

back the tourists taken to Baratng from Port Blair in some other vehicle on the same day.

If the restriction on the same day permit for round trip is done away with, many of these 'extra vehicles' shall come in to operation thereby increasing the vehicular traffic substantially. This may lead to congestion on ATR which is, by and large, a single lane road. This would further endanger the lives of the Jarawas as many of them are found loitering on the fringe of the ATR during the day time.

In a common judgment dated 30/08/2010 in WP 997 of 2010, while disposing off many a Writ Petitions filed by the private LMVs operators having the tourist permit, the single judge bench of the Hon'ble High Court, Circuit bench at Port Blair opined that a general law like MV Act must yield to a special law like Protection of Aboriginal Tribe Regulation, 1956 in case of repugnancy or inconsistency. The relevant para of the said judgment is as under:

"To the mind of this Court, the maxim *generalial specialibus non derogant* would apply in the present case. The MV Act is the general law whereas the Regulation is the special law for these Islands. The regulation has been framed in exercise of power conferred on the President of India by clause (2) of Article 243 of the Constitution and in the event of repugnancy or inconsistency, the general law must yield to the special law and it is the special law that would prevail. Notwithstanding the fact that notification under section 115 of the MV Act has not been issued, the petitioners can't escape the rigours of section 7 of the Regulation. One has to reach Baratang by road by traversing the reserved area inhabited by the members of the Jarawa tribe. Therefore, the petitioners must be held to be bound by the condition of the pass that may be granted by the Deputy commissioner or any officer authorized by him for the purpose of operating their tourist vehicles within the reserved area inhabited by the Jarawas"

The Court further opined that

"Be that as it may, no provision has been brought to the notice of the Court based whereon the petitioners could legitimately claim a legal right to return from Bratang to Port Blair on the same day of their journey from Port Blair to Baratang. It is true, as contended by Mr Jaypal, that there is no restriction either in the MV Act or the Central rules to the effect that a round trip may not be allowed but one can't proceed to decide the issue raised herein oblivious of section 7 of the Regulation. It reads as follows:-

"7. The Chief commissioner may by notification prohibit any person other than a member of a aboriginal tribe or any class of persons other than members of aboriginal tribe from entering a reserved area except on the authority and subject to the observance of the conditions and restrictions of a pass granted by the Deputy Commissioner or by such other officer as the Deputy Commissioner may authorize in writing in the behalf".

In exercise of power conferred by sections 7, the Chief Commissioner issued notification, published in the Andaman and Nicobar Gazette, dated 21st April, 1957, which reads as follows :-