

## ECO-TOURISM VIS-A-VIS NATURE CONSERVATION: A STORY OF DEBATED WIN-WIN ENVIRONMENTAL AND SOCIAL GOVERNANCE UNDER THE AUSPICES OF THE NATIONAL GREEN TRIBUNAL (NGT) IN MIZORAM, INDIA

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### ABSTRACT

Article 21 of the Indian Constitution gives right to all citizens of the country to have clean and healthy environment and it also enshrines that it is the duty of the state to protect and improve the environment and to safeguard the forests and wildlife of the country and bestow upon the citizens the duty to protect the environment through its dictates under the Directive Principles of State Policy. With the passage of the National Green Tribunal Act, 2010, NGT has become an important instrument in environmental jurisprudence. Chalfilhl tlang controversy over the alleged construction under the eco-tourism initiative of the Government of Mizoram has been under the scanner due to the lack of formal approval obtained under the Forest Conservation Act, 1980. This has catapulted intense controversies and setbacks, both for the state government and its machineries including the narratives created by the NGO Co-ordination committee. Centre for Environment Protection (CEP), with their environmental stewardship campaign has challenged the move of the state and now the case has been pending in the Hon'ble Supreme Court and NGT.

**Keywords:** NGT, Mizoram, Chalfilhl tlang, NGO Co-Ordination Committee, Eco-Tourism

### INTRODUCTION

The Constitution of India enshrines that it is the duty of the state to protect and improve the environment and to safeguard the forests and wildlife of the country and bestow upon the citizens the duty to protect the environment through its dictates under the Directive Principles of State Policy. However, environmental issues have not been given enough weight in the effort to address basic problems such as poverty, illiteracy, and unemployment, as well as to provide basic health care. In the race to 'develop', environmental activities have taken a backseat which has resulted in widespread ecological damages, in the form of pollution and deforestation and degradation, loss of wildlife habitats and associated ecosystems etc.

Taking the milieu of Article 21 of the Indian Constitution which gives right to all citizens of the country to have clean and healthy environment, National Green Tribunal (hereinafter referred to as NGT) was constituted in 2010 through the passage of the NGT Act, 2010 by the Central government. NGT thus act as a special fast-track court and has become a formidable force in ensuring environmental and ecological safeguards and jurisprudence. Furthermore, the NGT adds a twist by imposing a severe penalty for disobeying the tribunal's orders. As a result of the tribunal's judgments being implemented, such problems are dealt with more effectively than they were in prior civil courts that dealt with environmental issues.

Chalfilhl tlang (hill) is located in Khanpui village, Saitual district of Mizoram. Khanpui village has approximately 400 households with an approximate population of 1499 people. An interesting fact of this hill is that no trees are seen in the top of the hill while there are several tall and large trees in its surroundings. Historically, Khanpui village chief usually had a control over this area but after the chieftainship was withdrawn in Mizoram, this area was declared a Forest Reserve in 1986 and hence the control and management comes under the jurisdiction of Mizoram Forest Department, specifically under Darlawn Forest Division. Chalfilhl tlang is the 7<sup>th</sup> highest mountain in Mizoram attaining a height of 1865m above msl.

This mountain provides water source to approximately 14 villages and this area houses diverse wild flora and fauna, including endangered and vulnerable biodiversity like Red Serow (the state animal of Mizoram) etc.

#### **STATEMENT OF THE PROBLEM**

The problem started in the year 2006 when Government of Mizoram received INR 499 lakhs from Ministry of Tourism, Government of India for the construction of Tourist Lodge as part of the ecotourism initiative of the Mizoram government. However, this initiative was without getting any prior concurrence for forest/environmental clearance for the same. INR 399 lakhs was released for the 1st installment and transferred to PWD Engineer in Chief on 13. 8. 2007. The 2nd installment of INR 100 lakhs was later released on 26.2.2011 to Finance Department and later transferred to PWD Engineer in Chief account again respectively. Thus, the entire amount transferred to PWD is INR 499 lakhs. With all these influx of installment money, Mizoram government had proceeded with the necessary constructions.

To protect this area from blatant violations committed by the state government and to protect the area from deforestation and destruction, the Centre for Environment Protection (CEP), Mizoram had filed an Original application (OA) with the NGT bench, Kolkata in 2017 (OA No.145/2017/EZ, CEP vs Union of India & Ors).

#### **GENESIS OF THE PROBLEM AND THE STORY OF CHALFILH**

Chalfilh Tlang is located in Khanpui Village, which is located in Darlawn sub-division of Saitual District in Mizoram, India. It is situated 29 kilometers away from Aizawl, which is the capital of Mizoram. Khanpui has a total population of 1,499 peoples, out of which 792 are male and female's number 707. Literacy rate of Khanpui village is 81.05%. There are about 400 houses in Khanpui village. Chalfilh tlang is surrounded by Pehlawn, Hmunghak, Khawruhlian, Khanpui, Leilak, Buhban, and Lungpher villages.

Chalfilh Tlang, before Mizoram sought independence in the year 1966, was part of Lailak Village and was under the province of a Sailo chief Lalkungi Sailo. During this time Mizoram was under the British rule and on 17 September, 1962, the Lushai Hills Superintendent gave this land to the Sailo chiefs to keep it under their care. After the death of Lalkungi Sailo, her son, Lalthangkhuma Sailo continued to take care of the lands that belonged to his mother after the power and chieftainship was passed on to him. After the reign of the Sailo chiefs ended Village Councils were set up and the Village Council declared the lands that had once belonged to the Sailo chiefs as now owned by the Village Council. During the time when Chalfilh tlang was under the care of the Sailo chiefs and the Village Council, Chalfilh tlang was a thick forest rich in biodiversity. The British rulers often took the strongest ropes from Chalfilh tlang for use to make rope bridges in different parts of Mizoram.

In the year 1966, Mizoram fought for its independence. The Mizo National Front (MNF) and the Indian Government were at war with one another and thus started the insurgency, and Mizoram became a disturbed area. The caretakers of Chalfilh tlang, the people of Lailak village and the chiefs were stripped of their belongings as everything they owned, their lands and their homes were all burned down to ashes. The people and the Sailo chiefs then built up a new village near what was once Lailak village and named it Khawruhlian which slowly made progress and a Village Council was also set up. Those who knew how to speak Hindi would leave to do business with the Indian Army and as a reward they would be given jobs. In the year 1968, the people stayed together and settled down in the village of Khawruhlian and had their own Village Council.

The fact that the Forest Department counts Chalfilh tlang as a Reserve Forest has been debated as the Sailo chiefs did not put it in the hands of the Forest Department but in the hands of the Village Council, and the Village Council did not put it in the hands of the Forest Department. Chalfilh tlang is therefore property of the people of Khawruhlian, and in the year 1984, PC Government President and Chief Minister Brig. T. Sailo wrote a letter to the Home Minister appealing to the court to give Chalfilh tlang back to the hands of the Khawruhlian Village Council. In the year 1984, it was accepted as part of both Khanpui village and Lailak village, and these two villages did not give Chalfilh tlang to be in the hands of the Forest Department. They still possess the letter of Chief Lalthangkhuma Sailo, and to this day the people believe they have been coaxed into accepting this area as a reserve forests, for which they feel they have not been consulted. It is however established in record that Chalfilh tlang has been declared as a Reserve Forest on 13 July, 1976.

***Stakeholders in the entire narrative and their claims:***

1. Government of Mizoram represented by *Tourism Department*, PWD as Implementors of the project
2. Government of Mizoram represented by *Forest Department* whose reserve forest was being used for non-forestry purpose
3. NGO Co-Ordination Committee represented by the NGO leaders from the 2 villages, i.e., Lailak and Khanpui Villages who wanted the project to come up in their area for various socio-economic development
4. Centre for Environment Protection (CEP), Mizoram who spearheaded the fight to retain this area as reserve forest and filed OA before the Hon'ble NGT.

***Description of the nexus between the Implementers of the project and the dissenters:***

On 5 August, 2014, the then Tourism Minister Pu John Rotluangliana along with government officials visited the tourist project at Chalfilh tlang peak where a tourist lodge was being built at Vanzauphul. The Minister was accompanied by the Parliamentary Secretary T.T. Zothansanga, the current head of Chalfilh Constituency Dr. Ngurdingliana. MLA, KVI Board Chairman K. Lianzuala, Principal Accountant General L. Tochwawng, Deputy Accountant General Hautinlal Suantak Vaiphei and Vabeiha Hlychho, Director of the Tourism Department.

The Minister was quoted as saying that despite its location being far inside, the roads that lead to Chalfilh tlang are getting better with progress; hence it is now easier for tourists, visitors, and Adventure Clubs to visit the place. In order to become a more attractive tourist destination he said that deforestation of the area needs to be quickly stopped and it is important to make sure the forests of Chalfilh are preserved enough to become a tourist attraction. There are a lot of youth who are becoming more interested in Adventure, and it will be worth it for them to visit Chalfilh tlang. He had also mentioned that the state government is making earnest efforts and is working hard to provide sufficient water and electricity supply to the tourist resort being built in Vanzau.

The Tourism Department was constructing a tourist resort with a capacity of approximately 20 people at Vanzauphul in Chalfilh tlang along with enough space for several tents. A watch tower was also being constructed at the highest peak where one can look over the mountains. During days when the weather is clear and sunny, Chalfilh tlang offers a panoramic view of Mizoram and it is said by some visitors and locals that Manipur state is also sometimes visible. Aside from all these projects being taken up, plans were also being made to create a trekking route not far from the resort, from Filhte Tlang through Tualbung towards Tam Dil.

Plans were also being made to erect lodges, base camps in Vanzau Phul, Chalfilh tlang and Tam Dil.

Government of Mizoram had already lodged a Miscellaneous Appeal on December 16, 2021 to the NGT Eastern Zone Bench, Kolkata, to cancel its order to demolition of all the buildings in Chalfilh tlang specifically of Vanzau village, a hearing had also been held for this petition on 7 January 2022.

For the planning and construction of Tourist Destination projects in Chalfilh tlang to attract visitors, the Mizoram government did not obtain prior forest clearance. Miscellaneous Appeal (M.A.) was lodged by the Centre for Environment Protection on 25 August, 2021 in NGT. The NGT put out an order on 17 November, 2021, to stop all the construction work and take down everything within a month. Accordingly, the Mizoram government was ordered to demolish all building works at Chalfilh within one month and to submit reports with photo evidence on 7 January, 2022. On 29 November, 2021, the then Forest Minister Pu TJ Lalnuntluanga, in the then ruling party's (MNF Party) gathering at Mizo Hnam Run remarked that in compliance to the wishes of the Chief Minister, NGT Order to demolish Chalfilh tlang tourist resort is to be followed but with a request to NGT to change parts of the order where Mizoram government is being ordered to demolish the buildings.

It was remarked in the order dated 30<sup>th</sup> October, 2019, in the NGT case of Centre for Environment Protection Vs Union of India & Others that the constructions in the proposed Chalfilh Tourism Destination, Mizoram was in violation of Forest Conservation Act, 1980 and without the necessary environmental clearances including the Environment Impact Assessment (EIA) Notification, 2006. It was informed to the court that these constructions had started based on the verbal instructions given by the then Hon'ble CM of Mizoram.

Of the two phases constituting projects estimated at INR 499 lakhs and INR 500 lakhs, the Phase II was discontinued due to shortage of funds in the year 2015-16. The affidavit has been sworn by the Additional Resident Commissioner, Kolkata but not supported by any documents. The counsel for the Applicant informed the Tribunal that the affidavit does not depict the correct state of affairs and as per her information the entire project has been completed. Taking into consideration the above facts, the NGT directed the Forest Department and the state of Mizoram to file fresh affidavits on the matter especially with respect to the clearances under Forest Act and EIA.

The NGT vide its order, January 5, 2021, had directed the Government of Mizoram to furnish particulars of all the officers of the PWD, Mizoram who were responsible for implementation and construction of the project road in respect of the project. The Tribunal in its order, November 17, 2021, had noted that in the affidavit filed by the state respondents, it was shown that large scale construction for Phase-I had been completed, whereas only part of the construction with regard to Phase-II had been made and thereafter the project was abandoned since the Ministry of Tourism did not release the complete funds. The NGT, November 17, 2021, mentioned that the counsel for the state of Mizoram had informed the court that till date no application for grant of Phase-I and Phase-II clearances have been filed by Mizoram under FC Act nor was any environment clearance sought. "That being the factual position, we find that the entire construction carried out either in Phase-I and Phase-II of Chalfilh Tourist Project is absolutely illegal," the order had said.

The NGT, in its order dated, January 19, 2022, directed the Deputy Director General of Forests, Integrated Regional Office, Shillong, to conduct enquiry and expeditiously pass appropriate orders with respect to nine former officials of the PWD and the tourism department, Mizoram in accordance with law.

Khanpui village community have a split opinion; where some section wants the hill to be reserve area and be protected, the other section wants it to be a tourist spot and to be exploited for commercial gains. This case also highlighted how private people hold their private lands within reserved forests and how Mizoram Government breach the law it had created for Environmental Protection.

Within any area declared as Reserve Forest by the Government, it is mandatory for anybody, irrespective of Private or Government, to obtain the mandatory clearances from the concerned department in the Government under which the area falls for carrying out land use changes (construction activities here). Failing to obtain such clearance prior to construction leads to breach of existing law which is a punishable offense. The NGT had found the accusations to be true which obligated the Government of Mizoram to suspend all its on-going activities and also to destroy all the completed buildings and make efforts to restore the area back to its original state. The NGT order heated up the Government and the community close to Chalfilh tlang particularly of Vanzau village which had led to evolution of several arguments in favour as well as against of the stand of the Government vice-a versa the NGT order. This was also reflected in the way they had perceived their forefathers land has been treated by the Government which included the arguments and opinions laid down from the Government side, social activists and legal personnel or experts all of whose arguments are being presented in this paper.

The protected forest area in Mizoram amounts to only 5.02% of the total geographical extent of the State. The then Forest Minister, Pu T.J. Lalnuntluanga had a talk during the MNF party meeting on 29<sup>th</sup> November, 2021 about how he had already notified the tourism department about the notice and order that the National Green Tribunal (NGT) had issued about taking down the construction of the Chalfilh Tourist Resort. He had also spoken about how they had a discussion with the Standing Counsel and the leaders of the Forest Ministry in Delhi. He had also spoken on how he would make an appeal to the NGT about changing the previous order to take down the construction of the resort so that they would not have to disobey or go against the order.

The actions of the Mizoram Government regarding the Chalfilh case (OA No.145/2017/EZ, CEP vs. Union of India & Ors) is something worth crying over for the lovers and patriots of the state. The Mizoram Government made an appeal (M.A. No.13/2021/EZ) against the NGT's orders over the Forest Conservation Act, 1980 regarding taking down the construction of roads in Vanzau, Chalfilh tlang. This Miscellaneous Application (MA) was filed by the Forest Department of Mizoram. This MA is something that should have been filed by the law breakers (Tourism Department and PWD) but it was filed by the Forest Department which is entirely baffling. When the same department's reserved forests were encroached for illegal constructions, instead of running after these encroachers and making sure their area stands protected, instead they seemed to encourage such illegal acts by not taking the required legal and administrative stands. When the government had made an appeal against the NGT order, they had not only had the help of government lawyers but also sought the help of Saurabh Kripal who raked in over INR 1.5 lakh per hour and was a Sr. Advocate. However, this did not ensure them the victory they hoped for.

After the Forest Department, Govt of Mizoram lost in the M.A. No.13/2021/EZ, they further made an appeal to the Supreme Court (C.A. No.3758-3759/2022). At this time they had hired the help of 6 lawyers- Mr. C.U. Singh, Sr. Adv. Mr. Siddhesh K., Adv. Ms. Anu Upadhyay, Adv., Ms. U. Shanddilya, Adv., Mr. Akash Singh, Adv., and Adv., Mr. Nirnimesh Dube, AOR (Advocate on Record). One can easily calculate and discern just how much money they must have used for this purpose. NGO Coordination Committees of Khanpui and Lailak



village are also suing Government of Mizoram about the Notification regarding Chalfilh Reserved Forest to the Aizawl Bench, Guwahati High Court (PIL/6/2022).

The Mizoram government was still busy looking for excuses and grounds to make their stand. The Tourism Department wrote a letter (vide No. C. 18018/12/2020-TOUR) to the Principal Chief Conservator of Forests (PCCF), Forest Department, Govt. of Mizoram on 3 May, 2021 about how they were ready to hand over the infrastructures of the Tourist Destination of Chalfilh Phase I & II. On the same day, Forest Department furnished their reply (vide No. B. 13028/19/2021-FC/PCCF) and detailed how they were ready and accepted the responsibility to be the caretakers of the infrastructure. This is just a tool and an attempt to legitimize their actions which were illegal. The plans to demolish the Tourist Destination Phase I & II was also seemingly just attempts to make more money. An astounding amount of INR 209 lakhs was kept as the budget for this demolition. On 2 May, 2022, the Finance Department made an order (vide No. G. 20016/1/2022-FBT) for the year 2022-23 regarding the demolition of Chalfilh Tourist Destination infrastructures handing over INR 100 lakhs to the Tourism Department.

In a parallel development, a proposal has also been uploaded in PARIVESH 1.0 portal (FP/MZ/Others/154677/2022) of Ministry of Environment, Forests and Climate Change for getting approval of the proposal under FC Act. It is currently 'De-Listed' (since 23/07/2022) as the queries raised have not yet been answered by the user agency (i.e., Tourism department of the Government of Mizoram).

#### **WAY FORWARD OF THE CASE**

1. Regardless, Chalfilh tlang is in dire need of a savior. This important piece of land is being abused enough by greedy individuals who desire to make money through it. In the year 1975 the Forest Department gave out permits to cut down trees for wood, a vast area of land was cut down for this, and later on as it was said to have become denser once again, the Vanaspati-Van Society used up thousands of acres of land for planting medicinal plants, they were unsuccessful with it which left a once thick forest into a barren land.
2. Chalfilh tlang contains trees and bamboos, with all kinds of wildlife residing in it, if only they are able to see its importance, it would be an extremely important and valuable thing if the Government of Mizoram should be brave enough to plan an 'anti-encroachment drive'.
3. If forest clearance violation is established by the Integrated Regional Office and by MoEF&CC, state will have to bring in all resources to establish that it was done without any malafide intent and only given a go ahead as the legal status of the land in question was not established to be forest during that time.
4. The local people of the areas where the ecotourism project is proposed should participate and be in liaison with the state government to ensure that the collective views of the village is also recorded. This will also bring in accountability and ensure that they co-operate with the decisions made by the state/centre, including judiciary on the matter.
5. In the State Assembly held on 4 March, 2024, it was specifically informed by the Tourism department Minister of the state of Mizoram that there is currently no proposal from state Government for taking up maintenance activities in the already constructed portions of the area.

#### **CONCLUSION**

Forest Conservation Act, 1980, with its various amendments over the years has been instrumental in protecting forests from unwanted destruction as forest diversion for any non-

forest uses requires prior permission from central government. As forest falls under concurrent list, the involvement of both states and centre in the matter warrants attention.

In this unique case of centre vs. state vs. local people on the matter of use of forest land, 3 important precedents have arisen- first, on the sanctity of FCA applicability and the role of centre in the matter; secondly, on the non-realisation by the state on the nature of the land including its legal status and the consequent non determination of approved tourism projects in the area; and lastly, the role and misguided attempts of the local people in establishing ownership of the area and the consequent legal and technical challenges in going forward with the ecotourism venture, which in itself is a welfare measure supposedly built on sustainability outcomes.

In the end, what has transcribed in the case has brought in the larger dimension of the necessity of correctly surveying and demarcation of protected forests vs deemed forests of village councils, clear cut understanding of applicability and scope of FCA in these areas (and other such village commons in the other parts of the state) and how these ventures can be initiated through following proper legal and technical sanctions for improvement of local economies. It is also important to carry out unbiased and proper valuation of local resources, their priorities and with their free, prior informed consents, establish local identities that in turn protect forests around them.

Long term protection of forests and wildlife resources in the state, as well as in the country, can only be sustainable when local people are actively involved in the decision making processes and when their ideas and local technologies are appreciated. However, they should also be made known of the state and centre laws and principles so that their decisions on the use of the resources around them, including forests, is guided on sound principles of sustainability, and free from overuse and exploitation. Local people also need to be made aware of their rights and responsibilities on these matters.

Equally important is the need for co-ordinated and convergence of various state machineries, especially of the tourism and forest departments in this case. The priorities set forth by tourism industry should be in line with the broader principles enshrined for protection of forests and the natural wealth of the country. Ecotourism ventures such as this case requires complete environmental and social audits and impact assessments, including long term sustainability to protect and preserve local resources from overexploitation in the long run. The state government also should analyse such projects from the initial discussion phase itself and bring in all line departments so that concerted efforts can be envisaged and roles and responsibilities of all concerned wings are attended to.

In the end, for Chalfil project to commence, state needs to respond and even obtain post facto forest clearance (if possible) and then only proceed with the case. Local identities and requirements and their consents may establish more ground for the case. However, violation of FC Act will be detrimental for the state as a whole.

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