

Smuggling problem----- brought on track!

..... and the trail of destruction left in its wake brought home forcefully the fact that India's forest were not exhaustible. Railway requirement 'the first and by far the most formidable' of the forces thinning Indian forests. (Cleghorn 1860).

One of the most vivid descriptions of the transformation in the ecological landscape brought by the railways is found in Cleghorn's work, *The Forests and Gardens of South India*. The Melghat and North Arcot hills, formerly crowned with timber, were 'now to a considerable degree laid bare' by the insatiable demand of the railways. All around the tracks, where once there was forest, there now lay wide swathes of cleared land stripped bare of cover, and consequently of protection to wild animals. (Gadgil, M. and R. Guha 1992)

This observation would have fitted well if the past history of conservation effort in Saranda forest were followed but for a very bold legal measure. This case would go down the tunnel of legal history, as one of the rare cases where the Indian Railway has been penalized and train bogey confiscated, for the fault of railway and their operating staff for smuggling the illegal forest produce.

Development and ecology can never exist, simultaneously as is best exemplified in the southwest corner of Jharkhand. This remote corner of Jharkhand adjoins the remote north west corner of Orissa and here lies the best Sal forest of Singhbhum district of

Jharkhand. Far from the civilization, with hardly any human pressure, this tract had the pristine forest cover, till 50 years ago. But alas, with the advent of industrialization, particularly coming of Tata steel plant in the eastern part of the district and after the independence, the coming up of steel plant at Rourkela in the west, doomed this forest tract. Incidentally these forests also harboured the largest concentration of elephants of the Jharkhand state, besides other wildlife. These two big industrial nuclei of development at both ends brought ever-increasing hunger for wood. With rail and road links improving, the inaccessible forests started opening up, more for illegal pilferage than for the legal harvesting. The network of roads in inaccessible forest tract has torn down their sanctity. The skeletal forest protection machinery with its limited resources and knee jerk reaction policies could hardly contain this systematic devastation process. This tract of forest in Singhbhum, namely Saranda, Kolhan and Porahat paid the price of “development” and ever-increasing cases of human wild animal conflict are just an indicator to it.

If the paths or roads could be used for illegal transport of forest products, how can railways remain untouched by this malady. In fact in India,(particularly after independence) it is presumed to be a birth right of an Indian to travel ticketless and misuse the railway property. The problem of transporting illegal wood in passenger trains is a national phenomenon for the last many decades. But in recent years, under the patronage of some misguided political leaders, who encouraged indiscriminate felling of forest in the name of “Jharkhand agitation “ (but basically for encouraging encroachment/cultivation to

their constituencies), the problem of illegal transportation of wood by passenger and goods train increased alarmingly.

Initially overlooked by forest staff, as the problem was confined to fuel wood but later it took worse shape with poles, timbers, sleepers started smuggling out not only in passenger trains but even in goods trains. The ingenious ways of hiding timber in the toilets, sides, undersides of railway carriage, even concealing inside the loaded wagon were devised by the smugglers, for its shipment to Industrial township of Rourkela and Tatanagar. But the worst “actors” of the story were unscrupulous railway staff and lower functionary of Railway Protection Force (RPF), Govt. Railway Police (GRP), who colluded in this nefarious game plan and abetted this destruction of forests for the “Development”?

This unholy alliance of these “saviors” of national property for the “ulterior motives’ and helplessness of forest staff (sometime, they also colluded) played havoc with the pristine forests; the prime habitat for elephants, tigers and other creatures. The decimating fringes of forests became obvious to everybody and the forest department could not afford to ignore this systematic devastation and loot.

When the author took over the charge of Saranda Forest division in 2001, a casual flip of satellite imageries of forest pertaining to previous years, showed the gnawing of edges of forests as if eaten by termites. These damages were more pronounced on the forests falling along the railway line connecting Tatanagar to Rourkela.

The protection staff, when questioned replied that the earlier efforts to contain this menace, came to naught due to non cooperation of other agencies. In fact, this was the classic example of "Bureaucracy" -where so many agencies of Govt. had the common objective of protecting the Govt. property, but all of them working independently (without any coordination) and most of the time against the interest of the Govt. No amount of request to make coordinated effort of patrolling, raiding on Railway station, trains (both goods and passenger) could yield favorable result. In fact, these agencies had invisible but more specific border lines drawn for their territory and any intrusion was not tolerated kindly. Railway station and platform by GRP, moving trains by RPF ,approach to Railway stations by state police , entry to platform , bogey's/wagons by rail ticket checking staffs were the different domain. It seems that this concept of territoriality was more created to facilitate the vested interest of allowing, storing, loading and unloading of illegal forest produce by the different agencies and in turn they were obliged in monetary form by the organized gang of smugglers. Further enquiry also revealed that in the past some enthusiastic efforts of a range officer to conduct raid on Manoharpur railway station led to altercation with GRP and landing him in jail on the charges of trespassing and obstructing the railway police to perform their official duties. This particular incident became the biggest stumbling block for starting any effective operation to control the smuggling activities by railways.

Whenever ,the matter was persuaded with the senior officer of railways, evoked non cooperation or their indifference. Many of the occasion, railway official would suggest to Forest Deptt. (in friendly

manner) or rather dictate (when not friendly...) to keep forest produce off the platform by checking the problem of cutting of trees etc. in jungle itself. It was very difficult to make them understand that with very meager staff, how difficult it is to control the felling activities in jungle itself and that's why there is a provision of control and checking the forest produce in the transit. This provision was there in all the earlier version of Indian Forest Act also. But by no amount of imagination the senior railway official could believe that the foresters can not stop all the felling in the forest itself and hence there is a necessity to check the points of exit, loading, unloading of forest produce.

But with constant motivation, request and persuasion - sometimes foresters could conduct occasional raids on railway platform with the permission of stationmaster. This had some check on illegal transport, but main activities went on as greedy Guards, Drivers of the train could stop the train and allow the loading/unloading of forest produce in inaccessible, remote points in jungle. Similarly GRP, and RPF would allow free passage to these smugglers by charging "protection money" from them. The unfortunate part of the story was that the general public and media remained the mute spectators, who thought it is the general practice and made occasional verbal comments on this state of affairs.

When repeated requests to railway officials and Railway police officials to stop this smuggling by trains failed, It was planned by Forest Deptt. ,one day to conduct a surprise raid on Manoharpur railway station and this time not only to seize forest produce or nab the offender but to seize the railways also. The raiding party boarded

the train at Chakradharpur and as planned the train was raided at Manoharpur railway station with prior request to the station master, forest produce was seized but at the same time 3 offenders were nabbed. When seizure-report was being prepared at the railway station, the bogey number of Tatanagar -Nagpur passenger train was also mentioned. The forest staff was perplexed and not prepared to mention it in seizure list as it was beyond their imagination to seize the train. Yet sheer persuasion or command of the DFO, prevailed and the seizure list included “ the Bogey of Tatanagar- Nagpur passenger”, with drivers and guards of the trains as co-accused , based on the statements of other arrested accused,. The arrested accused also stated that they were in continuous habit of smuggling forest produce in connivance with drivers and guards of the railway. Since the seriousness of this organized crime was not taken cognizance by railways, who played no proactive role in stopping this nefarious activity. Since the railways who were the owner of the all the rolling stock and were requested, warned umpteen times earlier to not to allow their passenger trains/good trains to facilitate the smuggling of forest produce. Hence, this was sufficient to presume that railway had not taken enough precaution to prevent their property in omission and commission of smuggling activities. This point was well thought of for all its possible legal repercussions and ultimately it was decided that the railways as owner were not very cautious or rather were negligent in controlling their staff who despite several prior warnings allowed the rolling stock in smuggling activities.

In fact this was the most crucial logic, while fixing such responsibility of negligence to railways; which eventually made the railways liable for confiscation.

When the decision for confiscation of railway bogey was initiated; it was scoffed even within the foresters' community. The foresters of all the hue with varying seniority, even retired ones were at their wit's end to digest the concept of "confiscation of railways".

The real crisis precipitated, when the notice by the "authorised officers" were served to railway authorities, right from "Railway Board" to "station master", to explain why the seized bogey of train should not be confiscated. This notice must have created some furore in railway officialdom, who started contracting the senior forest officials for the misdemeanor shown by the local foresters. Soon this issue became hot topic for discussion in senior bureaucracy, legal fraternity -as for them it was the case of height of impudence Forest dept. But the legal process had started and railways moved to the High Court, Jharkhand, by filling writ petitions No. 4162/2001 to 4166/2001 for quashing the whole confiscation case started by the Forest dept.

As usually the normal practice is, forest and environment are such a useless issues for Govt. pleaders, who not even bothered to inform Forest deptt. about the filing of above case in High court and the lawyers of railways got the order for stay of this confiscation case, exparte. Not only that they could get the order of release of trains immediately. It is most unfortunate that the picture painted by lawyers of the railway before the court was that the train seized by the high handed foresters was causing great difficulty to general public. This became possible as forest Dept. was not given any

opportunity to explain their stand. This order of the High court was served by district collector to implement it immediately and asked for personal appearance the D.F.O. and other senior functionaries of Government for explaining the so called high handed, mischievous action of Forest dept. or vexatious /totally unwarranted seizure?

It would be interesting to clarify that the bogey in question was seized, but was immediately handed over to railway station master for further interim possession and with freedom to operate it, and hence suffering of travelling public did not arise at all. This step was carefully taken to avoid any public hue and cry of “ high handedness” and also with the simple reason that Forest Dept. had no stockyard to store such trains in their custody. But all these points were suppressed by railways before High Court ,to get its sympathetic order.

The “quarterfinal” match going in favour of railways; the “seized” railway bogeys were again released in order to comply the courts order.

Now the real heat was on foresters, due to this order of court; as even senior foresters and bureaucrats believed that it was a case of “high handedness” of field foresters who were making mockery of “legal provisions”. The forest department had to file show cause and senior most functionary of department; including departmental secretary and Chief Secretary of the state had also to file a show cause. Hence all the points raised by railways were carefully replied with strictest legal scrutiny. The provisions of seizure of railways, whether the railway property could be confiscated etc. were carefully dealt with in the light of involvement of Central Government agency.

All the legal points were elaborated in context of general negligence of railways and failure to take effective action to control the menace. Even then the senior bureaucrat of the state, who were impleaded by Railways, were not convinced with the logic of the show-cause and were apprehending the wrath of High Court; when they would appear in person. But then the Advocate General was the only person who was some how convinced of the logic of forest department stated in the show-cause.

The doom day arrived and the court was packed to its capacity, every lawyer in the court was interested to hear the arguments, whether railways could be confiscated or not? . The first “fire” started from the “battery of top lawyers of railways”, who argued for the railways that being Central Govt. organisation, the “railway” can never be confiscated or attached and it was sheer case of high handedness of Forest dept. to conceal their failure to protect forest in place. The vociferous and emphatic logic seemed so impressive and was supported by continuous nod of the chair (who made occasional snide remarks about forest department’s failure to protect the general greenery and wildlife of the country). Simultaneously, the internal discussion going in whispers by state govt. officials present(including the Chief Secretary) was to blame the impetuous DFO for initiating this intemperate act, which had landed them in such a poor position. This cursing of senior bureaucrats, who started apprehending severe stricture from the court as the argument moved; made the heart of DFO sinking.

Then suddenly came the loud voice of the presiding judge with word “But...”, he elaborated that on that very day he happened to

visit the Railway station of Ranchi , the capital town of Jharkhand. He himself narrated, how filthy it was, with firewood and small wood bundle littered all over the platform. It was beyond his comprehension, how this could happen in station premises with all the presence of RPF and GRP. After this observation, the shaky, lawyer of the forest department was forced by the court to explain his points. Alas, he could hardly speak and forester present himself was made to explain the case. When the whole episode unfolded with its genesis, the court also started appreciating it. Finally the court observed that the forest department had law on their side. The railways represented by all their very senior official present were shocked to listen this comment and the court ordered the Chief Secretary present their to call a meeting of Railway and forest officials on that very day to see how railways can cooperate with forest department in controlling the smuggling activities by trains. The earlier shaky Chief Secretary and senior foresters were now feeling confident enough to instruct senior railway officers(of course by the backing of High court). The poor DFO heaved sigh of relief; as had the High Court taken any adverse view; this case would have spelt doom for him. Also the case was adjourned for further hearing with exemption from personal appearance to forest officials.

After prolonged hearing and with written and verbal arguments; it was very well appreciated by the court that “law” permitted the seizure of Railway and its subsequent confiscation but in general public interest directed to close the confiscation proceeding in question, in its order dated 2/12/2002.

With this background in another case, in which another bogey was seized, this confiscation proceeding continued. Finally in July 2004, after detailed hearing the both sides; the rail bogey in question was confiscated under the provisions of Indian Forest Act. It may be unique case when “train” was confiscated legal history and it was still more satisfying end for the “forest and its wildlife”, as now the “Railways” was duty bound to act and suomoto to cooperate with the forest department in controlling the smuggling of forest produce both in trains and on platforms.

References

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