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W.P.No.15200 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.05.2023

Pronounced on: 17.05.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

W.P.No.15200 of 2023
and WMP.No.14710 of 2023

Dr.T.Murugavel

... Petitioner

Vs

1. The Addl. Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Principal Secretary to Government & Chairman of
Tamil Nadu Tourism Development Corporation,
Tourism, Culture & Religious Endowment Department,
Secretariat, Fort St.George,
Chennai – 600 009.
3. Additional Chief Secretary,
Environment, Forest & Climate Change Department,
Secretariat, Fort St.George,
Chennai – 600 009.
4. The District Collector,
Nilgiris District, Collectorate, Ooty.



5. The District Forest Officer,
Nilgiris District,
Collectorate, Ooty.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from conducting 'heli tourism' as part of the May 2023 Summer Festival in Nilgiris as advertised by the District administration.

For Petitioner : Mr.R.Srinivas, Senior Counsel
For Genicon and Associates

For Respondents : Mr.J.Ravindran,
Additional Advocate General
assisted by Mrs.S.Mythraye Chandru
Special Government Pleader

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

This Public Interest Litigation (PIL) has been filed by a resident of Chennai seeking a mandamus forbearing the respondents being the Additional Chief Secretaries of the State of Tamil Nadu, Department of Environment, Forest and Climate change/R1 and R3, the Principal Secretary to the Government and Chairman of the Tamil Nadu Tourism Development Corporation/R2, the District Collector/R4 and Forest Officer, Nilgiris District/R5 from conducting 'heli tourism'



as part of the May, 2023 summer festival in Nilgiris as advertised by the District administration.

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2. At this juncture, we may as well deal with the preliminary objection raised on behalf of the respondents, for whom Mr.J.Ravindran, learned Additional Advocate General appears on behalf of and assisted by Mrs.S.Mythraye Chandru, learned Special Government Pleader. They would argue, albeit tentatively, that the petitioner, being based in the City of Chennai has no locus to move the present Writ Petition and that he has established no public interest. According to them, this petition is thus to be dismissed in limine.

3. We do not agree. The petitioner has established his connection to Nilgiris by way of owning properties as well as engaging in local activities. That apart, there is no dispute on the position that he espouses public causes frequently and has approached this Court on several occasions raising issues in public interest. There is nothing to indicate that the petitioner has a vested right in the matter.

4. That apart, the issue raised by the petitioner concerns the use of helicopters commercially for the purpose of tourism in the ecologically sensitive region of the Nilgiris. The questions raised go to the root of the matter, as to whether the respondents have carried out necessary due diligence, prior to embarking on the aforesaid activity. It is to be seen as to whether the interests of



all stakeholders, particularly the Environment, including the animal and bird species in that habitat, have been borne in mind and due attention and safeguards

put in place to insulate them against the consequences of such an endeavour.

5. The issue on merits is thus substantial. Needless to say, protection of the environment, specifically forest lands and various animal/bird species, including endangered ones are undisputedly in public interest. The respondents do not raise any objection to the significance of the issues raised per se, and thus the mere fact that the petitioner normally resides in Chennai would not, in our considered view, stand in the way of the petitioner agitating the matter in public interest. The preliminary objection on maintainability is thus dismissed.

6. Having got that out of the way, we now proceed to record the following submissions that Mr.R.Srinivas, learned Senior Counsel appearing on behalf of the learned counsel for the petitioner has to make.

i) The PIL is filed bonafide by the petitioner as an attempt to protect and preserve environment, nature and wildlife. The petitioner is a keen nature enthusiast, familiar with the topography of the Nilgiris, owning property in Kothagiri and farming the same.

ii) The Department of Tourism, District Administration, the Nilgiris and Department of Horticulture has advertised, and issued a brochure displaying the



logo of the State and the slogan of the Department of Tourism '*Incredible India*', various events in celebration of the Nilgiris summer festival.

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iii) Aside from heritage walks, a topography exhibition, film festival, flower and vegetable shows and other cultural programmes, for the first time ever 'heli tourism' has been advertised.

iv) The pamphlet states that the heli tourism would be operated from a helipad in Theetukal near Ooty.

v) The Nilgiris, including Ooty and the regions surrounding it is ecologically fragile and bio-diverse.

vi) It is home to several species of wildlife, some featuring on the endangered lists of the Wildlife International, such as the Asian Elephant, Bengal Tiger, Dhole, Nilgiri Tahr, Himalayan Vulture and Great Indian Hornbill.

vii) The terrain is mountainous and the temperatures are extremely variable, rendering the helicopter operation, both for human as well as wildlife population, precarious.

viii) The Theetukal Helipad is situated about 3 Kms. from Ooty town and is itself a part of the Nilgiris Biosphere Reserve, which spreads over the three States, Tamil Nadu, Karnataka and Kerala. Around 75% (approx.) of the Reserve



contains plantations and the remaining, comprises protected areas, such as, Tiger Reserve Sanctuary and a National Park.

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ix) The joy rides proposed to be offered would overlap the nesting period of some of the birds there, which would disturb the rhythm and destroy the season in entirety. One nesting season would thus be lost.

x) The area also houses the Elephant corridor connecting the Eastern and Western Ghats.

xi) The helicopters will cause a loud whirring noise apart from emitting pollutants and particulates that will affect the living beings and the air quality.

xii) Heli tourism in Nilgiris is a commercial venture which, apart from featuring as an additional attraction to tourists, has no other contributory value to public life. In fact, it has only adverse impacts and brings nothing else of value to the table.

xiii) The guidelines issued by the Department of Civil Aviation and the other authorities that control helicopter flying require stringent measures to be taken in any area involving helicopter flight.

xiv) One such requirement is the mandatory presence of an alternate helipad for re-routing of the helicopter in the event of access to the primary helipad becoming unavailable for any reason including bad weather.



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xv) Admittedly, there is only one helipad in Theetukal and there is no alternate helipad provided. While this is a violation even in normal times, it becomes far more serious and glaring in time of the proposed commercial operations that would involve safety of the public led into taking the joy ride.

xvi) It was incumbent on the District administration and State authorities to have undertaken feasibility studies prior to introducing heli tourism, which has admittedly, not been done.

xvii) Nothing is available in public domain to indicate that the Forest Department or the wardens of the Wildlife Sanctuaries were even consulted prior to this endeavour.

xviii) Thus, seen from any angle, the heli tourism venture is misconceived, at odds with the interests of wildlife and biodiversity and ecological sensitivity of the Nilgiris region and must not be allowed to be proceeded with.

7. The submissions of the respondents are as follows:

i) The respondents disavow all connections with the proposed heli tourism venture. According to the respondents, the heli tourism project is a proposal by a private party and not an initiative by the State.

When faced with the brochure circulated by the petitioner, which contains the State logo, the slogan of the Department of Tourism '*Incredible India*' as well



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as the phrases '*Department of Tourism*', '*Department of District Administration, Nilgiris*' and '*Department of Horticulture*' on the brochure itself, learned Additional Advocate General has no choice but to concede that the brochure has been issued by the respondents.

At this juncture, the petitioner would also draw attention to a statement having been issued by the concerned Minister in Nilgiris reiterating that heli tourism will undoubtedly be part of the Summer Festival in Ooty in May 2023. That apart, media reports also quote officials of the State Tourism Department who state that the machinery is all set to commence heli tourism and has also roped in the services of one, Overdrives Aviation, a Coimbatore based entity, to assist in chopper operations. Incidentally, there is no record for any engagement with the entity as aforesaid.

The material on record establishes categorically not just the unambiguous involvement of the State, but the keen interest and intention of the State to carry forward this project into fruition. We are thus of the considered view that the attempts to attempt of the State to distance itself from the venture deserve no consideration. It is, in our view, nothing more than a misconceived effort to save themselves the embarrassment of being seen to have ventured into a project of such ramification without proper planning and no due diligence whatsoever.



ii) The respondents argues that the Writ Petition is pre-mature, since they are yet to take a final decision on allowing the heli tourism. This decision will be taken only when the operator provides the flight routes, that are yet to be received.

8. In light of this preliminary contention that the State is yet to take a decision on the project, no submissions were really made by the learned Additional Advocate General on the merits of the matter, that is, the submissions by the petitioner touching upon the unviable nature of the heli tourism project itself in Nilgiris District and the deficiency in planning and due diligence.

9. Thus, the substantive submissions on the deep impact that a project of this nature would have on the fragile ecology of the District, the dangers of the variable temperature in Ooty on helicopter activity and the dangers in permitting such activity in this topography are matters that were not touched upon by the respondents.

10. On the other hand, the respondents would request that they be permitted to file a counter and also be allowed to examine the matter at their end. Ultimately, it must be left to them to decide whether or not to proceed with the project after consideration of relevant materials. This submission pre-supposes the existence of all relevant material on record in order to enable the respondents to take an informed decision, and immediately, seeing as the project is to be flagged off on



13.05.2023, and we were, when the matter was heard and reserved for orders, on

11.05.2023.

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11. In order to test this submission and also to test the approach taken by the respondents in promoting and advertising heli tourism under the banner of the State, complete records were called for. A file and two compilations said to contain all material relevant to this project were circulated. The documents contained are as follows:

- a) A draft of a letter dated 12.04.2023 (bearing reference GMB-2023-COT-004-1) from Global Media Box Innovations Private Limited (GMBI/Operator), a private operator, addressed to the Director of Tourism and Managing Director (MD) of the Tamil Nadu Tourism Development Corporation (TTDC) regarding the helicopter joy ride and hot air balloon tethered ride during the Summer Festival at Ooty, and referring to site visits.

The dates for the proposed activity are 13.05.2023 to 30.05.2023. The joy rides would be conducted on a helicopter (VT-DVG) owned by Davangere Sugar Company Limited between 9.30 a.m. to 4.30 p.m., on slot basis.



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GMBI requests the MD of TTDC to obtain permission from the Collector, Ooty, Superintendent of Police, Ooty, Forest Department and Fire Station, Ooty to initiate the process.

b) Letter dated 13.04.2023 from Davangere Sugar Company Limited to the District Collector requesting permission for their helicopter movement as required by the relevant provisions under Civil Aviation Law. This is accompanied by a Certificate of Registration of the helicopter, Air worthiness Review Certificate and an Air Operator Permit.

c) Letter dated 17.04.2023 from MD, TTDC to District Collector and Superintendent of Police seeking permission sought for by GMBI.

d) Letter dated 24.04.2023 from District Collector to the Superintendent of Police, Executive Engineer, Public Works Department (PWD) and District Officer, Fire and Rescue Services referring to the letter from the Tourism Director and asking those authorities to send a feasibility report as to whether such permission may or may not be granted.

e) Letter dated 26.04.2023 from Tourist Officer to District Collector, Nilgiris requesting Fire Safety Vehicle and First Aid service during the helicopter joy rides.



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f) Proceedings dated 28.04.2023 in Na.Ka.No.1926/A2/23 from the Fire Office to the District Collector granting permission and also setting out certain conditions in that regard.

g) Likewise, vide letter dated 01.05.2023, the Superintendent of Police conveys no objection for grant of permission for operating heli services.

The conditions laid down are that the security of the helicopter should be taken care by 'Sherin Cherian Operations, Chipsan Aviation Private Limited, New Delhi', the helicopter should not fly in the No fly zone within the District under the threat of legal action for non-compliance and wind sacks and smoke sacks, smoke candle and adequate fire extinguishers should be arranged by the organization.

It is unknown as to what the No fly zone is, and as to whether either the operator or the owner of the helicopter, Davangere Sugar Company have been intimated of these requirements and there is nothing on record to indicate that they have been so intimated.

h) Likewise, vide proceedings dated 09.05.2023, PWD has also granted sanction imposing a list of conditions.



i) Letter dated 10.05.2023 from Tourist Operator to the District Collector asking for provision of Helipad for the Heli tourism venture.

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12. In conclusion, respondents reiterate that the writ petition has no merit and must be dismissed as premature. We have heard learned counsel and have devoted our anxious consideration to the materials circulated by both sides.

13. In the course of the hearing, learned Additional Advocate General circulates yet another letter from the Operator, also dated 12.04.2023, this time on the letter head of GMBI and duly signed, in substitution of the draft letter dated 12.04.2023. The aforesaid letter contains a critical omission and reads thus:

12 April 2023

GMB - 2023 - COT - 004

To

Mr.Sandeep Nanduri, IAS

Director of Tourism and Managing Director of TTDC.

Department of Tourism, Tamil Nadu

Chennai

Sub: "Helicopter & Hot air Balloon Activity - OOTY May 2023"

Dear Sir,

Following our discussion regarding the Helicopter Joy Rides & Hot Air Balloon Tethered ride during the Summer Festival at Ooty, The Nilgiris, we have done the site visit on the Collector's instructions we will do the activity as follows:

*Helicopter Rides at Theetukal Helipad from 15th to 30th May 2023
9.30 a.m. - 4.30 p.m. based on slots Hot air Balloon Show and*



Tethered at Govt Arts College Ground from 20 - 30 May 2023 6 am - 9 am Morning & 4pm - 6pm evening (Depending on weather conditions)
We request you to initiate the permission for the location to the following departments

- 1. Collector Ooty*
- 2. Superintendent of Police, Ooty*
- 3. Fire Station, Ooty*

We request your office to initiate the above permissions and the requested local support through the respective Tourist office for a smooth and successful even.

With regards,

Sd/-

.

Founder & Director

Global Media Box Innovations Pvt Ltd.

Mbl :

14. Herein lies a twist in the tale. While the draft circulated bears reference number *GMB - 2023 - COT – 004-1*, the executed letter bears reference number *GMB - 2023 - COT – 004*. Secondly, and more importantly, the draft contains reference to '*Forest Department*', whereas these words have been omitted from the executed letter. A strong inference that commends itself is that all is not well in the procedure followed.

15. While whoever has drafted letter draft 12.04.2023 is well aware of the necessity for clearance from the Forest Department, in the final executed version the reference to Forest department has been deleted, perhaps for the reason that such clearance might not have been forthcoming. Clearly, the attempt seems to



have been to go plough ahead with heli tourism irrespective of environmental concerns and despite all evidence pointing to the same. It is thanks to the above slip-up by the respondents that the conscious sidelining of the Forest Department has come to light.

16. The proposed heli tourism project is one of the activities planned to attract tourists for the 200th year Summer Festival in Ootacamund. Ooty is the District headquarters of Nilgiris District, that comprises substantially hilly terrain, forest land and wildlife sanctuaries. The specific route for the joy ride is unknown and it is on this premise that learned Additional Advocate General would say that a decision on the project can be taken once the route is finalized.

17. The petitioner, in his anxiety, has circulated a probable map of the joy ride, which is vehemently agitated to by the respondents who point out that it is only a hypothesis. As to the hypothetical route map that has been circulated, we put it down to the anxiety of the petitioner, and find the effort well taken. A report in the Times of India dated 06.05.2023 states thus:

Udhagamandalam: In a first, the tourism department is planning to introduce heli tourism in the hills for 18 days from May 13 as part of Nilgiris Summer Festival-2023.

The department has roped in Coimbatore-based Overdrives Aviation for chopper operations, Nilgiris tourist officer D Uma Shankar said. "The event, at Theetukal helipad near Ooty, will be an added attraction for tourists."The 10-minute helicopter ride



will cover 30km, said Sundar Rajan of Overdrives Aviation. “We plan to use two choppers, each having six passenger seats. The tourism department will decide the fee,” he said.

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Overdrives Aviation is in the process of obtaining permissions and clearances from authorities such as the Nilgiris collector, Nilgiris SP, PWD and fire and rescue department, Sundar said. “After obtaining permissions, we will approach the director general of civil aviation for clearance.”The firm will follow the guidelines prescribed by the Supreme Court for helicopter ride in the hills, Sundar added.

As per SC guidelines, flight is prohibited in zones such as national parks, core and buffer zones of tiger reserves and bird sanctuaries.

18. Normally, one hardly pays heed to media reports in judicial proceedings but we have referred to the above instance, since an officer of the Tourism Department is quoted and it is hence taken to be authentic. The officer is quoted as referring to an engagement with a third party who is, in turn quoted to state that the probable flight path will cover 30 kms. Thus the joy ride would evidently require the flight path to be routed over the forest land. We also agree that there is little value otherwise in a helicopter ride over Ooty.

19. World over, it is the visual impact of verdant forests, possible sighting of wildlife and the rolling topography that would serve as attractions for heli tourism. Be that as it may, the question of such detail including the proposed route would be relevant only if the project had itself been conceived having regard to all essential and mandatory parameters.



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20. Nilgiris district which comprises about 2500 sq. kms is hilly, and at an elevation of between 1000 to 2500 level mean sea level. It straddles the junction of the Western and Eastern Ghats and the rolling topography is home to several species of wildlife as well as birds, some of them endangered. Three National Parks, viz., Mudumalai National Park, Mukurthi National Park and the Silent Valley National Park fall within the region. This area has been formed into the Nilgiri Biosphere Reserve, India's first Biosphere Reserve, in 1986.

21. In the Case of *T.N.Godavarman Thirumalpad Vs. Union of India & Others*¹, the Hon'ble Supreme Court held as follows:

15. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology¹. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

¹ CDJ 2022 SC 562



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16. In *Vellore Citizens' Welfare Forum v. Union of India*, this Court held that the 'Precautionary Principle' is an essential feature of the principle of 'Sustainable Development'. It went on to explain the precautionary principle in the following terms:

(i) *Environmental measures--by the State Government and the statutory authorities--must anticipate, prevent and attack the causes of environmental degradation.*

(ii) *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

(iii) *The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.*

17. *The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.*

22. The feasibility of commercial helicopter operations over such an ecologically sensitive region must be very cautiously approached and carefully assessed. The policy in regard to tourism must balance with public concerns, specifically, environmental and wildlife.

23. Though public interest must prevail to some measure, it must be seen to be in harmony with projects that might have an adverse impact on the environment. However, it is nobody's case that heli tourism would have any public



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use whatsoever, except as a revenue earner to the State. While considering the

balance to be achieved between private/state commercial interests and larger public

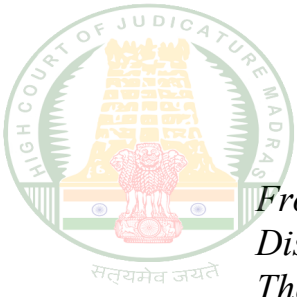
concerns, the Hon'ble Supreme Court refers to the judgment in *M.C.Mehta V.*

*Union of India*² in the following terms:-

18. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. (M.C.Mehta v. Union of India (2004) 12 SCC 118). This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.

24. The request of the private operator dated 12.04.2023 was transmitted by the Director, (Tourism), TTDC to the District Collector and Superintendent of Police on 17.04.2023, for necessary action and extension of full support. Conspicuous therein is any mention of the Forest Department. The District Collector, under communication dated 24.04.2023 seeks input from three departments, the Police, Public Works and Fire Departments and calls for a feasibility study from them. This ought to have been done with respect to the Forest Department as well. Letter dated 24.04.2023 reads as follows:

² (2004) 12 SCC 118



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From
District Collector
The Nilgiris.

To
1.The Superintendent of Police
The Nilgiris, Udhagamandalam.
2.The Executive Engineer
Public Works Department,
Udhagamandalam.
3. The District Officer
Fire and Rescue Services,
Udhagamandalam.

C2/E-4316421/2023 dated : 24.04.2023

Sir,
Sub Tourism - Operation of Helicopter joyrides at
Theetukul helipad from 15th to 30th May 2023
the Summer Festival at Ooty - request to grant permission-
regarding
Ref Letter No 2698/TE - 1 /2023 - 1 Dated 17.04.2023 of the
Director of Tourism, Directorate of Tourism, Tamil Nadu
Tourism Complex, No.2, Walajah Road, Chennai.

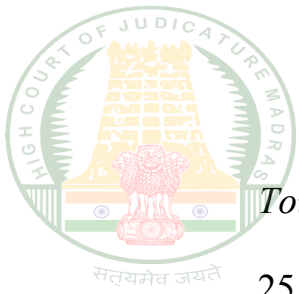
In the reference cited the Director of Tourism, Directorate of
Tourism, Tamil Nadu Tourism Complex, No.2, Walajah Road,
Chennai has requested that to grant permission for operation of
Helicopter joyrides at Theetukul helipad from 15th to 30th May 2023
during the Summer Festival at Ooty (Helicopter VT - DVG) from
Davangerr Sugar Company Ltd.)

I enclose herein a copy of the letter cited. I request you to send a
feasibility report specifically stating whether the permission
requested by the Director of Tourism, Chennai be granted or not. If
not, reasons should be mentioned.

Encl as above

Sd/- T.Dhanapriya
For Collector, The Nilgiris

Copy to
The Tourism Officer,



Tourism Office, Wenlock Road, Udhagai.

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25. In letter dated 13.04.2023 Davangere Sugar Company, the owner refers to temporary landing sites. However, it is an admitted position that Theethukal is the only available site which uses the helipad and thus the query of the helicopter owner qua 'temporary landing sites' is unclear to the Court. Letter dated 13.04.2023 reads as follows:

DSCL/220/130423-DC 13.04.2023

Bangalore

*To
The District Collector,
C/c Superintendent of Police,
Nilgiris District,
Tamilnadu.*

Dear Sir,

**SUB: REQUEST PERMISSION FOR HELICOPTER MOVEMENT
(REGN VT-DVG) AT THEETUKAL HELIPAD, OOTY, NILGIRIS
DISTRICT, TAMIL NADU FOR JOYRIDE FROM 12.05.2023 TO
28.05.2023"**

We, Davangere Sugar Company Ltd are a Non-Scheduled operator approved by DGCA, MOCA.

We are scheduled to operate our company owned helicopter VT-DVG to Theetukal Helipad (Coordinated 11 24 10.25 N 76 40 25.62 E) Ooty, Nilgiris District, Tamil Nadu on 12.05.2023 to 28.05.2023 for Joyride.

We hereby Request Permission for our Helicopter movement as required by Civil Aviation Requirement, Section 4, Series B, Part II, issued by the O/o Director General of Civil Aviation and letter issued



by Ministry of Civil Aviation DO. No.AV.22011/1/2016-Ga-MoCA regarding intimation of Helicopter movement from temporary helicopter landing areas.

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HELIPADS COORDINATES:

Theetukal Helipad Coordinates

(11 24 10.25 N 76 40 25.62E)

Details of the Helicopter are given below for your information.

PIC : Capt. KK Raja

Registration : VT - DVG.

Type : AS 350 B3 Single engine helicopter.

MTOW : 2250 kgs.

26. As a consequence, there is not a single document produced before us to indicate seeking of, or grant of clearance of the heli tourism project, by the Forest officials after consultation with Wildlife wardens of the National Parks/Sanctuaries. This is not just curious but indicates abject non-application to the relevant considerations on hand. The authorities/administration cannot, but be aware of and sensitive to the special features and demands of the area in which they are posted and serve and the apparent and blatant disregard in this case, leaves us baffled.

27. That apart, a specific submission made relates to the necessity for an Alternate heliport which is defined in the Guidelines issued by the Director General of Civil Aviation in regard to 'Commercial Helicopter Operations'(File No. AV.22024 / 26 / 2016-FSD) dated 14.11.2019, as follows:



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Alternate heliport. *A heliport to which a helicopter may proceed when it becomes either impossible or inadvisable to proceed to or to land at the heliport of intended landing. Alternate heliports include the following:*

(a) *Take-off alternate. An alternate heliport at which a helicopter can land should this become necessary shortly after takeoff and it is not possible to use the heliport of departure.*

(b) *En-route alternate. A heliport at which a helicopter would be able to land after experiencing an abnormal or emergency condition while en route.*

(c) *Destination alternate. An alternate heliport to which a helicopter may proceed should it become either impossible or inadvisable to land at the heliport of intended landing.*

Note. — The heliport from which a flight departs may be an en-route or a destination alternate heliport for that flight.

28. The above Guidelines make it mandatory for the provision of an alternate landing site in the following terms:

2.3.4 Alternate Heliports

2.3.4.1 Take-off Alternate Heliport

2.3.4.1.1 A take-off alternate heliport shall be selected and specified in the ATS flight plan, if the weather conditions at the heliport of departure are at or below the applicable heliport operating minima.

2.3.4.1.2 For a heliport to be selected as a take-off alternate, the available information shall indicate that, at the estimated time of use, the conditions will be at or above the heliport operating minima for that operation.



2.3.4.2 Destination Alternate Heliport

2.3.4.2.1 *For a flight to be conducted in accordance with IFR, at least one destination alternate heliport shall be specified in the operational flight plan and the flight plan, unless:*

(a) the duration of the flight and meteorological conditions prevailing are such that, there is reasonable certainty that, at the estimated time of arrival at the heliport of intended landing, and for a reasonable period before and after such time, the approach and landing can be made under visual meteorological conditions, as prescribed by the DGCA; or

(b) the heliport of intended landing is isolated and no alternate is available. In such cases, a point of no return (PNR) shall be determined.

29. It is however, an admitted position that there is only one heliport in Ooty and hence, and prima facie there appears to be some lacunae in this regard, even generally. The authorities must look into this aspect of the matter forthwith.

30. The scientific literature that has been placed on record by the petitioner reiterates the importance of preservation of this vulnerable area and of the biodiversity to which it is home. Some species of birds fly here for the nesting season and of concern is the disturbance that the helicopter noise will cause. An Article published in The Hindu – Uthagamandalam dated 18.08.2022,³ has this to say in this context:

³The Hindu _Uthagamandalam dated August 18, 2022



*Conservationists have called on the forest department to identify roosting and nesting sites of the Great hornbill (*Buceros bicornis*) in the Nilgiris and ensure their protection.*

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Recently, around 40-50 members of the species were spotted at an undisclosed location along the Kil Kotagiri slopes. S. Moinudheen, an independent researcher from the Nilgiris, said that the habitats of the species in the Nilgiris were primarily located at the interface between reserve forests and private plantations, making the species susceptible to anthropogenic pressures in the Nilgiris.

“The species is classified by the [International Union for the Conservation of Nature](#) as ‘vulnerable’ and most of the habitats of the species are located along Coonoor, Manjoor and Kotagiri in altitudes below 1,500 meters above sea level in the Nilgiris,” he said.

Due to the nesting and roosting sites of the species being located in close proximity to human settlements, researchers and naturalists have called on the forest department to conduct detailed studies that will ensure the protection of the species.

31. In an paper entitled ‘Effect of human activities on bearded vulture behaviour and breeding success,⁴ the author says, with reference to the impact of noise, pollution and other disturbances on the birds, the following:

‘Potentially disturbing activities were the following: cars (vehicles on roads close to the nests; most observations involved relatively quick passage of cars on roads that were not directly visible from the nest); motorbikes (in many cases outside roads); helicopters; small planes; gliders; paragliders; forestry activities (tree cutting for forestry exploitation); burning (“controlled” fire lit to create open

⁴Effect of human activities on bearded vulture behaviour and breeding success in the French Pyrenees Beatriz Arroyoa,b,*, Martine Razinc a Centre for Ecology and Hydrology, Hill of Brathens, Banchory AB34 4BW, UK b Centre d’Etudes Biologiques de Chize’, CNRS, 79360 Villiers en Bois, France c Coordination Casseur’os/LPO-FIR, Oihan Alde, 64210 Ahetze, France



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areas for grazing); hunting (mainly hunting of wildboars, stags, roe deer and mouflon, by groups of 10–40 people, approaching by car and/or by foot); mountain climbing; fire (criminal, as opposed to burning); intervention (by ornithologists to monitor bearded vulture reproduction); military activities (manoeuvres and military planes); farming/shepherding; photographers (people approaching nests to take pictures or to film); “walkers” (people by foot, including hikers, fishermen or bird watchers), infrastructure works (road or path construction, hydroelectric work or other infrastructures)

.....
Very noisy activities (such as infrastructure works, motorbikes, forestry or military activities and helicopters) seemed to be those most strongly affecting bearded vulture behaviour and breeding success. Noise is particularly transmitted in alpine habitats, as relief provokes echoes and increases resonance. These activities thus provoked a reaction in bearded vultures even if far away from the nest (2 km). Breeding success was significantly negatively associated with the frequency of very noisy activities in a territory during a breeding event, as the probability that nests were left unattended was higher in those territories. These activities should, therefore, be largely avoided around the nests in order to maximise bearded vulture productivity..’

32. The petitioner also submits that the breeding season of some of the birds living in that area is around now, and the disturbance caused by the helicopters would adversely impact the cycle. The behaviour of wildlife including the Elephants for whom this region constitutes a critical corridor connecting the two ranges, would also be greatly impacted by this unplanned proposal.



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33. We have also noticed media reports to the effect that the State administration, in 2018, had banned the use of Unmanned Aerial Vehicle (UAV) or Drones, being sensitive to requirements of such bio-diverse and vulnerable areas. All the aforesaid material has not really been controverted by the respondents.

34. While we are not possessed of the technical expertise to pass judgment upon the finer and detailed aspects of the biodiversity in the Nilgiris or of the deleterious effects of helicopters in that region, and neither is that the requirement in this case, we are of the categorical view that the respondents have been remiss in rushing to endorse and advertise the heli tourism project even prior to assessing all relevant material, and holding consultations with the Sanctuary wardens and officials of the Forest Department.

35. In arriving at the above conclusion we find no necessity for a counter as the records speak for themselves establishing the abject sidelining of the Forest Department, the wildlife wardens and other relevant persons who should have been involved in the decision making process for a project of this nature.

36. The injunction granted on 11.05.2023 with regard to the conduct of heli tourism for the period 13.05.2023 to 30.05.2023 is made absolute and effective for the entirety of the period. The need for a counter arises only had there been any



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material at all on the record to indicate involvement of the Forest Department. One expects that a proper assessment and feasibility study after consultation with domain experts would consume at least a few weeks for examination of all relevant and possible angles. This must be a pre-condition to consideration of proposals itself and not a post-facto event.

37. On the day we reserved orders in this matter, a copy of the coffee table book brought out by the Tourism, Culture and Religious Endowments Department of the State was given to us. This book showcases the myriad aspects of Tamil Nadu and refers specifically to Ooty. Under the head 'Stories of Alluring Wilderness', the curators have referred to the Bison, Nilgiri Tahr, Elephants, Leopard, the Lion Tailed Macaque, Tigers, Black Panther, Hornbills, as being resident to Nilgiris.

38. The fragile eco-system and vulnerability of this bio-diverse region cannot be the victim of crass commercialism, that too in such an unplanned and careless fashion. It was on 1st June 1823 that Stone house, now the Government Art College, was opened as the official residence and office of the then Ruler, John Sullivan, of 'Ottakamundu'. Ooty, as we know it, became the first hill station of the English Empire. This, then, is the 200th year of Ooty.



39. Prophetically, the Coffee Table book is entitled 'Tamil Nadu – Where Stories Never End'. This Writ Petition is, in light of the discussion as above, allowed with the fond and fervent hope that such projects be implemented cautiously and with sensitivity to all stake holders, particularly the environment and wildlife, such that the ethereal and timeless beauty of the Nilgiris, does continue endlessly. No costs. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (M.N.K.,J)
17.05.2023

Index:Yes/No
Speaking/non-speaking order
Neutral Citation:Yes/No

sl

To

1. The Addl. Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Principal Secretary to Government & Chairman of
Tamil Nadu Tourism Development Corporation,
Tourism, Culture & Religious Endowment Department,
Secretariat, Fort St.George,
Chennai – 600 009.
3. Additional Chief Secretary,
Environment, Forest & Climate Change Department,
Secretariat, Fort St.George,
Chennai – 600 009.



W.P.No.15200 (



4. The District Collector,
Nilgiris District,
Collectorate, Ooty.

5. The District Forest Officer,
Nilgiris District,
Collectorate, Ooty.



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W.P.No.15200 of 2023



Dr.ANITA SUMANTH,J
AND
M.NIRMAL KUMAR,J.

sl

W.P.No.15200 of 2023
and WMP.No.14710 of 2023

17.05.2023