

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 420 of 2013(SZ)

IN THE MATTER OF:

Mr. V. Magesh
S/o. N. Vedachalam
No.387-A, Thirumalai Nagar
Hastinapuram
Chennai-600 064

सत्यमेव जयते

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Applicant(s)

AND

1. The Union of India
Rep. by its Secretary
Ministry of Environment and Forests
CGO Complex
New Delhi
2. The State of Andhra Pradesh
Rep. by its Principal Secretary
Secretariat
Hyderabad.
3. The State of Andhra Pradesh
Rep. by its Secretary
EFS & T Department
Andhra Pradesh Secretariat
Hyderabad
4. The Directorate General of Foreign Trade
Udyog Bhawan, H-Wing
Gate No.02
Maulana Azad Road
New Delhi-110 011

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Respondent(s)

**Counsel appearing for the Applicant:
Mr. A. Yogeshwaran
Ms. Neha Mirim Kurien**

**Counsel appearing for the Respondents:
Mrs. C. Sangamithirai for R-1
Mr. T. Saikrishnan for R-2 and R-3
Mr. K. Ramana Moorthy for R-4**

ORDER

PRESENT:

HON'BLE SHRI JUSTICE M. CHOCKALINGAM, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Dated 19th November, 2015

Whether the Judgement is allowed to be published on the Internet – Yes/No
Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

Heard the counsel for the applicant and also the respondents. The following reliefs are sought for by the applicant :

- 1. Directing the 1st respondent to include Red Sanders (*Pterocarpus Santalinus*) in Schedule VI of the Wildlife (Protection) Act, 1972 in accordance with the order of the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & others [2012 (4) SCC 362].*
- 2. Directing the respondents not to permit the sale of export of Red Sanders until the species recovers from the brink of extinction.*
- 3. Directing the respondents to evolve a comprehensive scheme to protect Red Sanders and to prevent felling and smuggling.*

4. *Directing the respondents to conduct an empirical study on the status of Red Sander trees in the country.*

5. *Directing the respondents not to permit the commercial sale of Red Sander Wood until the species recovers and ceases to be endangered.*

2. The applicant is aggrieved by the action of the 2nd respondent, the State of Andhra Pradesh in calling for global tenders for sale of Red Sanders, which according to the applicant, is an endangered species and the 1st respondent to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 in accordance with the order of the Hon'ble Supreme Court in the case of ***T.N. Godavarman Thirumulpad Vs. Union of India & others [2012 (4) SCC 362]***.

3. At the outset, the counsel for the respondents questioned the maintainability of the application before the Tribunal on the grounds that the relief sought for, namely, a direction to the 1st respondent to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 in accordance with the order of the Hon'ble Supreme Court in ***T.N. Godavarman Thirumulpad Vs. Union of India & others [2012 (4) SCC 362]*** does not fall within the jurisdiction of the Tribunal as envisaged under the National Green Tribunal Act, 2010. Contrarily, the learned counsel for the applicant, pointing to Paragraph 26 of the said Judgment of the Hon'ble Apex Court, would submit that there is a specific direction given to the 1st respondent to take appropriate steps under Section 61 of the Act to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 as requested by the State of Andhra Pradesh within a period of 6 months from the date of the judgement.

4. After hearing the submissions made by the counsel for both the sides, the Tribunal is of the considered view that the application has got to be dismissed as not maintainable. As it could be seen from the relief clause, a specific direction is sought for against the 1st respondent to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 in accordance with the order of the Hon'ble Apex Court. Hence, it is more apt and appropriate to reproduce the Paragraph 26 of the above said Judgement, where a specific direction was given to the 1st respondent to include Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 as recommended by the State of Andhra Pradesh.

“26. CITES as well as IUCN has acknowledged that Red Sander is an endangered species. It is settled law that the provisions of the Treaties/conventions which are not contrary to Municipal laws, be deemed to have been incorporated in the domestic law. Ref. Vellore Citizens (supra), Jolly George Vs. Bank of Cochin (1980) 2 SCC 360, Gramophone Company of India vs. Birendra Baldev Pandey (1984) 2 SCC 534. Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to the Central Government to take appropriate steps under Section 61 of the Act to include Red Sanders in Schedule VI of the Act as requested by the State of A.P. within a period of six months from the date of this Judgement. We are giving this direction, since, it is reported that nowhere in the world, this species is seen, except in India and we owe an obligation to world, to safeguard this endangered species, for posterity. Power is also vested with the Central Government to delete from the Schedule if the situation improves, and a species is later found to be not endangered”.

5. As rightly pointed out by the learned counsel for the 1st respondent, Wildlife (Protection) Act, 1972 is not one of the seven enactments enlisted in the first schedule of the National Green Tribunal Act, 2010. Needless to say to exercise its jurisdiction by the Tribunal under the NGT Act, the applicant must be able to show not only the substantial question connected to and concerned with environment and ecology but must be able to show that the said question falls in exercise of the provisions of any one of the seven enactments listed in the first schedule of the National Green Tribunal Act, 2010. The Wildlife (Protection) Act, 1972 is not one of the enactments enlisted therein. Thus a direction sought for against the 1st respondent to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 would fall outside the ambit and powers of the jurisdiction of the Tribunal. Hence on that ground, the application cannot be maintained.

6. It is true that the Hon'ble Apex Court has issued a direction to the 1st respondent to take steps to include Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 as it could be seen in Paragraph 26 of the above said Judgement. The Applicant has sought for a direction for inclusion of the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 in accordance with the order of the Hon'ble Apex Court. Under such circumstances, it cannot be stated that the applicant is remediless. If the direction of the Hon'ble Apex Court is not complied with by the respondents it is always open to the applicant to take necessary steps there for in accordance with law but not before the Tribunal by way of filing an application like this.

7. Hence, the Tribunal is satisfied with the objections raised by the respondents that the application is not maintainable and the objection got to be sustained. Accordingly, the application is dismissed.

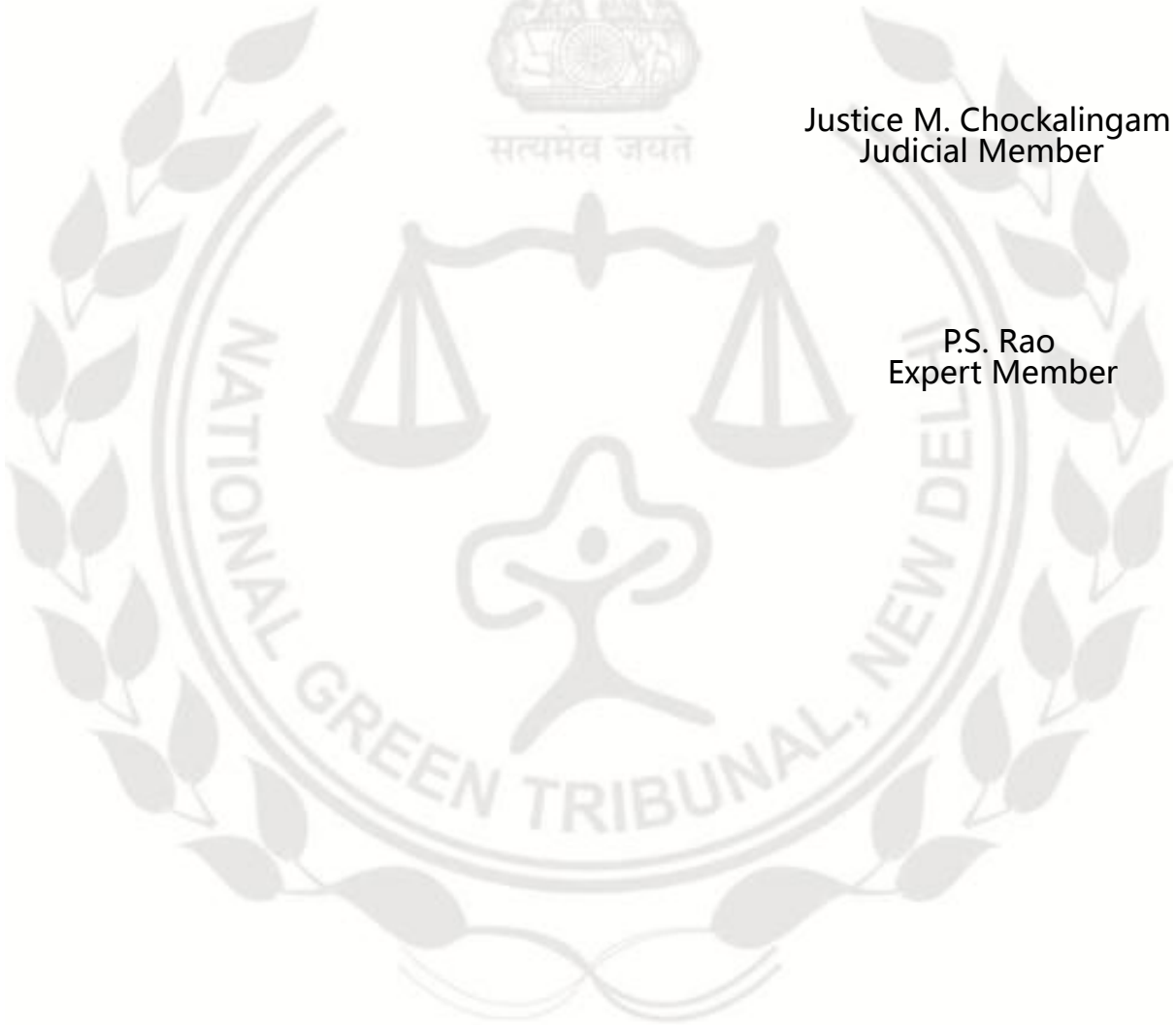
No cost.



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Justice M. Chockalingam
Judicial Member

P.S. Rao
Expert Member



NGT