

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

WP(C) NO. 14325 OF 2020

PETITIONER/S:

GAURAV TEWARI
AGED 48 YEARS
S/O.LATE DR.(PROF)GOPINATH TEWARI, TEWARI
BUILDING, SMT.MITHILESH TEWARY ASHRAM, GRAM GOHNA
KALA, LOHAMPUR, BAKSHI KA TALAP, LUCKNOW, UP
INDIA-226201, NOW RESIDING AT 83 VIEWMARK DRIVE,
RICHMOND HILL, ONTARIO L4SIE3 CANADA.

BY ADVS.

SRI.M.RAMESH CHANDER (SR.)

SRI.C.K.RAPHEEQUE

SRI.K.B.NIDHINKUMAR

SMT.NISHA G.THARAMAL

SMT.SARIMOL KAREETHARA

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO MINISTRY OF FOREST
AND ENVIRONMENT AFFAIRS, NEW DELHI-110001.
- 2 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT OF
KERALA, THIRUVANANTHAPURAM-695001.
- 3 SECRETARY TO HOME AFFAIRS,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.
- 4 CHIEF CONSERVATOR OF FORESTS,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.

5 CHIEF WILD LIFE WARDEN,
FOREST HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695001.

6 KERALA FOREST RESEARCH INSTITUTE,
PEECHI, THRISSUR-680653, KERALA.

BY ADVS.

MANU S., ASG OF INDIA

SRI.JAISHANKAR V.NAIR, CGC

OTHER PRESENT:

SRI. NAGARAJ NARAYANAN, SPL GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.08.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

S. Manikumar, C. J.

Instant writ petition is filed for the following reliefs:-

“i) Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the respondents 1 to 5 to take such adequate and effective measures so that the wild animals in the various forest division of Kerala are protected from the attack from outside world;

ii) Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the respondents 1 to 5 to provide sufficient fodder and drinking water inside the forest so that these elephants/wild animals do not stray into the habitated areas;

iii) Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the respondents 2, 4 & 5 to have check dams and troughs filled with water inside the various forests in Kerala so as to enable the elephants/other animals in the forest to have sufficient food and water for their sustenance;

iv) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents herein to make clear demarcation between the boundaries of forests and private

lands/highways and use such protective devices in the boundaries so as to prevent the wild animals from straying into human habitant.”

2. Short facts leading to the filing of the writ petition are as hereunder:-

a) According to the petitioner, he is an Indian citizen residing at Ontario in Canada, as he is professionally employed there. Petitioner has submitted that instances are legion in the history of Kerala, wherein due to the absolute negligence of the Government and its officials, many wild animals are facing brutal attacks on them, which has compelled the writ petitioner to file this pro bono litigation before this Court, seeking protection for animals living in the forest, and also for a direction to the Government to take remedial measures in this regard. Petitioner is an avid animal lover and is involved in many philanthropic activities in various parts of India and it was the recent incident which was flashed in all the media across the world, wherein on 27.05.2020, a pregnant elephant succumbed to injuries, which was caused due to eating of pineapple filled with crackers in the State of Kerala, which has prompted the petitioner to approach this Court.

b) Referring to Article 48A Part IV of the Constitution of India, petitioner has further submitted that the State is bound to protect and safeguard the wild life of the country. Article 51A Part IV A of the Constitution of India casts duties on every citizen of India. One such duty which is cast on a citizen is to protect and improve the natural environment and to have compassion for living creatures.

c) Petitioner has produced Exts. P1 and P2 reports dated May 1999 and January 2016 respectively, which were submitted to the Government, against which no action has been taken by the Government.

d) Petitioner has contended that regarding the damage to the crops caused by wild animals, there has not been any study to find out the cause for damages caused by the wild animals and what measures could be adopted by the Government in order to prevent the wild animals from straying into habitated areas. It is usually in summer that these wild animals stray into human habitations. One of the main reason for the straying of these wild animals into human habitation during summer is the lack of drinking water inside the forest. Therefore these wild animals stray into the human habitated areas to

quench their thirst. While straying into these areas, it is only natural that they may stumble upon the cultivated areas. Therefore to ensure adequate water inside the forest itself, it is only proper for the Government to have check dams inside the forest and troughs created inside the forest and see that these troughs are filled with water.

e) Petitioner has further contended that the menace of wild elephants, which stray to habitat areas, occur in very many States in India. However, most of the States have taken measures to keep these wild animals confined in the forest itself, as they felt prevention is better than cure. However, it is noticed that in the State of Kerala, steps are taken only when there is an attack by a pachyderm on a citizen.

3. On 26.07.2022, we passed the following order:-

“2. Chief Wild Life Warden, Forest Headquarters, Vazhuthacaud, Thiruvananthapuram – 695 001, respondent No.5, has filed a counter affidavit, for which a reply dated 17.03.2021 has also been filed by the writ petitioner. However, by referring to Ext. P5 guidelines for Management of Human Elephant Conflicts dated 06.10.2017 filed along with the reply affidavit dated 17.03.2021 learned Senior Counsel appearing for the petitioner, submitted that the above said guidelines have to be implemented by the State Government.

3. Notwithstanding the reliefs sought for, for which the pleadings are already over, we directed the learned Special Government Pleader to ascertain as to whether the above said guidelines are followed and implemented by the State of Kerala.

4. Sri. Nagaraj Narayanan, learned Special Government Pleader, submitted that the guidelines of the year 2017 have been implemented. He further submitted that appropriate statement of facts along with supporting documents would be filed by 27.07.2022. Copies of the same be served well in advance on the learned Senior Counsel appearing for the petitioner.”

4. Pursuant to the abovesaid order, the Assistant Conservator of Forests & Liaison Officer, Forest Liaison attached to the Advocate General's Office, has filed an affidavit dated 26.07.2022 on behalf of the Chief Wild Life Warden, Thiruvananthapuram, the 5th respondent, with proposals to deal with the human-wildlife conflict, which reads thus:-

“2. The 5th respondent had duly acted upon Exhibit P5 guidelines [Guidelines F.No.1/2016-PE dated 06.10.2017 of the Project Elephant Division (hereinafter "PED") of Ministry of Environment, Forest & Climate Change (hereinafter "MoEF") of the 1st respondent] and thereby taken due and appropriate action to reduce human-wildlife conflict in Kerala based on Exhibit-P5 guidelines. The details of the action taken by this respondent based on Exhibit-P5 guidelines are as follows.

(i). The department has constructed 2560 kms of solar power fence, 511.22 kms of trench, 70 kms of elephant proof wall, 44 kms of crash guard rope fencing, 10 kms of rail fencing, 55 kms of hanging solar fence, 5.70 kms of bio fence, 15.12 kms of Kayyala etc. to prevent wild animals especially wild elephant from entering human settlements and farm lands.

(ii). For improving the habitats of wild animals, various activities like soil and moisture conservation activities, construction and maintenance of check dams, water holes to store water and eradicating exotic flora and planting endemic species etc. are carried out.

(iii). Fire protection activities are carried out every year to prevent casualties to Wildlife and degradation of wildlife habitats.

(iv). Early warning systems are established along fringe areas bordering forest land in all high human-wildlife conflict prone areas to give prior warning to people about the presence of wild animals/ elephants.

(v). 15 Rapid Response Teams are deployed in highly prone areas to drive away wild animals especially elephants straying into human settlements.

(vi). Frequent crop raiding elephants are tranquilized and Radio Colored to watch their movement so as to give warning to people about their movement.

(vii). Kumki elephants are deployed in Palakkad and Wayanad districts where human elephant conflict is more.

(viii). Regular crop raiding / cattle lifting/ human casualty causing wild animals are tranquilized / trapped and released / translocated to interior forest areas and in rare and exceptional cases, where it is impossible to relocate them, they are held in captivity in rehabilitation Centres.

(ix). Compensation is paid for death, injury causing handicap and other injuries due to wildlife attack as per GO(MS) 17/2018/F&WLD dated 05.04.2018 issued.

(x). Compensation is paid to farmers for 27 crops which sustain loss / damage due to attack by wild animals at the rates as per GO(MS) 2/2015/F&WLD dated 08.01.2015 and GO(MS) 17/2018/F&WLD dated 05.04.2018.

(xi). Agricultural department has implemented crop insurance vide GO(MS) No. 37/2017/Agri. dated 22.03.2017, Thiruvananthapuram, by which 27 crops which sustain loss due to wildlife are covered under insurance scheme for a low premium which is to be paid by the farmers.

(xii). 261 Jana Jagratha Samithies are formed in various Panchayaths bordering forest areas for mitigating human animal conflict.

(xiii). Re-location of people living in high conflict prone

settlements inside forest based on their consent in Wayanad Wildlife Sanctuaries is taken up with Central assistance and 800 families are planned to be resettled from 14 settlements in Wayanad Wildlife Sanctuaries. Already 339 families are relocated according to this project.

(xiv). An Elephant Rehabilitation Centre (ERC) for wild elephants which cannot be translocated and captive elephants under duress, injury or illegal captivity, had been constructed at Kottoor, under Thiruvananthapuram Wildlife Division. The ERC is over an extent of 176 hectares (434.89 acres) of forest land for housing elephants individually and in groups and would be a State of the art. The same is done in three phases and first phase is completed.

(xv). In order to manage the captive elephants in the Kerala State, the State has formulated Captive Elephant Management Rule 2012 prescribing proper care and management of captive elephants. At present Kerala is having 443 captive elephants including elephants of Devaswom Board & Forest Department.

(xvi). A proposal under Scheduled Tribe Sub plan (Project Elephant) on Human-Elephant Interface Management Plan for Anayirangal, Chinnakanal region of Munnar Division for 194 lakhs has been submitted by the Divisional Forest Officer, Munnar Forest Division and the same has been submitted to MoEF on 25.05.2022 for availing financial assistance which is pending sanction. True copy of the

project proposal submitted on 25.05.2022 by the Divisional Forest Officer, Munnar Forest Division to MOEF for Anayirangal, Chinnakanal region of Munnar Division is produced herewith and marked as Exhibit-R5(b).

(xvii). A proposal dated May 2022 on Mitigation of Human-Elephant conflict in Athirapally-Ezhattumugham region of Vazhachal and Malayattoor Divisions for submission to NABARD for financial support of Rs. 1082.78 lakhs (Rupees 10 Crores, 82 lakhs and 78 thousand only) has been prepared and the same is submitted to the Principal Chief Conservator of Forests (Planning & Development), Kerala Forest & Wildlife Department and the same after modifications, if any, could be forwarded to the NABARD within 2 weeks. True copy of the project proposal dated May 2022 prepared by the Parambikulam Tiger Conservation Foundation, Parambikulam Tiger Reserve for submission to the NABARD for financial assistance in May 2022 is produced herewith and marked as Exhibit-R5(c).

(xviii). An expert Committee appointed by the Government of Kerala has prepared a Mitigation Plan along the boundary of Aralam Wildlife Sanctuary for 2200.00 Lakhs (Rupees 22 Crores only) for implementation by Tribal Department and same is pending consideration by the Government. True copy of the project proposal submitted by the Expert Committee to the Government of Kerala regarding mitigation plan along the boundary of Aralam Wildlife

Sanctuary on 02.12.2021 is produced herewith and marked as Exhibit-R5(d). The last Secretary level meeting in respect of this project has been held on 25.06.2022 and further progress is awaited.

(xix). Kerala Forest Department has prepared a Multilayered Elephant Alert System (MEAS) for Forest and Railway Officials of Walayar in Palakkad District is under preparation.

(xx). Comprehensive project dated August 2021 to mitigate human animal conflict for next five years for Rs. 620 crores was submitted by the Kerala Forest & Wildlife Department to the State Government on 07.09.2021 and pending consideration before the State Government for raising funds with Central assistance. True copy of the project proposal dated August 2021 for management of human-wildlife conflict in Kerala submitted by the Kerala Forest & Wildlife Department to the State Government on 07.09.2021 is produced herewith and marked as Exhibit-R5(e). A Chief Secretary level meeting was convened on 10.01.2022 and further progress is awaited.

3. Thus all the possible effective initiatives and steps are taken by the State for redressing the issues related to Human Wildlife Conflict in accordance with Exhibit P5 guidelines and other detailed studies.”

In the light of the above, in as much as the guidelines have been

implemented and steps have also been taken as stated supra, we only observe that the proposals and the action to be taken, be expedited.

Accordingly, writ petition is disposed of.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Eb

///TRUE COPY///
P. A. TO JUDGE

APPENDIX OF WP(C) 14325/2020

PETITIONER EXHIBITS

- EXHIBIT P1** **PHOTOSTAT COPY OF THE RELEVANT PAGES OF REPORT FROM THE KERALA FOREST RESEARCH INSTITUTE, TRICHUR MAY 1999.**
- EXHIBIT P2** **PHOTOSTAT COPY OF THE KERALA FOREST RESEARCH INSTITUTE, PEECHI, THRISSUR JANUARY, 2016.**
- EXHIBIT P3** **PHOTOSTAT COPY OF THE NEWS ITEM REPORTED IN THE DAILY DATED 9.8.2020**
- EXHIBIT P4** **PHOTOSTAT COPY OF THE NEWS ITEM REPORTED IN HINDU DAILY DATED 13.8.2020**
- EXHIBIT P5** **PHOTOSTAT COPY OF GUIDELINES FOR MANAGEMENT OF HUMAN- ELEPHANT CONFLICTS DATED 6.10.2017**