

(2013) 10 KAR CK 0193

In the Karnataka High Court

Case No : Writ Petition No. 14029 of 2008 (GM-RES)

Suo Motu

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A, 51A(g)
Wild Life (Protection) Act, 1972 — Section 11, 16(b), 9

Citation : (2013) 10 KAR CK 0193

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : M.R. Naik as Amicus Curie, for the Appellant; R.G. Kollé, AGA for R1 to R4, Sri. P.M. Nayak, for R5, Sri. Unni Krishnan M., CGC for R6, Sri. S.S. Haveri, for Karnataka State Bar Council, Sri. A.K. Subbaiah as Intervener, Dr. Raman Sukumar, Chairman, Task Force Committee, Sri. G.S. Prabhu, Chief Wild Life Warden and Chief Conservator of Forest (Wild Life) Karnataka, Dr. C.H. Basappanavar, Former Chief Conservator of Forest, Sri. N. Ravindranath Kamath, Sri. B.R. Deepak, Members of Task Force Committee, Sri. Ashok G. Nijagannavar, Member Secretary Karnataka State Legal Services Authority, for the Respondent

Final Decision : Disposed Off

Judgement

B.V. Nagarathna, J.—Being shocked and concerned over the news of death of four elephants under mysterious circumstances in Nanjangud Taluk, Mysore District and worried about the statistics that nine elephants had died in the past seven days and 25 elephants had died in the past six months around Bandipur-Nagarahole National Park and the concerned authorities had no clue about such a disaster being reported in the news papers, this Court initiated this suo motu Public Interest Litigation in the year 2008. The State and the Union of India were directed to investigate into the case of death of the elephants and to take action against lapses on the part of the authorities and take remedial measures to prevent such disasters in future. After hearing the learned counsel for the authorities and counsel, who have acted as Amicus Curiae and Dr. C.H.

Basappanavar, Retired Chief Conservator of Forests, further directions were issued to file necessary reports and on 09/04/2009, the State Government submitted a Report and an Action Plan dated 11/03/2009 called "Elephant Landscape" before this Court, suggesting short-term and long-term measures and recommendations. The State Government filed a comprehensive Action Plan for conservation and protection of elephants and other wildlife on 17/04/2009 and Dr. C.H. Basappanavar, also filed an "Action Plan to Mitigate Human-Elephant Conflict" on the said date.

2. Placing reliance on certain decisions of the Hon'ble Supreme Court and reiterating Article 48-A of the Directive Principles of State Policy and Article 51-A(g), by order dated 25/05/2009, the following directions were issued:--

37. Accordingly we pass the following order:

(i) The Report and the Action Plan - Elephant Landscape dated 11/3/2009 filed on 12/3/2009; the Comprehensive Action Plan dated 11/3/2009 filed on 17/4/2009 for conservation of Elephants and other wildlife proposed by the State; and the Comprehensive Action Plan on "Human-Elephant Conflict Mitigation" (scientific report) filed on 17/4/2009 by Dr. C.H. Bassappanavar, retired Forester and Wild-lifer, are taken on record.

(ii) The State Government shall implement the short term measures mentioned in paragraphs 8.7.1, 8.7.2 and 32.2 (supra) as per the action plan proposed particularly; and shall complete the selection and recruitment process for filling up the vacancies of staffs and flying squads, within three months from the date of receipt of this order.

(iii) The State Government shall also implement the long term measures mentioned in paragraphs 8.7.3 and 32.3 (supra) as per the action plan proposed by the State Government within a period of six months from the date of receipt of the copy of this order.

(iv) This Court further deems it fit to include (1) the Member Secretary, Karnataka State Legal Services Authority, Bangalore, (2) Member Secretary, High Court Legal Services Committee, Bangalore, (3) Mr. Madhusudan R. Naik, senior counsel, (4) Dr. C.H. Bassappanavar, retired Forester and Wildlifer as Members of the State Advisory Board for Wildlife constituted u/s 6(1) of the Wildlife (Protection) Amendment Act, 2002, and among them the Member Secretary, Karnataka State Legal Services Authority, who shall file periodical report before the High Court Legal Services Committee and the Karnataka State Legal Services Authority at least once in three months, for their constant monitoring, as to the implementation of short-term and long-term measures framed and proposed to be framed, as undertaken by the Government referred to above, for conservation of elephants and prevention of unnatural death of elephants as well as other wildlife. The said Board shall study and implement the recommendations provided in the said report filed on 11/3/2009 and 17/4/2009 by the forest department and the report dated 17/4/2009 filed by Dr. C.H. Bassappanavar on

Short-term and Long-term measures for conservation of elephants and to prevent the unnatural death of elephants. The High Court Legal Services Committee/Karnataka State Legal Services Authority is at liberty to refer the matter to the Green Bench for any further directions, if necessary.

(v) The Board so constituted shall hold review meetings as and when required and at least once in three months.

(vi) As and when required, the Board is also at liberty to approach this Court for appropriate further directions in the matter.

(vii) The Press, Electronic media or any person, who come across the ill-treatment or death of elephants or wildlife whatsoever, are at liberty to bring the same to the notice of the Member Secretary, High Court Legal Services Committee/Member Secretary, Karnataka State Legal Services Authority, to take appropriate action in the matter.

(viii) Government shall take appropriate steps as to the prevention of raising commercial crops like Banana, Sugarcane and Maize, nearby forest area and the State and Central Government shall frame and implement appropriate crop-pattern policy for the lands in and around forest area, in order to avoid human-elephant conflict.

(ix) Wherever there are narrow passages, which the elephants are using as corridor touching the neighbouring states, the Government is directed to take necessary steps to widen such corridors by appropriate acquisition proceedings, in the larger public interests.

38. The Writ Petition is ordered accordingly.

3. Subsequently, a Report containing recommendations submitted by the Karnataka State Legal Services Authority was taken on record on 27/10/2010. The matter was posted on several dates. Thereafter, on 16/11/2011, it was clarified that this Court had not given its imprimatur to the translocation of Elephants from Kodagu - Hassan border to an alternative site including Bhadra Wildlife Sanctuary, BRT Wildlife Sanctuary or Bandipur National Park. It was observed that the opinion of the experts including the officers from the Forest Department would have to be considered in greater detail before a conclusion as to translocation of the elephants could be ordered.

4. On 04/01/2012, learned Assistant Solicitor General stated that the names of the persons who could constitute the Task Force would be submitted to the Court, as the Court felt that if a competent Task Force was constituted, reports in relation to short-term and long-term measures as contained in the Comprehensive Action Plan for the conservation of elephants and other wildlife prepared by the Government of Karnataka, would be comprehensively available. Accordingly, on 24/01/2012, this Court constituted the Task Force headed by Dr. Raman Sukumar, CES, Indian Institute of Science, Bangalore, as a Chairman and comprising of 11 members. The terms of reference for the Task Force were as

follows:--

1. To look into the entire gamut of issues related to human-elephant conflict in Karnataka with special reference to Hassan-Kodagu area and make recommendations to bring about a more effective conservation and management regime for the species and its habitat in Karnataka with due focus on participation of local communities.
2. To study the composition of the elephant population in Katteपुरa area and its movement pattern.
3. To examine and report on "feasibility" of providing a proper Corridor and/or a habitat; if need be, by acquiring private lands/securing back - the un-authorisedly occupied/encroached lands within and on the periphery of Forest lands.
4. To consider the need, expediency or feasibility of translocation of elephants or the local inhabitants from the concerned habitats.
5. To examine and report on the present status/steps taken by Forest Authorities - in respect of "electric fencing; trenching and/or such other "Corridor formation"; if any; within and outside the Forests in Hassan - Kodagu Area and, whether such steps are "ill advised"/or improperly implemented, and thereby have contributed to increase in elephants and human conflict.
6. To examine and report on achievements made/present status of/implementation of "short" and "long term" comprehensive action plan submitted to this Hon"ble Court.
7. To consider any other relevant issue.
8. Any other reference that this Hon"ble Court may deem fit to suggest in the circumstances of the above case.

5. The Task Force was to submit its Report on or before 15/04/2012 but in fact, in September 2012, the Task Force submitted its Report to this Court. After holding several meetings and field visits, the Task Force has made its recommendations on the following headings:--

1. Establish a Karnataka Elephant Expert Group, within the State Wildlife Board, with a broad mandate to plan, advise, and assist in elephant conservation and management in the state.
2. Loss and fragmentation of elephant habitats due to ill-planned commercial infrastructure projects and natural resource extraction.
3. Legal consolidation of elephant habitats.
4. Improving connectivity between elephant habitats.
5. Managing land use in non-forest areas adjoining designated forests.

6. Reducing pressures on elephant habitat from large-scale human resource-use.
7. Mitigating and managing elephant-human conflicts.
8. Site Level Recommendation: Elephant-human conflicts in the Alur-Arkalgud region of Hassan District.
9. Site Level Recommendation: Acquisition of private lands in Sakaleshpur for the purpose of creating an "elephant corridor.
10. Minimising unnatural mortality of elephants.
11. Managing habitat in designated forests.
12. Strengthening and streamlining administration for elephant conservation.
13. Tourism in elephant areas.
14. Inter-state cooperation and coordination.
15. Research and monitoring for elephant conservation and management.
16. Welfare and management of captive elephants.

6. The background and the approach of the Task Force in the context of the terms of reference made by this Court as stated in the Report can be usefully extracted as hereunder:--

1.1. Background

Karnataka possibly has the distinction of harbouring the largest population of the Asian elephant (*Elephas maximus*) in India. About one-fifth of the country's estimated population of 28,000 wild elephants is found in Karnataka, mainly in protected and reserve forests in the southern part of the state. As such the elephant population of Karnataka is sufficiently large and does not warrant serious concern about the future prospects for its survival. The cultural association of the elephant with people is also ancient in the state, as seen from its prolific depiction in temple art from the Hoysala dynasty of the 12th and 13th century, through the ruins of the 14- 16th century Vijayanagara kingdom at Hampi and the murals of the 18th century Dariya Daulat, to the modern-day Dasara festival at Mysore Palace. The elephant is thus an iconic species for the conservation of biological diversity and the cultural heritage of the state.

Nevertheless, Karnataka also typifies many of the problems that the elephant faces across the country. Although most of the elephants in the state are presently distributed across a single, contiguous landscape in the south and southwest (named as the Mysore Elephant Reserve), along with adjoining elephant habitats in the states of Tamil Nadu and Kerala, there are still threats to the integrity of this landscape through fragmentation. There are at least two completely isolated populations in the state, a small population in north-western Karnataka and a medium-sized one in the Malenad plateau. We lack clarity on

the status and viability of a number of small, scattered elephant groups ranging over the Western Ghats. Karnataka also faces a serious problem of elephant-human conflicts, not only in the form of chronic crop raiding and occasional human deaths along the forest-agriculture interface of the major elephant habitats, but also a more severe manifestation of such conflict from dispersing groups of elephants or solitary bulls that range over a predominantly human-use landscape such as the Alur/Arkalgud taluks in Hassan district or the Savandurga region of Tumkur district. Some of these problems of habitat fragmentation and elephant-human conflicts stem from the historical patterns of land-use in the state, exacerbated in recent times by developmental pressures of a rapidly growing economy.

The Government of India initiated Project Elephant during 1992-93 with these broad primary objectives:

1. Conserving and protecting the viable populations of wild elephants and ensuring the quality and integrity of the larger landscapes across the country of which they are a part.
2. Mitigating elephant-human conflicts through a number of measures including compensatory payments for crop losses, ex gratia payments for loss of human lives, barriers to prevent elephants from entering agricultural land, as well as capture and translocation of elephants where necessary and feasible.
3. Promoting ecologically sustainable development among local communities dependent upon forest resources to reduce pressures on the natural habitat.
4. Controlling the illegal killing of elephant especially the poaching of male elephants for ivory (that had become a scourge in southern India during the 1980s).
5. Ensuring the welfare of elephants in captivity.

These strategic objectives are still very much valid in the present-day context of elephant conservation, and we must keep this framework in mind when planning for conservation and management of elephants in Karnataka.

Presently, the management of elephants in the highly fragmented areas, isolated forest patches, or the human-dominated landscapes in the country consumes a disproportionate amount of financial and human resources, often at great cost to human life, property and agriculture, and with questionable returns in terms of conservation gains. As compared to its neighbouring elephant-bearing states of Tamil Nadu and Kerala, whose elephant populations are largely concentrated within or confined to well-defined tracts of forests, Karnataka faces the problem of a small fraction of its elephant population being highly scattered over expansive forested and non-forested landscapes. Consequently, Karnataka faces a more serious problem of elephant-human conflicts, relatively speaking and thus greater challenges in formulating and executing an appropriate conservation paradigm.

The conservation of elephants must be based on these two overarching goals:

1. Ensure the long-term survival of viable (demographically and genetically) populations of elephants through land-use planning, regulation and consolidation in the larger natural landscapes of the state on the basis of sound scientific theory and social principles.
2. Substantially reduce the levels of elephant-human conflicts to relieve human suffering from loss of crops, property and life, in a manner that would promote greater tolerance and acceptance of elephants in the larger landscape by local communities, protect their livelihoods, and ensure their effective participation in conservation.

If the above two goals are kept in mind, conservation could become a win-win strategy-for elephants that would now be able to move within secure habitats and have lower chances of being injured or killed in conflicts with people, and for people whose lives and livelihoods would be more secure against the depredations of elephants.

1.2. Our approach

The Karnataka Elephant Task Force has thus taken a zone-based approach to make recommendations for the management of elephants in the state through conservation of habitat, protection of elephants, mitigation of conflict, strengthening of administrative structures and institutions, participation of local communities in this broader scheme, and scientific monitoring. It recognizes that conservation of elephants comes at a cost, often a great one borne largely by marginalized communities of farmers and other rural people. This is neither a sustainable model of conservation nor desirable from the view-point of equity and social justice. KETF thus advocates a scientifically sound yet pragmatic scheme for the long-term conservation of elephants in the state. This approach, briefly outlined below, is elaborated in the subsequent chapter of this report.

1. Elephant Conservation zone: This would encompass the larger and more-intact forested habitats that hold a large elephant population comprising a substantial proportion of the elephant population of the state. The emphasis within this zone would be maintaining habitat integrity at the landscape scale through protecting and strengthening corridors, preventing elephants from moving into agricultural land and settlements both along the periphery and within enclaves, and affording maximum protection to elephants against illegal killing.

2. Elephant-human Coexistence Zone: Elephant populations numbering in the several tens or perhaps over a hundred, either isolated or connected to the major conservation zone, but ranging over a restricted or a fragmented habitat in which conflicts are high, would qualify for experimenting with a model of coexistence with people.

3. Elephant Removal Zone: The elephant-removal zone would include places where small or isolated groups of elephants, with questionable viability, or

solitary bulls range over a predominantly human-settled landscape, and the social and economic costs to maintaining the elephants here are unacceptably high.

In the course of implementing such a conservation plan, it would be inevitable that some elephants would come into captivity without compromising the continued survival and viability of the wild populations of the state. KETF thus also addresses basic issues relating to the welfare and use of captive elephants. It also recommends the setting up of a Karnataka Elephant Expert Group, within the State Board for Wildlife, to assist the Chief Wildlife Warden in detailed technical planning and implementation of elephant conservation in the state.

7. The Task Force has noted that elephants are distributed over the Eastern and Western Ghats with the southern region of State of Karnataka having the maximum numbers at relatively high density. Wild elephants are found in 24 forest divisions of Karnataka and the total area of distribution is approximately 14,500 sq.kms, though the regular presence of elephants covers only about 10,000 sq.kms., which includes northern Karnataka, wherein a small elephant population ranges over a large diffused area. The State has notified Project Elephant Reserve, spread over 6,463 sq.kms., known as Mysore Elephant Reserve (MER) comprising of fifteen Forest Divisions from Bhandra in the Malenad plateau to Bandipur in the South and from Chamarajnagar to Bannerghatta along the Eastern Ghats. The MER holds over 98% of the wild elephant population of the state. The population estimate of elephants based on sample block count done in May, 2010 gave an average population of 5,740 elephants across the 19 forest divisions, to which about 50 odd elephants of northern Karnataka would be added. The elephant population of the Mysore Elephant Reserve of Karnataka form part of a larger elephant population that ranges into the adjoining states of Kerala and Tamilnadu. The Task Force has also recorded that the birth rates and mortality rates indicate that the elephant population of Karnataka is unlikely to decrease and most likely to be either stable or growing. Thus, the need to plan for appropriate management of dispersing elephant groups in the State is an imminent necessity, according to the Report.

8. Further the Report of the Task Force, states that the elephant's penchant for feeding on cultivated crops brings it into direct conflict with people. The most obvious patterns and reasons of crop raiding, supported by the scientific studies, are the following:

- a) The rapid loss of natural habitat through conversion to agriculture would result in escalated conflict as elephants continue to treat the converted land as part of their traditional home range. Habitat loss directly impacts only those clans or males within whose home ranges the changes have taken place.
- b) The fragmentation of habitat increase the chances of this long-ranging species to make contact with cultivated land and indulge in crop raiding.
- c) The elephants having tasted crops would continue to prefer this source of

food, irrespective of the availability of natural forage in their habitat.

d) Sub-adult and adult male elephants typically have a higher propensity as compared to female-led groups to raid crops by moving out from their native range.

e) Elephants may disperse from their native range due to local habitat pressures, significant reduction in forage through proliferation of unpalatable weeds or large-scale fire, overabundance in relation to carrying capacity, or adverse climatic events.

f) Due to strong inter-clan hierarchies, the elephants tend to disperse into unoccupied areas which are general human use areas.

9. Dealing with elephant-human conflict, the Task Force has stated that two aspects need to be addressed in order to minimize the problem on a lasting basis. First, to address the causative factors for conflicts and the second, to think of "out-of-the-box" or unconventional solutions and have a pragmatic approach to eventually erase the conflict. The Task Force has suggested that conflict mitigation has to be a three step process viz., (i) stopping the causative factors; (ii) Reversing some of past land use changes that are the cause for severe conflict today; (iii)Containing whatever residual conflict that remains after the first two steps.

10. The State has filed its response and given its opinion on the recommendations of the Task Force. The same is appended as Annexure "RR-1" to the affidavit of the Secretary, Government of Karnataka (Forest), filed on 02/07/2013.

Legal Frame Work:

11. Before we voice our opinion on the recommendations made by the Task Force and the response of the State to them, it would be useful to delineate the legal framework on the subject.

12. Article 48-A, which is a Directive Principle of the State Policy and Article 51-A(g), which is a fundamental duty enshrined in the Constitution, guide the State as well as the citizen in the matter of protection of environment including wildlife. They read as follows:--

48A. Protection and improvement of environment and safeguarding of forests and wild life:--The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51A. Fundamental duties:--It shall be the duty of every citizen of India.

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

13. Article 48A was inserted by the 42nd amendment made to the Constitution to protect and improve the environment and to safeguard the forest and the wildlife of the country. Article 51A states that it shall be the duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

14. The Stockholm Declaration, the Declaration of United Nations Convention on Human Environment signed in the year 1972, to which India is a signatory, have laid down the foundation for sustainable development and urged the nations to work together for the protection of environment. Conventions on Biological Diversity, signed in the year 1992 at Rio Summit, has recognized that the conservation of biological diversity is "a common concern of human kind" and it is an integral part of the development process. The Parliament has enacted the Biological Diversity Act in the year 2002 followed by the National Biodiversity Rules in the year 2004. The main objective of the Act is conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The International Union for Conservation of Nature (IUCN) has calculated the percentage of endangered species as 40% of all organisms. The IUCN adopted a resolution resulting in a treaty drafted as the Washington Convention and known as the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973. The Forest Conservation Act is enacted in the year 1980 with a view to check further de-forestation which would result in ecological imbalance. The aforesaid enactments enacted in the light of Article 48A and 51A(g) of the Constitution and the Conventions have enabled the Government of India to lay down various policies and action plans such as the National Forest Policy (NFP) 1988, National Environment Policy (NEP) 2006, National Bio-diversity Action Plan (NBAP) 2008, National Action Plan on Climate Change (NAPCC) 2008 and the Integrated development of wild life habitats and centrally sponsored scheme framed in the year 2009 and integrated development of National Wild-life Action Plan (NWAP) 2002-2016.

15. The Wildlife (Protection) Act, 1972 (the "Act" for short) provides for protection of wild animals and birds with a view to ensuring the ecological and environmental security of the country. The Act provides for setting up of protected areas such as national parks, wildlife sanctuaries, conservation reserves and community reserves. The Schedules list names of endangered species of mammals, amphibians, reptiles, birds, crustaceans and insects. For the possession, transportation, translocation etc., of these species permission from the Government of India is needed. Penalties for contravention of the Act in respect of Schedule I species are very stringent. Under the said Act, the National Board for Wildlife and the State Boards for Wildlife have been constituted having specific functions to carry out the objects of the Act.

16. Section 9 of the Act expressly bars hunting any wild animal specified in Schedules I to IV except as provided under Sections 11 and 12 of the Act. The

expression "hunting" includes:

- (a) killing or poisoning of any wild animal or captive animal and every attempt to do so;
- (b) capturing, coursing, snaring, trapping, driving or baiting any wild or captive animal and every attempt to do so;
- (c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

17. Section 11 of the Act states that, notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV, the Chief Wild Life Warden may, if satisfied that the wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause such animal to be hunted, but no wild animal could be ordered to be killed unless the Chief Life Warden is satisfied that such animal cannot be captured, tranquilized or translocated. Also no such captured animal can be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same have to be recorded in writing. The process of capture or translocation of an animal in Schedule-I has to be made in such a manner as to cause minimum trauma to the animal. Indian Elephant is found in Entry 12-B of Schedule-I of the Act.

18. Some of the recent decisions of the Hon"ble Supreme Court on the topic under consideration could be referred to at this stage.

a) In *Sansar Chand Vs. State of Rajasthan*, , it is held that all efforts must be made to preserve the wildlife of the country by taking stringent action against those who are violating the provisions of the Act, in order to maintain the ecological chain and balance in our country.

b) In *Lafarge Umiam Mining Pvt. Ltd. Vs. Union of India (UOI) and Others*, , the Court has held that the National Forest Policy 1988 has to be read along with Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. Both have to be read together having regard to the objects sought to be achieved under them.

c) On similar lines, in *Centre for Environment Law, WWF-I Vs. Union of India (UOI) and Others*, it has been held that the integrated Development of Wildlife habitats under the Centrally Sponsored Scheme of 2009 and the NWAP (2002-2016) have to be read with the provisions of the Wild Life (Conservation) Act. NWAP (2002-2016) has recognized that with the mounting agricultural, industrial and demographic pressures, wilderness areas, which are the richest repositories of wildlife and biodiversity have either shrunk or disappeared and

their continued existence is crucial for the long term survival of the biodiversity and the ecosystems supporting them. Keeping in view the protection of wildlife outside the protected areas and initiating recovery programmes for saving critically endangered wildlife habitats, a comprehensive Centrally Sponsored Scheme entitled "integrated development of wildlife habitats" has been enforced since the year 2009. In Lafarge case, it has been held that NWAP 2002-2016 and the Centrally Sponsored Scheme 2009, relating to integrated development of wildlife habitats are schemes which have statutory status and have to be implemented in their letter and spirit.

Further, the Hon''ble Supreme Court has explained the distinct approaches while dealing with the rights of various species of animals which have their habitat on earth. "anthropocentrism" focuses on human interest and gives precedence to human beings over other species, while "eco-centrism" is nature-centred and life-centred where nature includes both human being and animal species. Having regard to the objects sought to be achieved, the distinctive approach would have to be adopted while finding a solution to an ecological problem. In the said case, while examining the necessity of a second home for Asiatic lions, the Hon''ble Supreme Court adopted an eco-centric and not anthropocentric approach.

In the said case, the Hon''ble Supreme Court also observed that no State, organisation or person can claim ownership or possession of animals in the forest. u/s 2(36) of the Wild Life (Protection) Act, 1972 wild animals specified in Schedules I to IV are found wild in nature. Animals in the wild are properties of the nation and it is the State's duty to protect wild life and conserve it, for ensuring the ecological and environmental security of the country.

(d) In T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court observed that human-wildlife conflict is fast becoming a critical threat to the survival of many endangered species, like wild buffalos, elephants, tigers, lions etc., such conflicts affect not only its population, but also has broadened environmental impacts on ecosystem equilibrium and biodiversity conservation. Man-animal conflict often results not because animals encroach human territories but vice-versa. It is said that such conflict is due to human population growth, land use transformation, species'' habitat loss, degradation and fragmentation, increase in eco-tourism, access to natural reserves, increase in livestock population etc. Recognising that there is likelihood of anthropocentric bias towards man, and rights of wild animals often tend to be of secondary importance but in the universe, man and animal are equally placed. However, human rights approach to environmental protection in case of conflict, is often based on anthropocentricity. The Hon''ble Supreme Court stated that conservation education for local population, resettlement of villages, curbing grazing by livestock and domestic animals in forest, provision for availability of natural water, less or no disturbance from tourists are the steps which have to be taken by the State in order to eradicate human-wild life conflict.

19. The Hon''ble Supreme Court has opined that environmental justice could be

achieved only if we drift away from the principle of anthropocentric to eco-centric. It held that National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme 2009 are centred on the principles of eco-centrism. The National Wildlife Action Plan (2002-2016) is intended to provide adequate protection to wildlife in multiple use areas such as Government forests outside protected areas, various Community Conserved Areas like sacred groves, community and panchayat forests, identified private forests such as interspersed forests in tea, coffee and cardamom gardens and other protected landscapes, farm lands, wastelands, wetlands, coastal habitats etc. Under the Centrally Sponsored Integrated Developmental of Wildlife Habitat Scheme, 2009, the States and Union Territories have to propose an action plan for restoration of habitats, eco-development and community oriented activities etc., in order to qualify for the financial assistance under the scheme.

20. A few words on the steps taken by the Union Government for Conservation of Wild elephants. The wildlife wing in the Ministry of Environment and Forests, Government of India, has three divisions i.e., Project Tiger Division, Project Elephant Division and Wildlife Division, which are headed by an officer designated as Inspector General of Forests. These three Divisions look after the national policies and projects, international co-ordination, Centrally Sponsored Schemes and State level implementation of activities relating to the conservation of wildlife in Tiger Reserves, Elephant Reserves, national parks and wildlife sanctuaries of India, wildlife laws, wildlife conservation etc.

21. Project Elephant is a Centrally Sponsored Scheme for wildlife conservation aimed at a species which, because of its large rangeland requirements and on account of fragmented range elements, often comes in conflict with human population. The main thrust of the Project is improvement of elephant habitats and mitigation of conflict of interest with human communities. The Project was launched in February, 1992 for providing the required support to twelve elephant range States of India, Karnataka, being one of them, keeping in view the requirements of elephant reserves, and it was approved by the Central Government. Major activities under the Project include: habitat improvement, fire protection, land acquisition for consolidation of habitats and establishment of corridors, procurement of equipment for protection, census of elephants, immunization of cattle on the forest fringe, payment of ex-gratia grant for damage to human life and property by elephants etc. It is found that the main threat to elephant populations arise from the conflict for land, food and water with the people and their livestock and the main thrust of the Project is, therefore, on mitigation of man-elephant conflict and habitat enrichment. The Project also deals with the captive elephants and better maintenance of elephants in captive conditions.

22. Man-animal conflict is bound to be an inevitable issue to be dealt with by not only the experts in the field, but also by involving citizens. Large animals, such as elephants need extensive space to move, breed and feed. When their habitat

is fast shrinking, they come in conflict with human beings. Human development interfering with the elephants' migratory paths, breeding grounds and core habitats, would result in an obvious conflict with the elephants. Elephants being migratory wild animals, they require large habitats connected by well-established movement paths called "corridors".

23. It is found that man-elephant conflict could be addressed and mitigated in four ways: (1) Introducing barriers such as trenches, fences or repellants such as crackers, watcher squads etc., between the elephant and man; (2) Change in cropping patterns around elephant populated areas to include non-palatable crops, which do not attract elephants; (3) securing corridors for elephant movement; (4) Capture of rogue and problem herds. The first method is only a temporary solution and ought not to impede migration. The second and third measures are critical long-term measures that need to be pursued for finding a permanent solution to man-elephant conflict. The last measure should be resorted to only after identifying rogue animals which could be captured and translocated. The issue of translocation of herds of elephants from one habitat to another is a matter which would require careful and comprehensive consideration. [Source: Law of Forests in India - by R.N. Choudhary - 3rd Edition].

24. Thus, what emerges is that the order dated 25/05/2009 herein, issuing certain directions remains in tact. In fact, the writ petition was disposed of by the said order. Subsequently, the matter was re-listed on the recommendation submitted by the Karnataka State Legal Services Authority. It is in that context, that on 24/01/2012, the Task Force headed by Dr. Raman Sukumar and comprising of eleven members was constituted with specific terms of reference. The Task Force has submitted its report on 15/04/2012 with recommendations under sixteen different headings. The responses of the State Government to these recommendations are also placed on record. Some of the recommendations have been accepted by the State while some others have been accepted with certain observations and certain other recommendations are not accepted by the State. The recommendations and the views of the State Government have been considered in the light of the legal frame work on the subject as has been delineated above, that is, in the light of the provisions of the Constitution, Wildlife (Protection) Act, 1972, Project Elephant, which is a Centrally sponsored scheme and also the decisions of the Hon'ble Supreme Court referred to above. The approach of this Court on the recommendations as well as the response to them by the State has to be in consonance with the decisions of the Hon'ble Supreme Court.

25. In Samaj Parivartana Samudaya and Others Vs. State of Karnataka and Others, , the Hon'ble Supreme Court, while dealing with large scale illegal mining, had constituted the Central Empowered Committee. That Committee had submitted several Reports. While considering the Report of the committee, it has opined that "inter-generational equity and sustainable development have come

to be firmly embedded in our constitutional jurisprudence as an integral part of the fundamental rights conferred by Article 21 of the Constitution. In enforcing such rights of large number of citizens who are bound to be adversely affected by environmental degradation, this Court cannot be constrained by the restraints of procedure. The CEC which has been assisting the Court in various environment related matters for over a decade now was assigned certain specified tasks which have been performed by the said body giving sufficient justification for the decisions arrived and the recommendations made. If the said recommendations can withstand the test of logic and reason, then the same would have to be accepted by the Court."

26. The recommendations and the response of the State Government along with our views on them are as follows:

Opinion of the Karnataka Government on the Recommendations of the Karnataka Elephant Task Force (KETF)

The recommendation to establish a Karnataka Elephant Expert Group (KEEG), within the State Wildlife Board, has not been accepted by the State Government, placing reliance on Section 6 of Wildlife (Protection) Act, 1972. However, the State Government has an open mind to seek specific inputs on certain issues from experts, scientists etc., in case of necessity. We think that the opinion of the State Government in this regard has to be accepted.

The State Government is of the opinion that only where there is report of violations of the conditions of approval given to various projects, review of clearances of the projects will be required. That where there is report of breach of law in the approval given to various projects, disciplinary action would be initiated and that mining and quarrying activities in and around the forest areas would be regulated. If the latter aspect is taken into consideration, then there could be no mining or other non-forest activities in and around various areas including elephant habitat or corridor. Therefore, regulation is not the solution. Under the circumstances, the State needs to be directed to review all clearances given to various projects in the elephant habitat and corridor and also in the areas on the periphery of the forest areas as well. Also diversion of forest lands falling within the elephant corridor must be referred to the Chief Wildlife Warden for assessment of the potential impact, if any. This salutary practice must be put in place at the earliest.

With regard to constitution of any land, which is the property of the Government, as reserved forest, Chapter II of the Karnataka Forest Act, 1963 prescribes the procedure and the manner in which the same has to be done. Wherever notifications have been issued u/s 4 of the said Act declaring to constitute any land as a reserved forest, the State Government is required to take further steps, so as to complete the process of constituting the reserved forest. Judicial notice has to be taken of the fact that several notifications issued by the State Government u/s 4 of the Act remain in cold storage on account of steps being

not taken to complete the process of constitution of the reserved forest. In this regard, a direction requires to be issued to the State Government to take all necessary steps for the constitution of the reserved forest, wherever notifications have been issued u/s 4 of the said Act, especially where such lands fall within elephant corridors in the State. The same cannot be done on a case-to-case basis. Also a direction ought to be issued, in terms of recommendation 3.3, that there be a review of all concessions and leases granted for coffee estates and tourism in the elephant range in order to restore those lands as elephant habitats within a time bound manner.

Recommendation 4.1 is not accepted by the State Government as it feels that the Chief Conservator of Forest (Wildlife) and Chief Wildlife Warden could decide on the manner in which the elephant corridors have to be protected. As the State Government has stated that experts would be consulted, whenever necessary, we express no further opinion on the same.

Recommendation 4.2 has been accepted by the State Government and therefore, a direction is issued to the State to review the user of land on the periphery of the forests falling within the elephant habitats and corridors and take requisite steps for its conservation and preservation.

This recommendation has been accepted by the State Government, which has, however, not been in favour of establishing Ecologically Sensitive Area Monitoring Committee. Even in the absence of such a Committee, State is directed to review all non-forest activities and land user in the areas adjoining designated forest having elephant habitat and corridor and take appropriate action in that regard in case there is any violation of law.

Recommendation 6.1 has been accepted by the State Government. Necessary steps have to be taken by the State to reduce pressure on the elephant habitat by ensuring that people who are either residing in or utilizing the elephant habitat are re-located/re-habilitated in accordance with law.

The opinion of the State Government with regard to this recommendation is reasonable and would not call for any further observations.

With regard to elephant-human conflicts in Alur-Arkalgud region of Hassan District, though the State Government has accepted the recommendations, we would direct that the State Government ought to review the matter at various stages and from various angles and then come to a considered decision with regard to capture of the elephants at Alur-Arkalgud region by keeping in mind the balance of convenience from the point of view of the elephant as well as the human populace.

This recommendation with regard to private lands in Sakaleshpur for the purpose of creating an Elephant corridor" being to the effect that any acquisition would not have a positive impact on elephant conservation, being accepted by the State Government, would not call for any orders from this Court.

This recommendation has been accepted by the State Government subject to certain observations. Necessary steps would have to be taken by various electricity supply agencies and institutions so as to raise the height of the high-tension and low-tension power lines above the ground level, making them safe for the elephants. In this regard, a direction will have to be issued to the Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden to monitor the steps taken by various electricity supply agencies and institutions in the State with regard to construction and maintenance of power distribution lines, keeping in mind protection of wildlife including elephants and having regard to the interim orders dated 19/7/2012 and 6/9/2012 passed herein.

In this context, the ban of electric fences in elephant areas, particularly surrounding tea or coffee estates has to be taken note of. In the letter dated 11/11/2009 written by the Inspector General of Forests and Director (Project Elephant) to the Chief Wildlife Warden of all Project Elephant States including Karnataka, it is stated that, due to unregulated voltage in the fencing erected around the plantations and estates, there have been death of elephants due to electrocution, which tantamounts to willful hunting as per Section 16(b) and thus, it is in violation of Section 9 of the Wildlife (Protection) Act, 1972. The competent authorities under the said Act have to take appropriate legal and practical steps in that regard, such as permitting solar energy fencing.

The recommendations of the Task Force have not been accepted by the State Government. All that we can say is that the concerned authorities would have to ensure that the elephant habitat is not destroyed on account of unscientific management or by taking measures which would not be in the interest of preserving the elephant corridor. Steps taken for the restoration of forests should be holistic and keeping in mind the growth and preservation, and healthy growth of wildlife and other fauna and flora. Therefore, only general directions can be given in this regard to the concerned authorities.

The opinion of the State Government in respect of the above recommendations has to be considered keeping in view the feasibility of implementation of the recommendation having regard to the financial outlays and availability of manpower. However, we observe that recruitment and training of sufficient staff and a stable administrative set-up are of critical importance for protection of wild life in general and the government ought to make adequate provision for the purpose.

The State Government to implement the aforesaid recommendations in an effective and time bound manner as the same are accepted by it.

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The State Government to implement the recommendations at 16.2 to 16.7 in an effective and time bound manner. As far as recommendation 16.1 is concerned, it is left to the wisdom of the State Government to take appropriate measures. Recommendation 16.8 is not accepted by the State Government. It is within the wisdom of the State Government to have its own vision regarding the display of elephants at the Dasara Festival held at Mysore. However, during the course of arguments, it was pointed out that any use of elephant by the State Government for any festival or other event should avoid causing cruelty to the animal. Therefore, we direct that the provisions of the Prevention of Cruelty to Animal Act 1960 shall be observed while putting captive elephants to any use or display.

27. In the result, the following directions are issued:--

i) the State or the Union of India, as the case may be, to renotify the areas of elephant habitat and Corridors having regard to the areas notified under the Project Elephant areas, Mysore elephant Reserve and the areas mentioned in the Report of the Task Force within a period of two months from the date of receipt of certified copy of this order.

ii) the State is directed to review all clearances given to various projects in the elephant habitat and corridor in a time bound manner;

iii) wherever there is a diversion of forest lands falling within the elephant habitat and corridor, the same must be referred to the Chief Wildlife Warden for assessment of the potential impact, before issuance of any approval or clearance by the State;

iv) the State is directed to take, as early as practicable, all necessary steps for constitution of the Reserve Forests, wherever notifications have been issued u/s 4 of the Karnataka Forest Act, 1973 where such lands fall within the elephant habitat and corridor through out the State;

v) the State is directed to review the non-forest activities in the elephant habitat and corridor and take appropriate action in that regard, in case there is any violation of law;

vi) the State Government shall review the user of the land on the periphery of forests falling within the elephant habitat and corridor and take requisite steps for its conservation and preservation.

vii) the State shall take necessary steps to reduce pressure on the elephant habitat by people who utilize the elephant habitat illegally and relocate or rehabilitate them in accordance with law;

viii) with regard to human-elephant conflicts in Alur-Arkalgud Taluk, Hassan District, the State shall review the matter at various stages and from various angles periodically so as to capture elephants in the said region, bearing in mind the balance of convenience from the point of view of elephants as well as from the point of view of human populace and also bearing in mind the

recommendation of the Task Force Committee as well as the dissent notes in that regard;

ix) the State is directed to issue necessary directives to various electricity supply agencies and institutions in the State so as to raise and maintain the height of high tension and low tension power lines above the ground level, so as to make it safer for the elephants in the elephant habitat and elephant corridor; The Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden of the State shall monitor the steps taken in this regard;

x) the State to issue directives to electricity supply agencies and institutions to ensure that fencing around plantations and estates would not be a threat to the life of the elephants by any electrical installations, supply lines, theft of power or otherwise;.

xi) as Recommendation Nos. 13, 14 and 15 have been accepted by the State Government, a direction is issued to implement the same in an effective and time bound manner;

xii) the State shall implement the Recommendations No. 16.2 and 16.7 referred hereinabove in an effective and time bound manner. As far as Recommendation 16.1 is concerned, it is left to the wisdom of the State to take a decision with regard to the utilization of the elephants on festivals including Dasara Festival at Mysore. However, in case the elephants are involved in such festivals, then the State must ensure that elephants are protected and that there would be no violation of the provision of the Prevention of Cruelty to Animals Act, 1960 and the Rules made thereunder;

xiii) the statement of the Chief Wildlife Warden is recorded to the effect that an Action Plan would be put in place and timely action would be taken to ameliorate the dangers faced by the citizens on account of elephant menace or death caused by wild elephants. In case any representation is made by the citizens bringing to the notice of the Chief Wildlife Warden or other designated officers about the elephant menace, then immediate steps must be taken under the provisions of the Act. Therefore, the Chief Wildlife Warden is directed to formulate an Action Plan to be taken in order to meet grave situation of elephant menace and to circulate the same to all the Forest Divisions in the State;

xiv) the State shall take effective and adequate measures with regard to the safety and well being of captured elephants, such as giving training to mahots and other care givers and deploying veterinary doctors, where and when necessary;

xv) the State is at liberty to seek guidance on the recommendations made by the Task Force Committee and also consult the Committee for any of its future course of action concerning elephants in the State so as to implement the recommendations accepted by the State in their true letter and spirit;

xvi) the State shall implement the Policy and Action plan of the Union concerning

Project Elephant in its true letter and spirit;

xvii) if any of the aforesaid directions have to be complied by the Union of India, then the same are applicable mutatis mutandi.

28. The Writ Petition is again disposed in the aforesaid terms, along with all pending applications, with the additional directions summarized hereinabove. We place on record our appreciation of the time and devotion of the learned Amicus Curiae, learned Senior Counsel, Sri. M.R. Naik, Sri. N. Ravindranath Kamath and Sri. B.R. Deepak, the Chairman and members of the Task Force and Sri. Basappanavar who have been intensively involved in making of the Report and also all other counsel including Law Officers appearing on behalf of the State and Union of India and Officers of various departments who have appeared and made their presentations at various stages and all others who have assisted the Court in the matter. We conclude with the hope that the commendable efforts put in by well-meaning legal-fraternity of counsel, experts and officials of various departments, including the legal department will go a long way in not only protecting the majestic mammal of great historic and environmental importance, but engender a culture of sustainable coexistence with all species of animals.