoyable visit of the tourists in the Park. The Guides provided to the group of tourists sometimes do not speak the language which the tourists understand and, therefore, they are unable to explain them about the wild life in the Park and this also affect tourism. It has also been pointed out that there is not much difference between the Roster System and the Open System except that in the Roster System the tourist has to be accommodated in the vehicle with the guide provided by the Forest Department and not in accordance with the choice of the Hotelier or the person organizing the tour or the tourists themselves. Both Roster System and Open System controls the number of vehicles permitted to enter the Park in a given shift. Since the number of vehicles are restricted in open system also, they do not disturb the wild life in the Park to large extent. Therefore, it cannot be said that the Roster System alone furthers the object of

protecting the wild life better than the Open System. The vehicles, guides and the drivers in both systems are from registered pool. The guides, vehicles and the drivers are governed by the same set of rules and conditions. The vehicles, guides and drivers have to go on the routes specified to them. The Open System and the Roster System on most of the points are same except that the Roster System imposes an onerous condition that the tourist has to enter the sanctuary in the vehicle provided by the Forest officials.

7. The Wild Life (Protection) Act, 1972 (hereinafter shall be referred to as 'the Act of 1972') has been enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. The Act of 1972 contains a complete Code to afford protection of wild animals, birds and plants. Section 27 of the Act of 1972 provides for restriction on entry in sanctuary but the restriction is not absolute and is subject to the provisions of Section 28 of the Act which provides for grant of permit. Under Section 28 of the Act of 1972 the Chief Wild Life Warden may, on application, grant to any person, a permit to enter or reside in a sanctuary for all or any of the following purposes, namely, (a) investigation or study of wild life and purposes ancillary or incidental thereto; (b) photography; (c) scientific research; (d) tourism; and (e) transaction of lawful business with any person residing in the sanctuary. Therefore, the Chief Wild Life Warden has been authorized under the Act to permit any person to enter the sanctuary for the purposes mentioned hereinabove. Sub-section (2) of Section 28 of the Act of 1972 lays down that a permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed. Therefore, right to entry in the sanctuary is not absolute. It has to be sanctioned by the Chief Wild Life Warden and on such terms and conditions and on payment of such fees as may be prescribed. Regulating the entry of vehicles in the sanctuary for any of the purposes mentioned in Section 28 would be falling under sub-section (2) of Section 28 within the phrase 'permit to enter with conditions' and the Act authorizes the authorities to permit entry to be restricted subject to the conditions. Therefore, it cannot be said that the conditions imposed by introducing the Roster System would be contrary to law. There cannot be any manner of doubt that the authorities are well within their right to regulate the entry and impose the terms and conditions for entry in the sanctuary. At the same time, it would be just and fair to maintain a careful balance between the preservation of wild life in forest and sustainable development, in order to ensure the long term health of both the eco system and the tourism economy. The policy of environmental economic instrument and incentives should be developed to ensure that

the tourism activities which need the nature and biological diversity conservation includes mobilizing funds from tourism. The tourism should be based on environmental friendly concept. Tourism activities which directly or indirectly contribute to the conservation of nature and biological diversity and which benefits local communities should be promoted. It should be seen that tourism activities should be environmentally, economically, socially and culturally sustainable. The tourism should be developed in a way so that it benefits the local communities, strengthen the local economy, employs local work force. To ensure all these aspects the policy of tourism should be such where the tourists are not put to inconvenience.

8. With the opening of the global trade, earning of foreign exchange is an important consideration for the development of the country. The traditional concept that the development and ecology are opposed to each other are no longer acceptable. Sustainable development has to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco systems. Sustainable development as a balancing concept between the ecology and development has been accepted as a part of the customary international law. Though its salient features have yet to be finalized by the international law justice. There should be a proper balance between the protection of environment and the development process. The society has to prosper but of course not at the cost of environment and in the similar way the environment has to be protected but not at the cost of development of the society. There shall have to be both - development and proper environment and, as such, balance has to be found out and administrative action ought to proceed in accordance therewith and not de hors the same. Reference may be made to the decision of the Supreme Court in the cases of *Vellor Citizens Welfare Forum v. Union of India*,¹ and in *Goa Foundation, Goa v. Diksha Holdings Private Limited*,²

9. Considering all the aspects of the Open System and the Roster System we cannot say that the policy-decision taken by the Government in imposition of Roster System is an arbitrary act on the part of the respondents. At the same time we are of the view that the interest of the hoteliers and the tour operators who regularly organize tours and visits to the Ranthambore National Park Sanctuary, have to be protected providing them some concession or facility while implementing the Roster System. In the present Roster System, the hoteliers and the tour operators who are regularly and consistently providing the tourists flow to the Ranthambore National Park have to solely depend on the vehicles and the guides allocated by the Forest Department to

carry tourists booked by them without having choice of vehicle and guide. If under the Roster System some concession is given to them, it would be in the interest of project as it will increase the number of tourists and consequent the earning of the Park. Thus, while approving the Roster System we direct that the appropriate authority shall prepare the list of tour operator/hoteliars who are regularly booking sufficient number of tourists for visit to the Ranthambore National Park in last three years. When such tour operators /hoteliars make a request for entry of their registered vehicle three days in advance in the National Park for the tourists booked by them, the authority shall provide facility of one vehicle per trip in a day to enter the National Park, subject to fulfilling conditions under the Roster System and also provide them guide of their choice as may be requested by them. This facility shall be in addition to vehicles permitted by the department under the Roster System but within the Roster. The authority shall see that list is prepared of tour operators/hoteliars within a period of ten days from the placement of this order before the appropriate authority and the direction given by this Court shall be implemented immediately thereafter.

10. The appeal stands disposed of.

Order accordingly.

Cases Referred.

1. AIR 1996 SC 2715
2. (2001) 2 SCC 97