

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE GOPINATH P.

WEDNESDAY, THE 12TH DAY OF APRIL 2023/22ND CHAITHRA, 1945

R.P.NO.484 OF 2023 IN W.P.(C).NO.13204 OF 2021
AGAINST THE ORDER DATED 5.4.2023 IN W.P.(C).NO.13204/2021 OF HIGH COURT
OF KERALA

REVIEW PETITIONER/THIRD PARTY:

K BABU
AGED 58 YEARS
S/O.KITTA, SREEDHALAM, PEZHUMPARA,
CHATHAMANGALAM P.O., NENMARA, PALAKKAD,
PIN - 678508

BY ADV.SRI.SURIN GEORGE IPE

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF FISHERIES,
ANIMAL HUSBANDRY AND DAIRYING (DEPARTMENT OF ANIMAL
HUSBANDRY AND DAIRYING), GOVERNMENT OF INDIA,
KRISHI BHAVAN, NEW DELHI, PIN - 110001
- 2 THE ANIMAL WELFARE BOARD OF INDIA
REPRESENTED BY ITS CHAIRMAN, NATIONAL INSTITUTE OF
ANIMAL WELFARE CAMPUS P.O., 42K STONE, DELHI-AGRA
HIGHWAY, NH-2, VILLAGE-SEEKRI, HARYANA, PIN - 121004
- 3 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM, PIN - 695036
- 4 STATE OF KERALA
REPRESENTED BY THE SECRETARY, ANIMAL HUSBANDRY
DEPARTMENT, THIRUVANANTHAPURAM, PIN - 695 036

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- 5 STATE OF KERALA
REPRESENTED BY THE SECRETARY, LOCAL SELF
GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM,
PIN - 695036
- 6 THE KERALA STATE ANIMAL WELFARE BOARD
THIRUVANANTHAPURAM, PIN - 695036
- 7 THE KERALA VETERINARY AND ANIMAL SCIENCES
UNIVERSITY, POOKODE, LAKKIDI P.O., WAYANAD,
PIN - 673576
- 8 STATE POLICE CHIEF, KERALA
THIRUVANANTHAPURAM, PIN - 635010
- 9 SRUTHY N.BHAT, ADVOCATE
HIGH COURT OF KERALA, AGED 27 YEARS,
D/O.O.H.NANDAKUMAR BHAT, SANSKRITHI GARDEN,
PERANDOOR ROAD, KALOOR NORTH, PIN - 682026
- 10 DAYA ANIMAL WELFARE ORGANISATION (DAYA)
HAVING REGISTERED NUMBER E.R.737/01 WITH ITS
REGISTERED OFFICE AT XXII/459/A, PRAKASH ROAD,
VELLOORKUNNAM, MUVATTUPUZHA, ERNAKULAM - 686673,
KERALA, REPRESENTED BY ITS CO-ORDINATOR AMBILI B
- 11 ANGELS NAIR
AGED 54 YEARS
GEN. SECRETARY, ANIMAL LEGAL FORCE INTEGRATION,
KAPPILLIL HOUSE, PULLUVAZHY P.O., PERUMBAVOOR,
ERNAKULAM DIST., PIN - 683541
- 12 M.N. JAYACHANDRAN
AGED 63 YEARS
S/O.K. NARAYANAN NAIR, RESIDING AT
MUNDAMATTOM HOUSE, THODUPUZHA P.O., IDUKKI,
PIN - 685584
- 13 P. SARAGANDHARAN
THUMBIL, EZHUPUNNA SOUTH P.O., CHERTHALA,

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PIN - 688535

- 14 THE THRIKKAKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY.
- 15 THE STATE KUDUMBASREE MISSION
REPRESEED BY THE EXECUTIVE DIRECTOR.
- 16 DHYAN FOUNDATION, A REGISTERED CHARITABLE TRUST
REPRESENTED BY ITS TRUSTEE, DR.PRASAN PRABHAKAR,
AGED 48 YEARS, S/O.DR.M.C.PRABHAKAR, RESIDING AT
LAXMI PRASAD, PANAYAPILLY, KOCHI-682005.
- 17 ANIMAL RESCUE REHABILITATION & OVERALL WELLNESS
(ARROW), 214/IX KADAMANNIL, KUMBAZHA NORTH,
MYLAPRA P.O., PATHANAMTHITTA-689 671,
REPRESENTED BY ITS MANAGING TRUSTEE.
- 18 PEOPLE FOR ANIMALS (PFA),
REPRESENTED BY ITS SECRETARY, KARTHIKA, ANAYARA,
THIRUVANANTHAPURAM, PIN - 695029
- 19 PEOPLE FOR ANIMAL WELFARE SERVICE (PAWS)-
THRISSUR CHARITABLE TRUST, RAJ VIHAR, POOTHOLE P.O,
THRISSUR, PIN - 680004, REPRESENTED BY ITS SECRETARY.
- 20 MUNICIPAL CORPORATION, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.
- 21 MUNICIPAL CORPORATION, KOLLAM,
REPRESENTED BY ITS SECRETARY.
- 22 MUNICIPAL CORPORATION, THRISSUR,
REPRESENTED BY ITS SECRETARY.
- 23 MUNICIPAL CORPORATION, KOCHI,
REPRESENTED BY ITS SECRETARY.
- 24 MUNICIPAL CORPORATION, KOZHIKODE,

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REPRESENTED BY ITS SECRETARY.

- 25 MUNICIPAL CORPORATION, KANNUR,
REPRESENTED BY ITS SECRETARY.
- 26 MADRAS ANIMAL RESCUE SOCIETY 4/339
SANGARAPURAM, FIRST STREET, PALAVAKKAM,
CHENNAI - 600041, REPRESENTED BY ITS SECRETARY AND
TRUSTEE, VIVEK K. VISWANATH, S/O K.V. ACHUTHAN,
AGED 29 YEARS, HAVING PERMANENT ADDRESS AT
KARUNELLIPARAMBIL HOUSE, KAIPARAMBU P.O.,
THRISSUR - 680546 AND NOW RESIDING AT GODAVARI
HOSTEL, IIT MADRAS, CHENNAI - 600036.
- 27 SMT.RANJINI HARIDAS
AGED 39 YEARS
D/O.HARIDAS, 'HARISREE', PONNETH SOUTH TEMPLE ROAD,
CHILAVANNOR-682 020, TRUSTEE, HUMANITY FOR ANIMALS,
REG. NO.E 323/2015, ERNAKULAM.
- 28 GAURI MAULEKHI
AGED 44 YEARS
W/O.DUSHYANT MAULEKHI, RESIDING AT 40/153,
CR PARK, NEW DELHI, PIN - 110019
- 29 SANGITA IYER
AGED 59 YEARS
D/O.MR.K.ANANTHARAMAN, PERMANENTLY RESIDING IN
TORONTO, CANADA, PRESIDENT, VOICE FOR ASIAN ELEPHANTS
SOCIETY, TORONTO, CANADA, REPRESENTED BY HER POWER OF
ATTORNEY SATISH MURTHI, 2ND FLOOR, BETA PLAZA,
DR.KRISHNASWAMY ROAD, COCHIN, PIN - 682035
- 30 DR.ZAHIRA. B
AGED 51 YEARS
W/O.DR.MANZOOR AHAMMED, CHUNGASSERI MANZIL,
PADA NORTH, KARUNAGAPPALLY P.O., KOLLAM,
PIN - 690518
- 31 SANTHOSH. T.S
AGED 46 YEARS

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S/O.T.V. SASIDHARAN, RESIDING AT THIRUNILATHU HOUSE,
NETTOOR P.O., MARADU, ERNAKULAM, PIN - 682040

- 32 UNION OF INDIA
REPRESENTED BY THE MINISTRY OF ENVIRONMENT FOREST
AND CLIMATE CHANGE (FOREST AND WILD LIFE DIVISION,
PROJECT ELEPHANT), NEW DELHI, PIN - 110003
- 33 PRADEEP P.D
AGED 33 YEARS
S/O.DIVAKARAN, PUTHUVAL NIKARTH, PALLIPURAM P.O.,
CHERTHALA, 688 541, ALAPPUZHA, PIN - 688541
- 34 AKSHAY V.PRABHU
S/O.VEDANGA G.PRABHU, AKSHAYA HOSPITAL, KADAVANTHRA,
KOCHI, KERALA, PIN - 682020
- 35 KOLLAM DISTRICT PANCHAYATH
KOLLAM DISTRICT, PIN-691 001,
REPRESENTED BY ITS SECRETARY.
- 36 EDRAAC (ERNAKULAM DISTRICT RESIDENTS' ASSOCIATION'S
APEX COUNCIL), REG.NO.ER/735/03, CORPORATION
SHOPPING COMPLEX, SUBHASH CHANDRA BOSE ROAD
JUNCTION, PONNURUNNI, VYTTILA, COCHIN-19.,
PIN - 682019
- 37 THE PUNALUR MUNICIPALITY
REPRESENTED BY ITS SECRETARY.
- 38 M/S.SREDHA MOBILE ARTIFICIAL INSEMINATION AND
VETERINARY SERVICES, REP. BY ITS MANAGING PARTNER
PRIYA PRAKASHAN, D/O.PRAKASHAN, NEERIKODE P.O.,
ALANGAD, ERNAKULAM, PIN - 683511
- 39 SRI.RADHAKRISHNAN
PANANCHERRY HOUSE, PAYYAPPILLY MOOLA, PUTHUR,
THRISSUR, PIN - 680014
- 40 SRI.GANESAN

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S/O.SRI.RADHAKRISHNAN, PANANCHERRY HOUSE,
PAYYAPPILLY MOOLA, PUTHUR, THRISSUR, PIN - 680014

- 41 JOSE K.MANI
MEMBER OF PARLIAMENT, CHAIRMAN, KERALA CONGRESS (M) ,
STATE COMMITTEE OFFICE, NEAR FIRE STATION, KOTTAYAM,
PIN - 686001
- 42 JEEVAN RAJEEV
AGED 30 YEARS
S/O.RAJEEV. A. , KARTHIKA, PAKKAIL P.O. ,
KOTTAYAM, PIN - 686013
- 43 DR. K.P. SHIBU
AGED 53 YEARS
S/O.K.S. PAVITHRAN, KURUNDODATH HOUSE, EROOR SPO,
PIN - 682306
- 44 DR.ANITHA M.A
AGED 51 YEARS
W/O.DR.K.P. SHIBU, KURUNDODATH HOUSE, EROOR SPO,
PIN - 682306
- 45 CHINNAKKANAL GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, CHINNAKKANAL P.O. ,
IDUKKI, PIN - 685618
- 46 SANTHAPARA GRAMA PANCHAYAT
REPRESENTED BY ITS PRESIDENT, OFFICE OF THE
SANTHANPARA GRAMA PANCHAYAT, SANTHANPARA P.O. ,
IDUKKI DISTRICT, PIN - 685619
- 47 DEAN KURIAKOSE
AGED 42 YEARS
S/O.A.M. KURIAKOSE, ANANICKAL HOUSE, PAINGOTTOOR P.O. ,
KULAPPURAM, MUVATTUPUZHA, ERNAKULAM DISTRICT,
PIN - 686671
- 48 KERALA INDEPENDENT FARMERS ASSOCIATION (KIFA) ,
5/518, NIRANATH BUILDING, THALAYAD P.O. , UNNIKULAM,

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KOZHIKODE-673 574, REPRESENTED BY ITS CHAIRMAN
SRI.ALEX OZHUKAYIL CHANDY FRANCIS, AGED 41 YEARS,
S/O.CHANDY FRANCIS, OZHUKAYIL HOUSE, KARIYATHUMPARA,
KALLANODE P.O., KOZHIKODE, PIN - 673615

49 SUJIMOL K.R.
AGED 32 YEARS
D/O.RAJU, RESIDING AT KINTTAKAL 595 A,
SINGUKANDAM, ANGANVADI, SURANALLY, CHINNAKANAL,
IDUKKI, KERALA, PIN - 685618

BY SRI.ASHOK M. CHERIAN, ADDL. ADVOCATE GENERAL.
BY SRI.NAGARAJ NARAYANAN, SPL. GOVT. PLEADER
BY SRI.S.MANU, DSG OF INDIA
BY SRI.S.RAMESH BABU, AMICUS CURIAE
BY SRI.T.C.SURESH MENON, AMICUS CURIAE
BY SMT.M.U.VIJAYALAKSHMI, SC, ANIMAL WELFARE BOARD
OF INDIA
BY SRI.JOICE GEORGE, SC, SANTHANPARA GRAMA PANCHAYAT

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 12.04.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

A.K. Jayasankaran Nambiar, J.

“There is a very sacred relationship between nature and humanity. The culture of respecting nature has been the identity of our country. In India, nature and culture have been linked to each other and have been receiving nourishment from each other. Elephants have been most respected in our tradition. It has been considered a symbol of prosperity. It is the National Heritage Animal of India. Therefore, protecting elephants is an important part of our national responsibility to preserve our national heritage.”

Smt. Droupadi Murmu, The President of India

It is in sharp contrast to the above observations made by the executive head of our nation on 7th April 2023 that we find ourselves dealing with the plea raised in this petition, preferred by the MLA from the Nenmara Legislative Assembly Constituency, who is stated to be representing the local inhabitants of the Muthalamada Grama Panchayath that borders the Parambikulam Tiger Reserve, to review our earlier order that directed a translocation of the wild elephant - “Arikkomban”. Our earlier order dated 05.04.2023 was issued in the wake of apprehensions voiced by the residents of the Panchayaths bordering the Anayirangal region, who were apprehensive of the

foraging activities of the elephant in their settlements, and the decision to tranquilise, radio-collar and translocate the elephant to the Parambikulam Tiger Reserve was taken based on the opinion of experts in the field. In this petition, however, the assumption of the petitioner is that the elephant is habituated to foraging in human settlements and his apprehension is that it will now take to foraging in the human settlements within the Muthalamada Grama Panchayath.

2. At the very outset we might observe that we find the apprehension of the petitioner herein to be baseless as there is no material produced by him that would suggest that such anticipated behaviour of the elephant is a certainty. We are also appalled by the total insensitivity demonstrated to the plight of the animal in question, which has been directed to be translocated from its original habitat to a new one only because there is every likelihood that the availability of plentiful natural food and water resources there would deter it from foraging in human settlements. The fact that the elephant will be radio-collared and its movements monitored by the forest/wildlife officials ought to have sufficed to allay the apprehensions of the petitioner, as the 'surprise' element of any

conflict situation is effectively removed through the monitoring mechanism instituted and now in place.

3. It concerns us that the arguments advanced before us in these proceedings fly in the face of the express provisions of our Constitution that oblige our citizens to exhibit compassion to animals. We might observe that it is not mere co-incidence that Art.51A of our constitution uses the expression 'compassion' and 'humanism' while enumerating the duties expected of the citizenry towards the environment and living creatures. In the true spirit of humanism, and through invoking our feelings of empathy and compassion, what the constitution exhorts us to do is to develop a sympathetic understanding as a cognitive mode to decipher nature's own language, to see organic life as it is, not as translated into manipulable objects for human use. It is only through a duty based legal approach that obligates human beings to invoke their feelings of sympathy, empathy and compassion while trying to understand those legitimate interests of animals that require safeguarding, that our nation can succeed in enhancing the inherent spirit of humanism in the citizenry.

4. While there was some ambiguity in our jurisprudence as to whether the fundamental duties under our constitution could be enforced through a court of law, it is now fairly well settled that fundamental duties are as important as fundamental rights and that our courts will not look askance when it comes to their enforcement. When called upon to decide matters relating to the environment or ecology, our courts do keep in mind the provisions of Part IV and IV-A of the Constitution¹ and issue directions based thereon, recognizing that the judicial wing is also an integral part of the 'State' that is charged with the protection and improvement of the environment and to safeguard the forests and wildlife of the country. That apart, it has been held that although Art.51A does not expressly cast any fundamental duty on the State, the duty of every citizen of India is collectively speaking the duty of the State, which can be enforced.² Indeed this is the perspective that ultimately informs the doctrine of *parens patriae* that our courts have consistently used to impose obligations on the State to protect the interests of animals.³ The doctrine traces its origins to the duty required of a sovereign to act in public interest while protecting persons under disability who have no rightful protector. Animals being beneficiaries of the obligations

1 Sachidananda Pandey v State of West Bengal – AIR 1987 SC 1109

2 AIIMS Students Union v AIIMS – 2002 (1) SCC 428

3 Charan Lal Sahu v Union of India – AIR 1990 SC 1480; Animal Welfare Board of India v A. Nagaraja & Ors – (2014 (7) SCC 547

imposed on the citizenry, and collectively in the State, our courts can require the State to take measures to safeguard the interests of animals. Axiomatically, state action initiated for the welfare of animals and towards safeguarding their interests, even when it conflicts with the rights of individual citizens, can be justified as a reasonable, and therefore legally permissible, restriction on the rights, fundamental or otherwise, of those citizens.

5. As the guarantee of animal welfare under our constitution is by the State, which through its affirmative action has to discharge the collective duty of its citizens towards animals, the approach of the state to human-animal conflict resolution must primarily be one aimed at prevention of such conflict situations. This, the state can do by first identifying the underlying causes for such conflict situations and putting in place the necessary infrastructure required for removing them. The capturing or killing of an animal must be resorted to only if all other measures fail to yield results, and the situation escalates to one that endangers the right to life of the citizens. Even in the latter event, the State must consider the possibility of human action having triggered the aggression of the animal and in such instances, while balancing the inter-se rights/interests of the humans and animals, due

regard must be had to the offending human action⁴. While it would be morally wrong to kill, or confine to a life in captivity, an aggressive animal if it's aggression was triggered by unjustified and offensive human action, such action would also be legally wrong in a duty based legal regime that obliges humans to respect the interests of animals. In the case of the elephant "Arikkomban" we are convinced that in the absence of any material to show that it had caused any loss to human life in the recent past, the decision to translocate it to Parambikkulam was the best one under the circumstances, and one that balances the interests of the animal with that of the people, whose encroachment into their habitat years ago was what led to the conflict situation in the first place.

6. The contention of the petitioner before us is that the translocation of the elephant in question will pose a threat to the life and property of the settlers in Muthalamada Panchayath and is therefore violative of their fundamental rights under Art.21 of the Constitution. We find the said apprehension to be baseless for two reasons. Firstly, there is no material before us, either in the form of scientific opinion or otherwise, that would suggest either that the

⁴ Cheryl Abbate, 'The Search for Liability in the Defensive Killing of Nonhuman Animals', Social Theory and Practice, Vol.41, No.1 (January, 2015) pp.106-130

elephant would almost inevitably behave in the manner suggested by the petitioner or that its translocation would upset the ecological balance within the Tiger Reserve. Secondly, we do not find any right, fundamental or otherwise, inhering in the people residing in the vicinity of the Parambikulam Tiger Reserve, to decide on the nature of the animals that must be housed within the Tiger Reserve. It is for the State executive, at first instance, to decide on the course of action that must be taken with respect to an aggressive animal in the wild. If the decision taken by the State executive is found to be legally flawed, then it is for this court to step in and correct the same through the exercise of its power of judicial review. As the decision to translocate the animal was taken by this court after considering the opinion of experts in the field, the decision must be seen as one taken towards fulfilment of the State's obligation to look after the welfare of the animal. In the absence of any expert opinion that would suggest any other suitable place for the translocation of the elephant in question, we see no reason to review our earlier order directing the translocation of the elephant "Arikkomban" to the Parambikulam Tiger Reserve.

7. As we have already noticed in our earlier order, there are

reports submitted by the Forest and Wildlife department of the State that suggest that some of the settlements that have come up in the areas falling within or in the vicinity of established elephant habitats in the State, were authorised by the State government in gross disregard of the safety of the persons proposed for settlement therein, as they were permitted to reside in those areas notwithstanding clear data that showed them to be elephant habitats. The increasing instances of human elephant conflict that we are confronted with today appear to be nothing but inevitable fallouts of the apparently reckless executive action of yesteryears. The long-term solution to the problem may lie in re-visiting, and in appropriate cases reversing, those decisions, and restoring to the animals their lost habitat but that will take time.

8. Pending such long-term resolution of the issue, we feel that the State Executive must take immediate and effective action to protect human settlements in areas falling within or in the vicinity of wildlife habitats. Towards this end, it must forthwith constitute local level task forces comprising of officials from the revenue, forest & wildlife and police departments, as well as the President of the local Panchayath, who will work with the members of the local community

concerned to put in place adequate and effective warning and protective measures to insulate themselves from animal attacks. Local level *jagratha samithies* have also to be constituted that can alert the task force concerned to the possibility of human animal conflict situations in the area, in a timely manner. This would ensure the preparedness of the task force concerned to deal with such situations as and when they arise. The State Executive must also, simultaneous with the translocation of the elephant, put in place adequate safety measures that would allay the fear of the people residing within the Muthalamada Panchayath, of an attack by wild animals including the elephant in question. The above steps would constitute the bare minimum of the State's obligation to protect the lives of the people in the locality while balancing their rights with the rights enuring to the animals in the wild.

9. Before parting with this review petition we might observe that through our earlier orders we have only held that the capture of the elephant with a view to sentencing it to a lifetime in captivity is not an option available to the State Executive in the facts and circumstances of this case. The recent order of the Supreme Court in **Muruly M.S. v. State of Karnataka and Others - [2023 SCC**

OnLine SC 224] that extends the scope and jurisdiction of the High Powered Committee headed by Justice Deepak Verma (Retd.) to look into matters associated with the capture and translocation of wild animals, including elephants, and confers it Pan India jurisdiction, leads us to hold that it will not be open to the Executive Government of the State to unilaterally take any decision regarding capture for the purposes of holding captive any animal, without first getting a clearance for the same from the above mentioned High Powered Committee. We have now chosen to sustain our earlier order directing translocation of the elephant 'Arikkomban' to Parambikulam solely because we have not been shown any material, either by the petitioners herein or by the State government, which suggests the possibility of identification of an alternate and more feasible site for the translocation. If the State Executive identifies a suitable site for translocation, that would balance the interests of the people and the animal in question, it would be open to it to shift the elephant to the said site under cover of the directions issued in our order dated 05.04.2023. However, the identification of the alternate site must be done immediately and, at any rate, within a week from today, and during that time, the interests of the people of the locality where the elephant is currently situated must also be simultaneously

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safeguarded through the maintenance of round-the-clock vigil by the officials of the Forest and Wildlife Department of the State. If, on the other hand, no alternate site for translocation is identified by the State Executive within the aforesaid period of one week, our earlier order shall stand and the directions issued therein shall be implemented by the State Executive without any further delay.

The Review Petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
GOPINATH P.
JUDGE

prp/12/4/23

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APPENDIX OF R.P.NO.484/2023

PETITIONER ANNEXURES

Annexure I

A TRUE COPY OF THE LETTER ISSUED BY THE INSPECTOR GENERAL OF FOREST, GOVERNMENT OF INDIA, MOEF&CC ADDRESSING TO PRINCIPAL CHIEF CONSERVATOR OF FOREST (PCCF) AND CHIEF WILDLIFE WARDEN (CWW), ALL ELEPHANT RANGE STATES DATED 10-06-2020 ALONG WITH GUIDELINES FOR MANAGEMENT OF HUMAN ELEPHANT CONFLICT

AnnexureII

A TRUE COPY OF THE RELEVANT PAGES OF THE REPORT OF THE KARNATAKA ELEPHANT TASK FORCE SUBMITTED BEFORE THE HON'BLE HIGH COURT OF KARNATAKA WHEREIN THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (WILDLIFE), GOVERNMENT OF KERALA WAS ALSO MEMBER OF THE TASK FORCE.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE