



W.P.Nos.1830, 4130 & 4109 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2022

Delivered on : **06.04.2022**

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,  
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1830 of 2022 & W.M.P.Nos.1965, 4354 of 2022

W.P.No.4130 of 2022 & W.M.P.Nos.4265 of 2022

W.P.No.4109 of 2022 & W.M.P.Nos.4241, 4243, 4245 of 2022

**In W.P.No.1830 of 2022:**

SP.Chockalingam

.. Petitioner

**Versus**

1.Principal Chief Conservator of Forests & Chief Wildlife Warden,  
Department of Forests, Govt. of Tamil Nadu,  
No.1 Jeenis Road, Panagal Buildings,  
Saidapet, Chennai – 600 015.

2.Chief Conservator of Forests and Field Director,  
Sathyamangalam Tiger Reserve,  
Roja Nagar, Veerappanchathiram Post,  
Erode – 638 011.

3.National Tiger Conservation Authority,  
B-1 Wing, 7<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan,



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CGO Complex,  
New Delhi – 110 003, India.

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4. District Collector cum Regional Transport Authority,  
Erode District,  
First Floor,  
Collectorate,  
Erode – 638 011.

5. The Regional Officer,  
National Highway Authority of India,  
SRI Tower, 3<sup>rd</sup> Floor,  
DP – 34 (SP), Industrial Estate,  
Guindy, Chennai – 600 032.

6. The District Collector,  
Erode.  
(R6 Suo Motu impleaded vide order, dt.08.02.2022  
in W.P.No.1830 of 2022)

7. P.L.Sundaram  
(Impleaded vide order, dt.15.02.2022  
in W.M.P.No.3287 of 2022 in W.P.No.1830 of 2022)

8. S.Palaniswamy

9. S.Munuswamy

10. S.Ravichandran

11. R.Subash Kannan

12. R.Dhileepan

13. M.Ashok Kumar



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[ R8 to R13 are impleaded as party vide order dt.**06.04.2022**  
in W.M.P.No.4276 of 2022 in WP.No.1830/2022]

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14.Yuvabharath

15.Kumar

[ R14 & R15 are impleaded as party vide order dt.**06.04.2022**  
in W.M.P.No.4676 of 2022 in WP.No.1830/2022]

16.Gunasekar .. Respondents

[ R16 is impleaded as party vide order dt.**06.04.2022**  
in W.M.P.No.4646 of 2022 in WP.No.1830/2022]

17.S.Kannaiyan

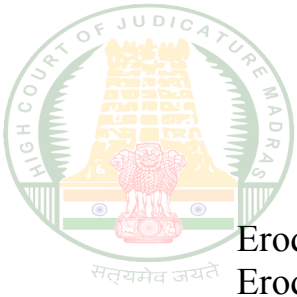
[ R17 is impleaded as party vide order, dt.**06.04.2022**  
in W.M.P.No.3302 of 2022 in W.P.No.1830 of 2022]

**In W.P.No.4130 of 2022:**

P.L.Sundaram .. Petitioner

**Versus**

- 1.The State rep.by,  
The Principal Chief Conservator of Forests  
& Chief Wildlife Warden,  
Department of Forests, Govt. of Tamil Nadu,  
No.1 Jeenis Road, Panagal Buildings,  
Saidapet, Chennai – 600 015.
- 2.The Chief Conservator of Forests and Field Director,  
Sathyamangalam Tiger Reserve,  
Roja Nagar, Veerappanchathiram Post,  
Erode – 638 011.
- 3.The District Collector,



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Erode District Collector Office,  
Erode District.

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4. National Tiger Conservation Authority,  
B-1 Wing, 7<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan,  
CGO Complex, New Delhi – 110 003.
5. The District Collector cum Regional Transport Authority,  
Erode District,  
First Floor, Collectorate, Erode – 638 011.
6. The Regional Officer,  
National Highway Authority of India,  
SRI Tower, 3<sup>rd</sup> Floor,  
DP – 34 (SP), Industrial Estate,  
Guindy, Chennai – 600 032. .. Respondents

**In W.P.No.4109 of 2022:**

S.Kannaiyan .. Petitioner

**Versus**

1. District Collector cum Regional Transport Authority,  
Erode District, First Floor,  
Collectorate, Erode – 638 011.
2. Chief Conservator of Forests and Field Director,  
Sathyamangalam Tiger Reserve,  
Roja Nagar, Veerappanchathiram Post,  
Erode – 638 011.
3. The Regional Officer,  
National Highway Authority of India,  
SRI Tower, 3<sup>rd</sup> Floor,



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DP – 34 (SP), Industrial Estate,  
Guindy, Chennai – 600 032.

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4.Chief Wild Life Warden,  
No.1 Jeenis Road,  
Panagal Building,  
IX Floor, Saidapet,  
Chennai – 600 015.

... Respondents

**Prayer in W.P.No.1830 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the fourth respondent along with other respondents to impose complete ban of vehicles from 09.00 P.M to 06.00 P.M and ban of heavy commercial vehicles between 06.00 P.M to 06.00 A.M on the stretch of road between Bannari and Karapallam in NH 948.

**Prayer in W.P.No.4130 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ in the nature of Declaration, to declare that the Notification bearing Ref.No.18425/2017(C2), dt.23.11.2018 prohibiting movement of Commercial Vehicle from using the Ghat Road between Bannari Check Post to Dhimbam stretch between 06.00 P.M to 06.00 A.M of next day and subsequent Notification bearing Ref.No.Na.Ka.No.18425/2017 (C2) dt. 07.01.2019 prohibiting movement of all vehicles such as Commercial LMV, passenger four wheelers, public transport from using the Ghat Road between Bannari Check Post to Dhimbam stretch between 09.00 P.M to 06.00 A.M



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of next day issued by the third respondent Collector as being violative of Art.19(1)(d) and Art.19(1)(g) of the Constitution of India and consequently direct the respondents to impose reasonable restrictions after giving public hearing to all concerned.

**Prayer in W.P.No.4109 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the Notification published in the Gazette No.2 of Erode District dated 07.01.2019 issued by the first respondent and quash the same.

For Petitioner : Mr.SP.Chockalingam  
(in **W.P.No.1830 of 2022**) (Party in Person)

For Petitioner  
(in **W.P.No.4130 of 2022**) : Mr.N.G.R Prasad,  
for M/s. Row & Reddy

For Petitioner : Ms.D.Geetha  
(in **W.P.No.4109 of 2022**)

For Respondents : Mr.J.Ravindran, (for R1 & R2)  
(in **W.P.No.1830 of 2022**) Additional Advocate General,  
Assisted by Dr.T.Seenivasan,  
Special Govt. Pleader (Forest)

: Mr.P.Muthukumar ( for R4 & R6)  
State Govt. Pleader,  
Assisted by Mr.S.J.Md. Sathik,  
Government Advocate



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: Mr.Su.Srinivasan (for R5)

: Mr.N.G.R.Prasad (for R7 to R13)  
for M/s.Row & Reddy

: Mr.K.Sasindran (for R14 & R15)

: Ms.D.Geetha (for R17)

For Respondents : Mr.J.Ravindran (for R1, R2)  
(in **W.P.No.4130 of 2022**) Additional Advocate General,  
Assisted by Dr.T.Seenivasan,  
Special Govt. Pleader (Forest)

: Mr.P.Muthukumar ( for R3 & R5)  
State Govt. Pleader

: Mr.Su.Srinivasan (for R6)

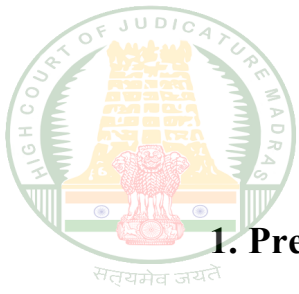
For Respondents : Mr.J.Ravindran (for R2 & R4)  
(in **W.P.No.4109 of 2022**) Additional Advocate General,  
Assisted by Dr.T.Seenivasan,  
Special Govt. Pleader (Forest)

: Mr.Su.Srinivasan (for R3)

: Mr.P.Muthukumar ( for R1)  
State Govt. Pleader,  
Assisted by Mr.S.J.Md. Sathik,  
Government Advocate.

### **COMMON ORDER**

**D.BHARATHA CHAKRAVARHY, J.**



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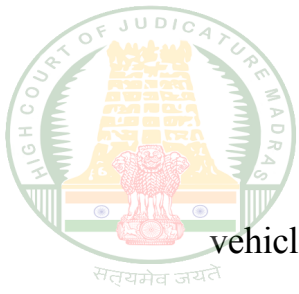
## 1. Prelude :

**WEB COPY** In these Writ Petitions, we are called upon to resolve yet another Man-Animal Conflict, their respective claims of habitat, natural landscape and resources. In Constitutional parlance, to what extent the restrictions can be on the Fundamental Rights of the humans under Article 19(1)(d) for freedom of movement and Article 19(1)(g) for freedom to carry on Trade and business, in pursuit of the avowed directive principles as enshrined in Article 48A.(g) to protect and improve environment, safeguarding of forests and wildlife and the fundamental duty under Article 51 A.(g) *to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures?*”

## 2. The Petitions :

**2.1.** *Mr.S.P.Chockalingam*, an advocate practicing in this Court and an avid wildlife lover, who has been associated with various litigations relating to wildlife, has filed W.P.No.1830 of 2022 in respect of the Dhimbam Ghat Rod, which passes through the Sathyamangalam Tiger Reserve, for a direction to the respondents to impose complete ban on





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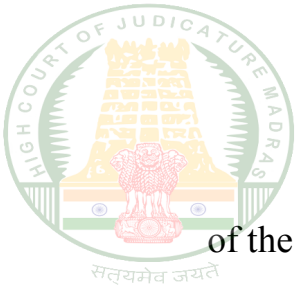
vehicles from 9.00 P.M. to 6.00 A.M. and ban on heavy commercial vehicles

between 6.00 P.M. To 6.00 A.M., on the stretch of the road between

Bannari and Karappallam in NH 918.

**2.2.** After this Court passed an interim direction to implement the already existing notification banning night traffic in the road aforesaid, by an interim order dated 08.02.2022, *Mr.P.L.Sundaram*, former Member of Legislative Assembly representing the Bhavani Sagar Constituency had filed W.P.No.4130 of 2022, to declare the Notifications dated 23.11.2018 and 07.01.2019 issued by the District Collector, Erode, prohibiting movement of vehicles using the Ghat Road between Bannari Check-post to Dhimbam Stretch between 9.00 P.M to 6.00 A.M as violative of Article 19 (1) (d) and Article 19 (1) (g) of the Constitution of India and consequently direct the respondents to impose reasonable restrictions after giving public hearing to all concerned.

**2.3.** *Mr.S.Kannaiyan*, a farmer and resident of Thalavadi village, has filed W.P. No.4109 of 2022 to quash the same notification dated 07/01/2019



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of the District Collector, *Erode*.

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**2.4.** This apart, the above said *Mr.P.L.Sundaram*, also filed application in W.M.P. No.4354 of 2022 to implead himself has a respondent in W.P. No.1830 of 2022 so as to oppose the same and by a separate order, he is impleaded as the seventh respondent in the Writ Petition.

**2.5.** *One Mr.S.Palanisamy* and 5 others all farmers of Thalavadi Taluk, also filed impleading application in W.M.P. No.4276 of 2022 in W.P. No.1830 of 2022 to implead themselves as respondents to highlight the plight of the villages and to oppose the Writ Petition. By a separate order they are impleaded as Respondent Nos.8 to 13 in the Writ Petition.

**2.6.** To make their submissions highlighting the plight of villagers on account of the impugned notification, one *Mr.Yuvabharath* and *Mr.Kumar*, both residents of Thalavadi Village, filed application to implead themselves as respondents in W.M.P. No.4676 of 2022 in W.P. No.1830 of 2022. By a separate order they are impleaded as Respondent Nos. 14 & 15 in the Writ



Petition.

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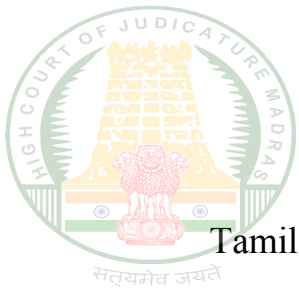
**2.7.** One *Mr. Gunasekar*, a resident of *Gundiupete* Taluk of Karnataka State, filed impleading application in W.M.P. No.4646 of 2022 in W.P. No.1830 of 2022 to highlight the necessity of inter-state movement and to oppose the Writ Petition. By a separate order, he is impleaded as Respondent No. 16 in the Writ Petition.

**2.8.** One *S.Kannaiyan*, a resident of Panakahalli Village and Post, Thalavadi Taluk, Erode District, filed impleading application in W.M.P.No.3302 of 2022 in W.P. No.1830 of 2022 to oppose the Notification, dated 07.01.2019 under various legal grounds. By a separate order, he is impleaded as Respondent No.17 in the Writ Petition.

### **3. Sathyamangalam Reserve Forests – The Sanctuary, Tiger Reserve & Eco Sensitive Zone :**

#### **i. The Reserve Forests:**

**3.1.** Sathyamangalam Forest Division, in Erode District of the State of



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Tamil Nadu forms part of Bharmagiri, Nilgiri and Eastern Ghat ranges. It

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forms part of the Nilgiri Biosphere in the Western Ghats and connects to the Eastern Ghats, is a forest link between Western and Eastern Ghats and is surrounded by protected areas, namely Billigiriranga Swamy Temple Wildlife Sanctuary, Sigur Plateau, Mudumalai National Park, Bandipur National Park and Cauvery Wildlife Sanctuary. It consists of 4 Ranges, 10 Sections, 29 Beats and is spread to an extent of 88, 131.56 Ha. It consists of Open Savannah forests, Moist Deciduous forests, Open Scrub Forests, Scrub Forests and Dry Mixed Thorn forests.

**3.2.** The Tamil Nadu Forest Act (Tamil Nadu Act V of 1882) was enacted in the year 1882, with an object to make provisions for the protection and management of forests in the State of Tamil Nadu. Under Section 3 of the said Act, the Government may constitute any land at the disposal of the Government, a reserve forest in the manner as further provided under the Act, by making a notification. Once such notification and final declaration under Section 16 of the Act is made as a 'reserve forest', every other right in respect of the reserve forest, except which is claimed



during the settlement proceedings, remains extinguished as per Sections 17

of the Act. As per Section 18 of the Act, no right of any description shall be

acquired in or over a reserved forest, except under a grant or contract in

writing made by or on behalf of the Government. Section 21 of the Act

prescribes for penalties for making any clearance, trespass, quarrying,

damaging etc., which is extracted hereunder :-

***“21. Penalties for trespass or damage in reserved forests, and acts prohibited in such forests.- Any person who-***

*(a) makes any fresh clearing prohibited by Section 7; or*

*(b) sets fire to a reserved forest, or kindles, or leaves burning, any fire in such manner as to endanger the same; or who, in a reserved forest,-*

*(c) kindles, keeps or carries any fire except at such season and in such manner as the District-forest-officer may from time to time notify;*

*(d) trespasses, or pastures cattle, or permits cattle to trespass;*

*(e) fells, girdles, marks, lops, taps, uproots of bums any tree, or strips off the bark or leaves from, or otherwise damages, the same;*

*(f) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;*

*(g) dears, cultivates or breaks up any land*



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*cultivation or any other purpose; or*

*(h) in contravention of any rules made by the-[Government] hunts, shoots, fishes, poisons water or sets traps or snares;*

*(i) damages, alters or removes any wall, ditch, embankment, fence, hedge or railing;*

*shall, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid, be punished-*

*(1) in any case where any of the acts aforesaid relates to sandalwood, with imprisonment for a term which may extend to one year and with fine which may extend to ten thousand rupees;*

*(2) in any other case, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*

***Acts exempted from prohibition contained in this Section.-*** Nothing in this Section shall be deemed to prohibit-

*(a) any act done in accordance with any rule made by the Government or with the permission in writing of the District-forest-officer, or of an officer authorized by him to grant such permission; or*

*(b) the exercise of any right continued under Section 12 or created by grant or contract in the manner described in Section 18:*

*Provided that this Section shall not be held to interfere with such working of the forest as may be ordered by the District-forest-officer.”*



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**3.3.** Accordingly, the Sathyamangalam Forest Division Area,

consisting of Guthiyalathur, Guthiyalathur Extension, Talamalai, Talamalai Extension, were all declared as Reserve Forests. The Sathyamangalam and Talamalai ranges were bifurcated and carved out of the North Coimbatore Division on 22.08.1980 and constituted as Sathyamangalam Division, having headquarters at Sathyamangalam.

**ii. The Wildlife Sanctuary :**

**3.4.** In the year 1972, the Government of India enacted the Wild Life (Protection) Act, 1972 (Act 53 of 1972) with an object to provide for the protection of wild animals, birds and plants and for the matters connected therewith and ancillary or incidental thereto with a view to ensure the ecological and environmental security of the country. As per Section 26 A (1) (b) of the said Act, any area comprised within any reserve forest which is considered by the State Government to be an adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, by notifications can be declared as a 'Wildlife Sanctuary'. The said provision is



extracted hereunder:-

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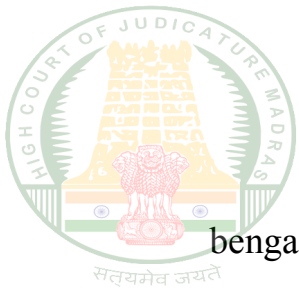
**“Section 26A.Declaration of area as sanctuary**

– (1).....

*(b) - any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological ,faunal floral ,geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary,”*

**3.5.** As stated supra, Sathyamangalam Reserve Forests, which is situated right in the midst of Western and Eastern Ghats, in a pristine location, altitude, landscape and climate, is a safe and most suitable habitat and home for a variety of wildlife, as a mother’s lap to a child. Sathyamangalam, which is richly endowed with heterogeneous mosaic of habitats such as scrub and riparian forests on the plains, deciduous and mixed deciduous forests on the slopes and hill plateau, high altitude savannah on the hills and semi evergreen patches between hill slopes is home for Fauna such as bonnet macaque (*Macaca radiate*), common or Hanuman langur (*Semnopithecus entellus*), slender loris (*Loris tardigradus*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), leopard cat (*Felis*





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bengalensis), fishing cat (*Felis viverrina*), jungle cat (*Felis chaus*), small Indian civet (*Viverricula india*), common palm civet or toddy cat (*Paradoxurus hermaphroditus*), common mongoose (*Herpestes edwardsi*), stripe necked mongoose (*Herpestes vitticollis*), smooth coated otter (*Lutra perspicillata*), striped hyena (*Hyaena hyaena*), jackal (*Canis aureus*), wild dog or dhole (*Cuon alpinus dukhunensis*), sloth bear (*Melursus ursinus*), Malabar giant squirrel (*Ratufa indica*), three striped palm squirrel (*Funambulus palmarum*), field mouse (*Mus boduga*), Indian bush rat (*Golunda elliotti*), common house rat (*Rattus rattus*), bandicoot rat (*Bandicota indica*), house mouse (*Mus musculus*), Indian porcupine (*Hysteris indica*), black naped hare (*Lepus nigricollis nigricollis*), Asian elephant (*Elephus maximus*), gaur (*Bos gaurus*), four horned antelope or chowsingha (*Tetracerus quadricornis*), blackbuck (*Antilope cervicapra*), sambar (*Cervus unicolor*), chital or spotted deer (*Axis axis*), muntjak or barking deer (*Muntiacus muntjak*), Indian chevrotain or mouse-deer (*Tragulus meminna*), wild boar (*Sus scrofa*), Indian pangolin (*Manis crassicaudata*), etc.



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3.6. It has also has Flora such as Australian wattle (Acacia

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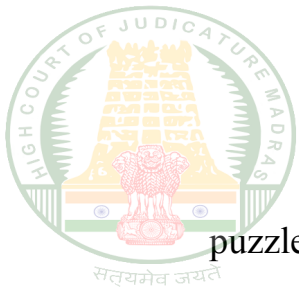
auriculiformits), velvelam (Acacia leucophloea), vagai (Albizia lebbeck), mundiri (Anacardium occidentale), palieechi (Antidesma menasu), palaa (jack fruit) (Artocarpus heterophyllus), malaiathi (Bauhinia malabarica), kumancham (Boswellia serrata), vettilai-pattai (Callicarpa tomentosa), kondarai (Cassia fistula), savukku (Casuarina equisetifolia), pancumulkiluvai (Commiphora berry), railpoondu (Croton oblongifolius), mayirkonrai (Delonix regia), tumbika (Diospyros malabarica), karippalai (Drypetes roxburghii), mulumurukku (Erythrina suberosa), kalli (Euphorbia nivulia), kallal (Ficus drupacea), savukkumaram (Grevillea robusta), parpatagam (Hedyotis corymbosa), vendai (Kydia calycina), cembavu (Meliosma simplicifolia), nuna (Morinda coreia), arali (Nerium indicum), kolarmavu (Persea macrantha), kallimandarai (Plumeria rubra), vaengai, (Pterocarpus marsupium), nirnochi (Salix tetrasperma), puvam (Schleichera oleosa), sombupattai (Soymida febrifuga), ambu (Stereospermum colais), sonnapatti (Tecoma stans), kadukkai (Terminalia chebula), amparuthi, mena. (Trema orientalis), nirnocchi (Vitex leucoxydon), etc.



**3.7.** And Avifauna such as little grebe (*Tachybatus ruficollis*), purple

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heron (*Ardea purpurea*), glossy ibis (*Plegadis falcinellus*), black kite (*Milvus migrans*), lesser kestrel (*Falco naumanni*), yellow legged button quail (*Turnix tanki*), marsh sandpiper (*Tringa stagnatilis*), spotted dove (*Spilopelia chinensis*), rose ringed parakeet (*Psittacula krameri*), small green billed malkoha (*Phaenicophaeus tristis*), blue bearded bee-eater (*Nyctornis athertoni*), white checked barbet (*Psilopogon viridis*), heart spotted woodspecker (*Hemicircus canente*), forest wagtail (*Dendronanthus indicus*), scarlet minivet (*Pericrocotus speciosus*), Eurasian blackbird (*Turdus merula*), jungle babbler (*Turdoides striata*), booted warbler (*Iduna caligata*), verditer blue flycatcher (*Eumyias thalassinus*), velvet fronted nuthatch (*Sitta frontalis*), little spider hunter (*Arachnothera longirostra*), brahminy starling (*Sturnia pagodarum*), white bellied drongo (*Dicrurus caerulescens*), etc; while butterfly, insects, reptiles recorded from the Tiger Reserve are tawny coster (*Acraea violae*), glassy blue tiger (*Parantica aglea*), rustic (*Cupha erymanthis*), common sailer (*Neptis hylas*), common lascar (*Pantoporia hordonia*), grey pansy (*Junonia atlites*), common five-ring (*Ypthima baldus*), lime blue (*Chilades lajus*), common silverline (*Spindasis vlucanus*), monkey



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puzzle (*Rathinda amor*), blue mormon (*Papilio polymnestor*), common gull (*Cepora nerissa*), white orange tip (*Ixias marianne*), crimson tip (*Colotis danae*), great orange tip (*Hebomia glaucippe*), paintbrush swift (*Baoris farri*), Indian skipper (*Spialia galba*), rice swift (*Borbo chinnara*), etc.

**3.8.** Further Sathyamangalam is home for a plethora of rare, endangered and threatened species such as striped hyena (*Hyaena hyaena*), jackal (*Canis aures*), white backed vulture (*Gyps africanus*), gyps (*Gyps indicus*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), elephant (*Elephas maximus*), Indian gaur (*Bos gaurus*), black buck (*Antelope cervicapra*), four horned antelope (*Tetracerus quadricornis*), hyena (*Hyaena hyaena*), sloth bear (*Melursus ursinus*), mugger crocodile (*Crocodylus palustris*), white backed vulture (*Gype africanus*), rusty-spotted cat (*Prionailurus rubiginosus*). While rare, endangered and threatened (RET) species of plants available in the Sathyamangalam Tiger Reserve are kadukkai (*Terminalia chebula*), kungiliyam (*Boswellia Serrata*), enthapanai (*Cycas circinalis*), perumalli (*Isonandra villosa*), porasu (*Chloroxylon swietenia*), cryptocarya (*Cryptocarya beddomei*), cryptocarya (*Cryptocarya*



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stocksii), enthaipanai (*Cycas circinalis*), eetti (*Dalbergia latifolia*).

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**3.9.** Considering the above, the Government of Tamil Nadu proposed Sathyamangalam as a 'Wildlife Sanctuary' and after acceptance by the Central Government, was declared as such, by two notifications under Section 26 A (1) (b) of the Act namely:-

i. G.O.(Ms) No.122 E&F (FR-5) Dept.  
dated 03.11.2008 : 524.349 Sq.kms;

ii. G.O.(Ms) No.93 E&F (FR-V) Dept.  
dated 11.08.2011 : 887.260 Sq.kms, in all  
totalling 1411.609 Sq.kms, which is incidentally  
the largest Sanctuary in the State of Tamil Nadu.

**3.10.** Once it is notified as per Section 27 of the Wildlife Protection Act, there is total restriction on the entry in Sanctuary, except public servants on duty or other persons permitted by Chief Wildlife Warden or a person who has any right over immovable property within the limits of Sanctuary or a person passing through the Sanctuary along the public highway. Under Section 27(2) of the Act, obligations are also imposed on every person, who resides in the Sanctuary. The said provision is extracted



hereunder:-

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**“27. Restriction on entry in sanctuary.—**

*(1) No person other than,—*

*(a) a public servant on duty,*

*(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,*

*(c) a person who has any right over immovable property within the limits of the sanctuary,*

*(d) a person passing through the sanctuary along a public highway, and*

*(e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28.*

*(2) Every person shall, so long, as he resides in the sanctuary, be bound—*

*(a) to prevent the commission, in the sanctuary, of an offence against this Act;*

*(b) where there is reason to believe that*



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*any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;*

*(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;*

*(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and*

*(e) to assist any forest officer, Chief Wild Life Warden, Wild Life Warden or police officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.*

*(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark.*

*(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.”*

**3.11.** Any kind of detrimental exploitation or removal of wildlife from a Sanctuary or diversion of habitat of any wild animal by any act whatsoever



is prohibited as per Section 29 of the Act and is re-produced hereunder:-

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**“29. Destruction, etc., in a sanctuary prohibited without a permit.—**

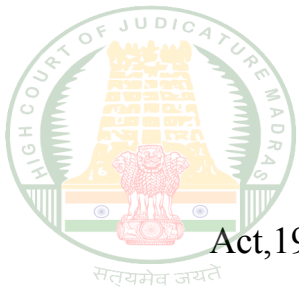
*No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:*

*Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose.*

*Explanation.—For the purposes of this Section, grazing or movement of livestock permitted under clause (d) of Section 33 shall not be deemed to be an act prohibited under this Section.”*

Thus, by the above and other provisions, multiple restrictions are imposed and penalties are provided under the Wildlife (Protection)





Act, 1972.

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**iii. The Tiger Reserve :**

**3.12.** In the year 2011, through the scat analysis and camera trapping, it was discovered that as many as 18 number of tigers were existent in the Sathyamangalam Sanctuary. In order to protect the endangered species of Tiger, the Government of Tamil Nadu proposed Sathyamangalam as Tiger Reserve. Chapter IV-B of Wildlife Protection Act, vide Sections 38-K to 38-X makes provision for declaration of a particular area as Tiger Reserve and for a National Tiger Conservation Authority to manage the Tiger Reserve by approving the Tiger Conservation Plan and also to constitute a Steering Committee to come up with implementation plan etc. Section 38-V which makes provision for declaration is as under :-

*“38V. Tiger Conservation Plan.—*

*(1) The State Government shall, on the recommendation of the Tiger Conservation Authority, notify an area as a tiger reserve.*

*(2) The provisions of sub-Section (2) of Section 18, sub-Sections (2), (3) and (4) of Section 27, Sections 30, 32 and clauses (b) and (c) of Section 33 of this Act shall, as far as may be, apply in relation to a tiger reserve as they*



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*apply in relation to a sanctuary.*

*(3) The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in sub-Section (1), so as to ensure—*

*(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;*

*(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;*

*(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.*

*(4) Subject to the provisions contained in this Act, the State Government shall, while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve,*

*Explanation.—For the purposes of this Section, the expression “tiger reserve” includes—*



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*(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;*

*(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.*

*(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate*



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*areas for tiger conservation unless—*

*(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;*

*(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;*

*(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;*

*(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;*

*(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and*

*(vi) the facilities and land allocation at the resettlement location are provided under the*



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*said programme, otherwise their existing rights shall not be interfered with.”*

**3.13.** By G.O (Ms) No.41 E&F (FR V) Dept., dated 15.03.2013, based on the approval granted by the Government of India on 12.03.2013, out of 1411.609 Sq.kms, 1408.405 Sq.kms was declared as Tiger Reserve, excluding the 9 Forest Tribal Settlements and 19 Revenue Tribal Settlements in the Sathyamangalam Forest Division. As per the notification,

Total extent of core zone : 79349.331 Ha. (or) 793.493 Sq.kms

Total extent of buffer zone : 61491.21 Ha. (or) 614.912 Sq.kms

Total extent : 140840.541 Ha. (or) 1408.405 Sq.kms

Section 38V (4) (Supra) explains the core and buffer zones. The core zone should be kept as inviolate for the purposes of Tiger Conservation and only the rights of the Scheduled Tribes or such other forest dwellers as notified by the State Government in consultation of the expert committee alone is protected.

**3.14.** Section 38-O delineates the powers and functions of the Tiger Conservation Authority, which is as follows :-



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*“38-O Powers and functions of Tiger Conservation Authority.—*

*(1) The Tiger Conservation Authority shall have the following powers and perform the following functions, namely:—*

*(a) to approve the Tiger Conservation Plan prepared by the State Government under sub-Section (5) of Section 38V of this Act;*

*(b) evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;*

*(c) lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;*

*(d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-existence in forest areas outside the National Parks, sanctuaries or tiger reserve, in the working plan code;*

*(e) provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species, status of habitats, disease*



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*surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it deem fit including future plan conservation;*

*(f) approve, co-ordinate research and monitoring on tiger, co-predators, prey, habitat, related ecological and socio-economic parameters and their evaluation;*

*(g) ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;*

*(h) facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;*

*(i) ensure critical support including scientific, information technology and legal support for better implementation of the tiger conservation plan;*

*(j) facilitate ongoing capacity building programme for skill development of officers and staff of tiger reserves; and*





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*(k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.*

*(2) The Tiger Conservation Authority may, in the exercise of its powers and performance of its functions under this Chapter, issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and such person, officer or authority shall be bound to comply with the directions:*

*Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes.”*

**3.15.** The National Tiger Conservation Authority had made a Tiger Conservation Plan vide Technical Document No.NTCA 1/07 *inter-alia* providing for strategies for management. The relevant Clause- 8 alone is extracted :-

**“5. Strategies for Management**

**5.1 Protection Strategy.**

.  
. .

**(8) Maintaining a list of vehicles passing**





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*through manned barriers, and surprise checks by senior officers at such points every month.”*

**3.16.** As per the above said document, every Tiger Reserve has to come up with its own Tiger Conservation plan. The Sathyamangalam Tiger Reserve is yet to formulate its conservation plan and as per the website maintained by the authorities<sup>1</sup>, the plan is under preparation and is at present being managed with the approved Indicative Plan and Management Plan of Sathyamangalam Wildlife Sanctuary (2010-2020) written by the then District Forest Officer, Sathyamangalam.

**3.17.** As a matter of fact, the National Tiger Conservation Authority had issued guidelines regarding tourism and tourist vehicles. As per the communication, dated 12.02.2020 of the National Tiger Conservation Authority, tourism carrying capacity in respect of a Tiger Reserve is calculated as maximum number of tourist vehicles permitted per day, as per the prescription mentioned in the National Tiger Conservation Authority (Norms and Standards of Tourism Activities and Project Tiger) Guidelines,

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<sup>1</sup> <https://sathytiger.org/about-us/management-plan/>



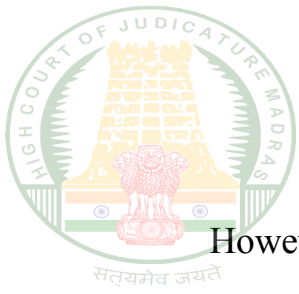
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2012, the above carrying capacity is determined with the presumption that

the gap between two consecutive vehicles must be a minimum of 500 meters distance from one vehicle to another.

**3.18.** The Guidelines for preparation of the Tiger Conservation Plan, in Annexure-VI prescribes that in respect of the visitors'/tourists'/humans' movement, the Tiger Reserve can be opened for tourists for nine months in a year and nine hours per day and details of vehicle carrying capacity including the formula to determine the number of visitors, the road's length, breadth etc., inside the Tiger Reserve, are prescribed. In fact, a formula is given to determine the visitor carrying capacity by taking into account the type of species prone to disturbance owing to visitation and accordingly, everything has to be determined.

**3.19.** The Sub-Committee of the National Board for Wildlife, Wildlife Division, Ministry of Environment, Forest and Climate Change, had also issued guidelines for roads in protected areas, vide Memorandum dated 28.12.2014. The first principle under the said guidelines is avoidance.



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However, if any road exists, the status-quo of the road should be maintained

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in respect of its existence. The management shall be with ban on night traffic

and strong regulations controlling and timing and traffic volumes including

stoppage of vehicles within limits, non usage of horns, speed restrictions etc.

It is useful to quote the relevant portions:-

### ***“Basic Principles***

*1.Principle of Avoidance: The foremost option would be to altogether avoid are as that are within or in the vicinity of any Protected Area and to find alternatives that are socially and ecologically more appropriate.*

### ***Recommendations***

*1.The status quo of the roads passing through National Parks and Core Critical Tiger Habitats (CTH) shall remain the same. The roads could be maintained and repaired in the best manner possible in their current form and present width. No widening or up gradation is to be allowed. If it is an existing tarred road, it shall be maintained as such and no widening of the tarred surface or the widening of the road itself, may be done.*

### ***Management of Roads within PAs:***

*An exhaustive set of management measures have*



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*been recommended in the NBWL's draft guideline document mentioned above (pages 8-13, and 17-21). While fully endorsing these recommended management measures, for ready reference, some of the key management considerations applicable for already existing roads, are herewith highlighted:*

- ***Ban on night traffic (dusk to dawn) is essential to save animals from disturbance from the constant flow of traffic, and thus allow them passage. It is recommended that night traffic bans should be initiated and applied in Core Critical Tiger Habitats, National Parks and Sanctuaries. There are such existing bans in various Tiger Reserves and NPs. Night passes may be provided for villagers/communities living within the PAs.***
- *Strong regulations controlling timing and traffic volumes need to be built in for all roads through Protected Areas and critical habitats.*
- *Speed reduction is a must to reduce wild animal mortality, and can be achieved through imposed speed limits and speed breakers.*
- *Vehicles should not be allowed to stop within PAs.*
- *No use of horns within the PA, and no littering.*
- ***Speed restrictions and other guidelines that spell out rules and avoidance of disturbance to wildlife and habitats along***



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***roads in PAs, must be prominently conveyed through well-designed signboards, at entry and exit points and all other relevant locations.***

- *Establishment of check posts by the forest department, at both entry and exit points.*
- *Wherever possible, natural animal crossings existing across roads should be retained or encouraged. For instance, overlapping tree canopy in closed canopy evergreen/semi evergreen forests is an essential attribute for the movement of arboreal species. Passage to waterholes and daily movements of animals must also be safeguarded.*
- *Underpasses: well-designed tunnels, culverts, pipes, and other structures can function as underpasses below roads and bridges, for a wide-range of terrestrial and aquatic species. Underpasses can also be deployed below railway lines/highways for passage of large bodied animals, viz elephants, tigers.*
- *During maintenance works on existing roads, the underlying principle should be that work must be carried on in a speedy manner, with minimal disturbance to wildlife and with adherence to all rules and regulations that govern wildlife and PAs.*
- *No work should be allowed between 6 pm to 8 am (just before dusk to just after dawn).*
- *The labour force required for road*



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- maintenance must have their camps outside, the concerned PA.*
- *No firewood cutting or fuel collection from within the PA.*
  - *Waste/debris should not be dumped in the PA/or adjoining rivers/nullas/water bodies.*
  - *No taking of any material like sand, gravel etc from the PA. All materials for construction, road maintenance etc should be brought from outside.*
  - *No vegetation/tree should be cut or damaged/ during the maintenance. ”*

**3.20.** As a matter of fact, in *Ajay Dubey Vs. National Tiger Conservation Authority*<sup>2</sup>, by an order, dated 16.10.2012 itself, the Hon'ble Supreme Court of India had already directed the implementation of the guidelines of the National Tiger Conservation Authority and the State Governments were also directed to prepare the Tiger Conservation Plan.

**iv. The Eco-Sensitive Zone :**

**3.21.** The Environment Protection Act, 1986 (Act 29 of 1986) was enacted by the Government of India with an object to provide for the protection and improvement of environment and for matters connected

<sup>2</sup> 2012 SCC Online SC 875



therewith. Sub-Section (1) and clauses (v) and (xiv) of sub-Section (2) of

Section 3 of the said Act empowers the Central Government to declare any

area as eco-sensitive zone. It is useful to extract the entire Section 3 as below

:-

**“3. POWER OF CENTRAL GOVERNMENT  
TO TAKE MEASURES TO PROTECT AND  
IMPROVE ENVIRONMENT.-**

***(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.***

*(2) In particular, and without prejudice to the generality of the provisions of sub-Section (1), such measures may include measures with respect to all or any of the following matters, namely:--*

*(i) co-ordination of actions by the State Governments, officers and other authorities-- Act 29 of 1986 The Environment (Protection) Act, 1986 269 (a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and*



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*abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

***(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;***

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances; (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities,*





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*officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution; Act 29 of 1986 270 The Environment (Protection) Act, 1986;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.*

Once the area is declared as eco-sensitive zone, the act prohibits several activities including polluting industries, mining etc., and regulates certain activities. The vehicular movement also becomes a regulated activity. The Central Government can issue directions of activities prohibiting, regulating etc., as per the eco-sensitive zone.

**3.22.** The Ministry of Environment and Forest had also issued



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guidelines for declaration of eco-sensitive zones around the national parks

and wildlife sanctuaries. It is useful to extract the relevant portions of the

said guidelines in F.No.1-9/2007 WL-I(pt), dated 09.02.2011, as

hereunder:-

***“1.2. National Wildlife Action Plan (2002-2016)***

*1.21. The National Wildlife Action Plan (NWAP) 2002-2016 indicates that “Areas outside the protected area network are often vital ecological corridor links and must be protected to prevent isolation of fragments of biodiversity which will not survive in the long run. Land and water use policies will need to accept the imperative of strictly protecting ecologically fragile habitats and regulating use elsewhere.*

*1.22. The Action Plan also indicates that “All identified areas around Protected Areas and wildlife corridors to be declared as ecologically fragile under the Environment (Protection) Act, 1986.”*

***1.4 Hon’ble Supreme Court’s decision:***

*1.4.1 A Public Interest Litigation was also filed by the Goa Foundation vide their Writ Petition No. 460/2004 before the Hon’ble*



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*Supreme Court regarding the issue of declaration of eco-sensitive zones.*

*1.4.2 Vide their order dated 4" December 2006, Hon'ble Supreme Court had directed the Ministry of Environment & Forests to give a final opportunity to all States/Union territories to respond to the letter dated 27.5.2005 and that the State Governments send their proposals within four weeks, to the Ministry. It was also directed that all cases where environmental clearances were granted where activities are within 10 Kms zone, be referred to Standing Committee of NBWL.*

## **2. Statutory Provisions**

*2.1 Section 5 C(1) of the Wildlife (Protection) Act, 1972 states that it shall be the duty of the National Board for Wildlife to promote the conservation and development of Wildlife and Forests by such measures as it thinks fit.*

*2.2 Section 3 of the Environment (Protection) Act 1986 (EPA) gives power to the Central Government i.e. the Union Ministry of Environment and Forests to take all measures that it feels are necessary for protecting and improving the quality of the environment and to prevent and control environmental pollution. To meet this objective, the Central Government can restrict areas in which any industries, operations or processes or class of industries,*



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*operations or processes shall not be carried out or shall be carried out subject to certain safeguards [Section 3(2)(v)]*

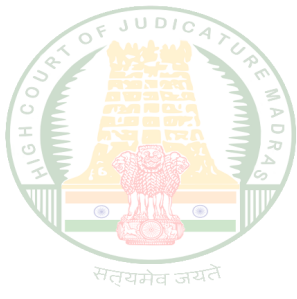
*2.3 Section 5(1) of the Environment (Protection) Rules, 1986 (EPR), states that the central Government can prohibit or restrict the location of industries and carrying on certain operations or processes on the basis of considerations like the biological diversity of an area (clause v) maximum allowable limits of considerations of pollutants for an area (clause ii) environmentally compatible land use (clause vi) proximity to protected areas (clause viii).*

### **3. Purpose for declaring Eco-Sensitive Zones:**

*The purpose of declaring Eco-sensitive Zones around National Parks and Sanctuaries is to create some kind of “Shock Absorber” for the Protected Areas. They would also act as a transition zone from areas of high protection to areas involving lesser protection. As has been decided by the National Board for Wildlife, the activities in the Eco-sensitive zones would be of a regulatory nature rather than prohibitive nature, unless and otherwise so required.*

*6.3. Based on the above, the Chief Wildlife Warden could group the activities under the following categories (an indicative list of such activities) attached as*

### **ANNEXURE-1:**



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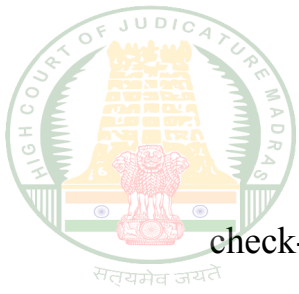
- (i) Prohibited  
(ii) Restricted with safeguards.  
(iii) Permissible ”

In the Annexure-I of the said guidelines, it is also mentioned about the movement of vehicle traffic during night time, which is extracted below:-

S.No.	Activity	Prohibited	Regulated	Permitted	Remarks
18	Movement of vehicular traffic at night		Y		For Commercial Purpose

#### 4. The Dhimbam Ghat Road :

4.1. Sathyamangalam Tiger Reserve is located about 225 kms from Bangalore, 75 kms from Coimbatore, 65 kms from Udagamandalam (Ooty), near the confluence of the borders of the three states, namely Tamil Nadu, Kerala and Karnataka. In the year 1920, Sathyamangalam-Dhimbam Ghat Road, with 27 steep hairpin bends, was formed. The said ghat road starts in the plains at Bannari check-post and runs in the plains for 3 kms, which comes within the buffer zone of the Tiger Reserve and thereafter, runs as Ghat Road for 9 kms having 27 steep hairpin bends, ends at the Dhimbam



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check-post, in the core zone of the Tiger Reserve. The Dhimbam check-post

is located at the plateau in the higher altitude around 1105 msl from the sea level and thereafter, it again runs for 10 kms until Karapallam in Tamil Nadu and joins Chamrajnagar in Karnataka, which is the nearest township in Karnataka. From the entry point in the Bannari road, the city of Mysore is within 123 kms.

**4.2.** The road, which is formed in the year 1920, was for the purpose of patrolling the forest and for usage of the village people of Thalavadi, Hasanur and other villages and tribal settlements, the road was slowly developed. The road does not have any under passes or other sophisticated ways for animals to cross over, neither it has any protection such as fencing because it exactly bisects the Tiger Reserve. However, since the vehicular traffic from Tamil Nadu can reach Mysore or further North through the west coast to interior Karnataka and onwards to Maharashtra and Northern States, the vehicles started using the said Ghat Road. Vehicles also find it convenient to reach Bangalore also in view of the distance involved in other alternate routes. Thus, apart from the forest patrolling and the usage of the



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villagers, commercial vehicles started passing through the said road, so much so that the road was declared as National Highways- No. 209, now as part of NH-948.

**4.3.** In the present day scenario admittedly about 6000 vehicles pass through this road and majority of them are heavy commercial vehicles. It is also common knowledge that now and then trailers of ten wheels and above, being driven for long distance by the drivers without having particular and sophisticated knowledge about the Dhimbam ghat road and its intricacies, get upturned and involved in accidents, and lay there for about 24 to 48 hours for the authorities to lift and remove the vehicle and the traffic jam inside the Tiger Reserve and outsides thereof is a regular phenomenon. This apart, the vehicular movement endangers wildlife by constantly and thoroughly disturbing them even during at Night and road-kills also happen and thus extremely inappropriate for wildlife, but has also become a necessity for humans.

**4.4.** The relevant provisions under the Motor Vehicles Act, 1988 for



regulation are as under:-

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**“113. Limits of weight and limitations on use:**

(1) *The State Government may prescribe the conditions for the issue of permits for transport vehicles by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route.*

(2) *Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.*

(3) *No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—*

*(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or*

*(b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.*

(4) *Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-Section (2) or clause (a) of sub-Section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.*





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***114. Power to have vehicle weighed:***

*(1) Any officer of the Motor Vehicles Department authorized in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113 require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of Section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with Section 113 and on receipt of such notice, the driver shall comply with such directions.*

*(2) Where the person authorised under sub-Section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit.*

***115. Power to restrict the use of vehicles:***

*The State Government or any authority*



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*authorised in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under Section 116 at suitable places:-*

*PROVIDED that where any prohibition or restriction under this Section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction.*

***194. Driving vehicle exceeding permissible weight:***

*(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113 or Section 114 or Section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the*



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*excess load.*

*(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under Section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupee.”*

**4.5.** It is useful to also extract the relevant rules from Tamil Nadu

Motor Vehicle Rules, 1989, as hereunder:-

**“Rule 369: Weighing of vehicles.—**

*Every inspecting officer of the Transport Department is authorised to require the weighing of goods carriages and trailers.*

**Rule 370: Powers of Transport authority to restrict speed, weights, etc.**

*(1) The State Transport Authority and Regional Transport Authority shall have the power to impose speed limits, to impose limits on the laden weight or axle weight or dimensions of motor vehicles and to prohibit or restrict the use of motor vehicles generally or of a particular class or trailers in a specified area or in respect of any road:*

*Provided that no limits or prohibition or restrictions shall be imposed by the Regional Transport Authority without the specific concurrence of the State Transport Authority.*

*(2) The Commissioner of Police in the City*



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*of Chennai and the Superintendent of Police in the district shall exercise the powers—*

*(i) to impose speed limits including the minimum speed; and*

*(ii) to designate any road as a main road:-*

*Provided that the power conferred by this sub-rule shall be subject to the control of the State Transport Authority”*

**4.6.** It is pertinent to note that National Highways Authority of India has fixed a permissible vehicular weight of 16.20 tonnes and the plying vehicle should be 3.80 metre high and the speed limit as 20 km for the Dhimbam Ghat Road (Old NH-209). The relevant provisions with regard to the National Highways are as follows:-

*“Sec.2 of the National Highways Act,1956 Declaration of certain highways to be national highways.—*

*(1) Each of the highways specified in the Schedule 2[\* \* \*] is hereby declared to be a national highway.*

*(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.*



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*(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.”*

4.7. The National Highways Act, 1956 is a law ascribable to Schedule VII List I Entry 23 of the Constitution and it provides for construction of national highway on a non-existing road/ highway traversing through green fields or “any land” in any State. Considering the provisions of the Act, the Hon’ble Supreme Court of India, in ***Project Implementation Unit v. P.V. Krishnamoorthy***<sup>3</sup>, held that there is nothing in 1956 Act to constrict power of Central Government to notify any stretch/Section (not being an existing road/highway) within any State, to be a national highway, and thereupon to construct the same.

4.8. The provisions of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 are also relevant. Rule 3 deals with Levy of fee:-

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<sup>3</sup> (2021) 3 SCC 572



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**“3. Levy of fee-** (1) *The Central Government may by notification, levy fee for use of any Section of national highway, permanent bridge, bypass or tunnel forming part of the national highway, as the case may be, in accordance with the provisions of these rules: Provided that the Central Government may, by notification, exempt any Section of national highway, permanent bridge, bypass or tunnel constructed through a public funded project from levy of such fee or part thereof, and subject to such conditions as may be specified in that notification.*

(2) *The collection of fee levied under sub-rule (1) of rule 3, shall commence within forty-five days from the date of completion of the Section of national highway, permanent bridge, bypass or tunnel, as the case may be, constructed through a public funded project.*

(3) *In case of private investment project, the collection of fee levied under sub-rule (1) shall be made in accordance with the terms of the agreement entered into by the concessionaire.*

(4) *No fee shall be levied for the use of the Section of national highway, permanent bridge, bypass or tunnel, as the case may be, by two wheelers, three wheelers, tractors and animal drawn vehicles: Provided that three wheelers, tractors and animal-drawn vehicles shall not be allowed to use the Section of national highway, permanent bridge, bypass or tunnel, as the case may be, where a service road or alternative road is available in lieu of the said national*



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*highway, permanent bridge, bypass or tunnel: Provided further that where service road or alternative road is available and the owner, driver or the person in charge of a two wheeler is making use of the Section of national highway, permanent bridge, bypass or tunnel, as the case may be, he or she shall be charged fifty per cent. of the fee levied on a car.*

*Explanation 1.- For the purposes of this rule,-*

*(a) "alternative road" means such other road, the carriageway of which is more than ten meters wide and the length of which does not exceed the corresponding length of such Section of national highway by twenty per cent. thereof:*

*(b) "service road" means a road running parallel to a Section of the national highway which provides access to the land adjoining such Section of the national highway.*

*(5) The fee notified by the Central Government under these rules shall be rounded off and levied in multiple of the nearest Rupees five.*

***Rule 6 - Collection of fee.-***

*(1) Fee levied under these rules shall be collected by the Central Government or the executing authority or the concessionaire, as the case may be, at the toll plaza.*

*(2) Every driver, owner or person in charge of a mechanical vehicle shall for the use of the Section of national highway, permanent bridge, bypass or tunnel, before crossing the toll plaza, pay the fee specified under these rules.*





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(3) *The fee collected under these rules shall be paid either in cash or through smart card or on board unit (transponder) or any other like device: Provided that no additional charges shall be realised for making the payment of fee by use of a smart card or on board unit (transponder) or any other such device. ....*

**Rule 10. Rate of fee for overloading.-**

(1) *Without prejudice to the liability of the driver, owner or a person in charge of a mechanical vehicle under any law for the time being in force, a mechanical vehicle which is loaded in excess of the permissible load specified for its category under sub-rule (2) of rule 4, shall be liable to pay fee at such rate which is applicable for the next higher category of mechanical vehicles: Provided that the payment of such fee for overloading shall not entitle a driver or owner or a person in charge of a mechanical vehicle to make use of such national highway and his or her vehicle shall be prevented from using the national highway or crossing the toll plaza until the excess load has been removed from such mechanical vehicle.*

(2) *The weight of a mechanical vehicle, as recorded at a weigh bridge installed at the toll plaza, shall be the basis for levying the fee for overloading under this rule: Provided that where no weigh bridge has been installed at the toll plaza, no fee for overloading shall be levied and collected under this rule and the driver, owner or person incharge of the mechanical*





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*vehicle shall be liable to pay fee applicable for such vehicle only. ....”*

**4.9.** In respect of National Highways, where weight restrictions are applicable, it is made mandatory by the Hon’ble Supreme Court of India in ***Jantia Hill Truck Owners Assn. v. Shailang Area Coal Dealer & Truck Owner Assn.***<sup>4</sup> for the National Highways Authority or any person authorized by it should operate the weighbridge and it shall be at the cost of the vehicle owners to be collected by a notification by the Central Government.

## **5. Notifications on Restrictions:**

**5.1** Considering the repeated accidents and road blocks in the Ghat Road, the meeting of the District Road Safety Committee was held on 12.10.2018 and the committee decided to make a joint inspection with the Chief Conservator of Forests, the Superintendent of Police and other officials and held a meeting on 25.10.2018 with the representatives of lorry, bus owners of Erode and other adjacent districts and upon taking into consideration, the suggestions given by the representatives of lorry and bus

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4 (2009) 8 SCC 492



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owners, decided to ban the movement of all commercial heavy vehicles from 9.00 P.M to 6.00 A.M and accordingly, a notification bearing R.O.C.No.18425/2017 (C2), dated 22.11.2018 was made by the District Collector, which was published in the Extraordinary District Gazette No.47, dated 23.11.2018 of the Erode District. The following are the orders passed vide the said notification:-

“ 1) *Maximum breadth of the vehicle plying between the stretches of Bannari Check post to Dhimbam NH 209 (Old) NH 958 (Bangalore to Coimbatore) is restricted to 3.3 meters.*

2) *Maximum height of the vehicle is restricted to 4.2 meters.*

3) *Maximum speed limit in between Bannari Check post and Thimbam and vice versa is fixed to 30 kms per hour. To check the speed, surveillance cameras to be fixed at relevant points.*

4) *The road users should cross the stretch of 9 kms within the prescribed time limit.*

5) *Plying of heavy vehicles having more than 12 wheels is completely banned.*

6) *The vehicles loaded with more than the prescribed weight are banned. To ensure the weight, weigh bridges to be commissioned at both the entry points (i.e.) at Bannari Check post and at Hasanur.*

7) *Commercial Vehicles (like lorries) will not be allowed to used the ghat road from*



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*evening 6.00 P.M to morning 6.00 A.M in  
interest and welfare of wild animals.”*

**5.2.** Thereafter, once again the meeting of the District Road Safety committee was held on 29.11.2018 and vide Agenda No.27, it was resolved to install “-“ shaped iron bar in the Ghat Road near Bannari check-post near Thalavadi so as to prevent overloaded vehicles and also beyond prescribed height so as to prevent overloaded vehicles and also beyond prescribed height and it was decided to complete the work on or before December, 2018.

**5.3.** Again, pursuant to a decision taken in the Road Safety Committee meeting, the District Collector, vide Notification, which is impugned in the writ petitions, bearing R.O.C.No.18425/2017 (C2), dated 04.01.2019 published in the Extraordinary District Gazette of Erode District, dated 07.01.2019 bearing No.1, decided to collect the entry fees and also to ban the plying of commercial vehicles in the stretch from 6.00 P.M to 6.00 A.M and also prescribed the rates of entrance fees. The following are the orders contained in the said notification:-



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“ 1. To collect entrance fee as prescribed in the above list and to maintain the accounts properly.

2. Government Vehicles, Public Transport Vehicles (Government/Private Buses) and Emergency Vehicles (Ambulance, Recovery Vehicle etc.) are exempted from the entrance.

3. All Commercial heavy Vehicles are banned to ply in the stretch during 6.00 P.M to 6.00 A.M.

4. Private passenger Four Wheelers and Light Commercial Vehicles are banned to ply in the stretch during 9.00 P.M to 6.00 A.M.”

**5.4.** By a notification of the National Highways Authority of India, the prescriptions were made for the use of the Ghat Road, thereby, the maximum weight of the vehicles pass by was fixed at 16.20 tonnes, the maximum height of the vehicles can be 3.80 meters and the maximum speed limit was fixed at 20 kms/hr.

## **6. Submissions before Court:-**

**6.1.** *Mr.S.P.Chockalingam*, Petitioner-in-person submitted that the wildlife, predominantly nocturnal, were gravely affected on account of huge number of vehicles unabatedly passing through the Tiger Reserve. The



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respondents, even though are having a check-post, have converted it into a mere toll collection exercise and no restriction regarding weight, height or speed limit was in any manner regulated. The night ban remained only on paper. The decisions of the Road Safety Committee were not at all implemented. He would submit that apart from disturbance affecting their free movement and existence, there has been constant road kills. The data obtained by him under Right to Information Act, 2005 is reproduced in paragraph 9 of the affidavit, which is extracted hereunder:

Year	Leopard	Elephant	Gaur	Spotted Deer	Asian palm civet	Peacock	Bear	Others	Total
2012		1	3	17			1	6	28
2013				10	1	1			12
2014				3				1	4
2015	1			1					2
2016				9		16			25
2017	1			13		11		1	26
2018				3		9			12
2019	1			8		12			21
2020	1		1	4		6	1	2	15
2021	4			3				3	10
<b>Total</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>71</b>	<b>1</b>	<b>55</b>	<b>2</b>	<b>13</b>	<b>155</b>

6.2. He submitted that the inaction, on the part of the respondents,



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had led to serious consequences. Submitting a detailed Written submissions,

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Mr. *Chockalingam* submitted that the power of the District Collector under Section 115 read with Section 116 of the Motor Vehicles Act is unquestionable and has been rightly exercised considering the necessity and the legal obligations arising out of Sathyamangalam Reserve Forest being declared as Wildlife Sanctuary and thereafter, as Tiger Reserve.

**6.3.** In support of his contentions, he relied upon the judgment reported in *In Re Travancore Devaswom Board*<sup>5</sup>, for the proposition that even though a passage through the Sanctuary may be a highway, it is regulated and restricted in view of Section 27 of the Wildlife Protection Act. He would rely upon the judgment in *Virender Singh and Ors. Vs. State of H.P and Ors.*<sup>6</sup>, rendered by a Division Bench of Himachal Pradesh for the proposition that in respect of any matter relating to road safety, the provisions of the Motor Vehicles Act, 1988 will prevail over other enactments.

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<sup>5</sup> 2011 SCC OnLine Ker 4032

<sup>6</sup> 2018 SCC OnLine HP 2983



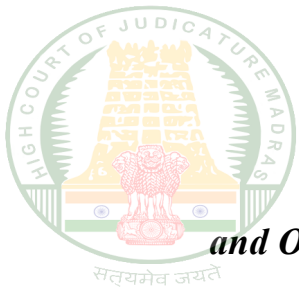
**WEB COPY 6.4.** Relying upon the judgment of a Division Bench of the Nagpur Bench of the Bombay High court, in *Zakir Husain and Ors. Vs. State of Maharashtra and Ors.*<sup>7</sup>, he would submit that there is no necessity of calling objections from the public for issue of notification under Section 115 of the Motor Vehicles Act, 1988. For the proposition that the vehicle owners do not have any inalienable right to ply their vehicles through particular route or particular area and the decisions taken by the State Government based on reasons will be binding on them, he relied upon the judgment of a Division Bench of the Delhi High Court in *Federation of Delhi Bus Operators and Ors. Vs. Lt. Governor of Delhi and Ors.*<sup>8</sup>. For the same proposition, he relied upon the judgment in the case of *Lalhimpuia and Ors. Vs. State of Mizoram and Ors.*<sup>9</sup>. To press home the point, that in the matters of policy, the Court would be reluctant in interfering, he relied upon the judgment in *Shweta Kapoor and Ors. Vs. The Govt, of NCT of Delhi*

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7 2000 SCC OnLine Bom 542

8 2011 SCC OnLine Del 1707

9 2010 SCC OnLine Gau 62



*and Ors.*<sup>10</sup>.

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6.5. Relying upon the judgment in *B.R.Prakash Kumar and Ors. Vs. The Collector-cum-Regional Transport Authority and Ors.*<sup>11</sup>, he submitted that the imposition of similar night ban within the Mudumalai Tiger Reserve was held to be valid by a learned Judge of this Court. He would further submit that in identical facts and circumstances, while considering the case of Bandipur Tiger Reserve, a Division Bench of the Karnataka High Court, upheld the night traffic ban in the judgment in *P.K.Fravesh and Ors. Vs. The State of Karnataka and Ors.*<sup>12</sup>.

6.6. *Mr. Chockalingam*, would also give the particulars of various other alternate routes which are available, which are as follows :

(i) *Sathyamangalam to Bengaluru via NH 948 (209) - 253 km – 6 hr 19 min.*

(ii) *Sathyamangalam to Bengaluru via NH 44 & 544 - 318 km – 5 hr 43 min.*

(iii) *Sathyamangalam to Mysuru via NH*

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10 2016 SCC OnLine Del 155

11 MANU/TN/4701/2010

12 2010 SCC OnLine Kar 192





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948/NH 150A- 136 km – 3 hr 16 min

(iv) Sathyamangalam to Mysuru via SH 38  
-176 KM – 4 hr 30 min

(v) Sathyamangalam – Kadambur –  
Germalam – Mysuru via SH 38/NH 766 – 174  
Km – 4 hr 43 min

(vi) Sathyamangalam to Kollegal via NH 948  
-119 KM – 2 hr 53 min

(vii) Sathyamangalam to Kollegal via MDR  
180/SH 38 -110 km- 3 hr 7 min

(viii) Sathyamangalam to Wayanad via NH  
948 /NH 766- 176 km – 4 hr 33 min

(ix) Sathyamangalam to Wayanad via NH  
181 -240 km- 6 hr 52 min

(x) From Coimbatore to Bengaluru via NH  
948 (209) -311 km – 7 hr 50 min.

(xi) From Coimbatore to Bengaluru via NH  
44 & 544 – 364 km – 6 hr 21 min

(xii) Anthiyur to Kargekandi via Burgur  
( This route was suggested by the Respondent  
Govt. authorities in their Status Report, dated  
09.03.2022. However, the authorities had  
submitted that due to recent landslides the  
road has motorable difficulties and vehicles  
would be permitted, upon restoration).”

He would submit that there are illegal quarry owners, resort owners and the lorry owners association who are behind this violations and excesses within the Sathyamangalam Tiger Reserve and prays for allowing of the Writ Petition and dismissal of the other Writ Petitions filed by the side



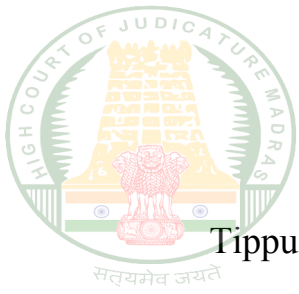
opposite.

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**6.7. Mr.J.Ravindran**, learned Additional Advocate General appearing for the State, including the District Collector and the Forest Department would submit that in these cases, the stand of the State Government is one of resolving the impasse and not to be adversarial to any stakeholder. He would submit that the respondent authorities are concerned about preserving the Tiger Reserve to the fullest extent possible and at the same time, not creating any fetters on the rights of the residents of the village, forest and tribal settlements and the agriculturists in the area. Apart from this, he would submit that this stretch is the crucial passage for a huge number of commercial vehicles, and this narrow stretch, being the connecting road, has become essential to permit the commercial vehicles to ply through the road as the other alternative routes are extremely far off and are not viable. There is no other alternative road in the periphery of the Tiger Reserve or in the nearby area. An attempt made by the State Government to let vehicles pass through the alternative route of Karkegandi (via. Burgur) became a failure on account of repeated land slides. Even the unused mud road, known as



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Tippu Road, is only upto a distance and is incomplete and the same is again within the Tiger Reserve. Therefore, even while taking care of the Wildlife, the economic interests of the State and the crucial usage of the National Highway cannot be totally sacrificed.

**6.8.** Relying on the status report filed, after holding a meeting with the stakeholders and considering the proposals, he would submit that while every suggestion given by all these stakeholders including the villagers, agriculturists, lorry owners which are placed on record, he would submit that after deliberation, the following proposals which are given by him in page Nos.7 and 8 of the counter affidavit may be taken into account and would submit that this Court may either permit the District Collector, Erode to make the necessary amendments to the Notification dated 04.01.2019 or in the alternative, requested this Court to pass suitable directions and submitted that the respondents are ready to implement the same so that the interests of all the stakeholders can be taken care of. The proposals as per the counter affidavit are extracted hereunder:-

*“ Suggestions are placed before the*



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*Hon'ble Court's kind consideration of appropriate orders:*

- *From 6.00 P.M to 5.00 A.M. any vehicle which is more than a 6 wheeler may not be allowed to ply in the stretch of Sathyamangalam Tiger Reserve.*
- *From 10.00 P.M to 5.00 A.M, night traffic ban to be implemented except for*
  - a). *Medical emergency vehicles like ambulance (Government/ Private), Public transport vehicles of any type may be allowed to ply in the stretch of Sathyamangalam Tiger Reserve without restrictions.*
  - b). *Local people may be allowed to travel in the stretch of Sathyamangalam Tiger Reserve without any time restriction, subject to verification of proof of local residence.*
  - c). *The transportation of perishable agricultural produces like fruits, vegetables, flowers, Milk and Milk products may be relaxed from the existing restriction to ply during the Night hours, subject to verification at check points.*
- *The collection of entry fee in the National Highway should be done only after getting the prior approval from the MoRT&H. This Prior approval was not sought in this instance. So, as per the suggestions received from the petitioners and stakeholders, the Collection of fees may be*



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*stopped with immediate effect. Since, it is now being levied without the prior approval from the MoRT&H.*

- *There is an alternate route from Anthiyur to Kargekandi (via Burgur), which at present, has motorable difficulties due to recent land sliding. The movement of vehicles may be permitted after the permanent restoration of this route.*
- *In order to regulate the speed of the vehicles plying in the Ghat Road, adequate number of speed breakers may be further constructed in the Accident Prone Zone and Animal Road Kill Zone by Concerned Departments as per the Rules in force.*
- *Adequate Road Safety Infrastructure may be installed along the stretch to prevent accidents.*

*It is respectfully submitted that, to implement the above in the interest of public as well as stakeholders, it is necessary to make amendments in the Erode District Gazette Notification dated: 07.01.2019.”*

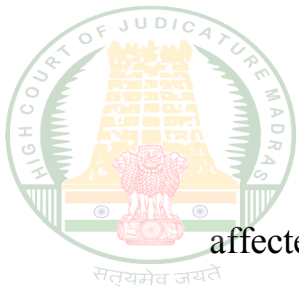
**6.9.** He would further submit that the enforcement of complete night ban of the traffic resulted in grave hardship to all the agriculturists, villagers, school going children. There is traffic jam on account of the same as the vehicles waiting for the night time to pass-by form a long queue of more



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than 3 to 4 kms and thereby, peripheral forest area is also disturbed besides being huge loss to the commercial vehicles and causing delay in the transportation. As far as the installation of C.C.T.V camera is concerned, relying upon the status report filed by him in that regard, he would submit that it is not feasible to install C.C.T.V at every 5 kms and on the other hand, C.C.T.V will be installed at the installed at the exit point and the entry point and two other places where it is feasible.

**6.10.** The learned Additional Advocate General, by relying upon a status report filed before this Court on 24.02.2022 would submit that only considering the various difficulties put-forth by the stake holders, the night ban was not strictly implemented. After the interim order granted by this Court, various departments have submitted their reports and the implementation of the ban on night traffic in its present form is causing grave hardship . According to the learned Additional Advocate General, there are twelve villages around Dhimbam and Thalavadi road, which has total population of 63,389. Apart from their movement, even there is constant clearing of shrubs and maintenance of the road itself will be



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affected during the traffic jam. As per the report received by the Joint

Director of Agriculture, Erode, in Thalavadi, Ragi, Pulses, Sugarcane are being cultivated and these grains have to be transported and the same is affected due to night ban. As per the report of the Horticulture & Plantation Department, the imposition of night ban results in the stoppage of harvesting itself two to three hours earlier than the normal time and if the flowers are not transported during the night itself, the same would get spoiled and fruits such as Tomato, Mango etc., will become unmarketable. The Transport Department, by its report submitted that unless the night ban is lifted, the heavy flow of the traffic in the morning and the resultant congestion will become unmanageable.

**6.11.** He would further submit that as per the report of Tamil Nadu State Transport Corporation, a total number of 36 buses by the Tamil Nadu Transport Corporations are plied between Sathyamangalam and Mysore and about 35 buses are plied by Karnataka State Transport Corporations and 14 private buses are also operated. Approximately 6,820 people are using this public transport on both routes and due to imposing of night ban, there is a



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delay of one to two hours in the running of these buses. As per the report submitted by the Education Department, there are 88 schools with 8,653 students and 409 teaching staff in Thalavadi Taluk and the school timing is from 9.10 A.M to 4.10 P.M and majority of the students have to travel by the Ghat Road only and the entire educational activities have come to a stand still.

**6.12.** Relying further upon the report from the Health Department, it is submitted that in Thalavadi Taluk, there are five primary health centres and one private hospital and the patients have to reach the Government Hospital, Sathyamangalam, Gobichettipalayam Government Hospital, Erode Government Medicial College Hospital at Perundurai and Government Medicial College Hospital, Coimbatore for major ailments/emergencies and even 108-Ambulances cannot reach in time on account of the night ban. Placing the reliance upon a report from the Aavin, which is Milk Producers Co-operative Union, it is submitted that the diary production has taken a huge hit as 2300 milk producers from the area are supplying 9000 litres of milk which has to be taken to the Dairy Unit at Chithode near Erode and the





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further processing of the milk and its sale is affected on account of the delay.

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**6.13.** Drawing attention of the Court to the status report, filed by the first respondent, namely Principal Chief Conservator of Forests, whereby the entire sequences of action including the various meetings of the District Road Safety Committee and the subsequent directions to lay speed breakers, consideration of the representation of the lorry owners and putting up weighing bridge at Vadavalli and the subsequent directions to not to operationalise the weighing bridge etc., would submit that the Forest Department is trying its best to manage the road traffic as well as considering the safety of the animals in the Tiger Reserve. He would also highlight the various works undertaken by the Forest Department in the enforcement of regulations imposed by the District Gazette Notifications.

**6.14.** *Mr.N.G.R.Prasad*, learned Counsel appearing for the petitioner in W.P.No.4130 of 2022 would submit that the Court should not be carried away only by allegations made relating to accidents to wild animals and he disputed the data submitted by the petitioner. He would submit that the



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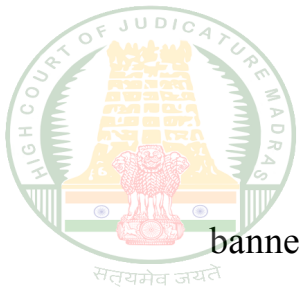
traffic can be regulated and with speed restriction vehicles can be plied in the stretch without causing any harm to the wild animals. The petitioner in the said Writ Petition, being Ex-M.L.A of the area, is interested in the general welfare of the residents of the area, more specifically, the villagers who are hit on account of the total night ban. They are unable to move even in case of medical emergency. Placing strong reliance on the order of the Hon'ble Supreme Court of India, in *State of Kerala Vs. L.Srinivasa Babu*<sup>13</sup>, in respect of the Bandipur Sultan Batheri National Highway, the learned Counsel would submit that the Hon'ble Supreme Court had permitted plying of vehicles even during the night time at regular intervals with escort so that the speed limit is maintained and safety of the animals is ensured.

**6.15.** In support of his contentions, the learned Counsel relied upon a Division Bench judgment of this Court in *State of Madras Vs. Murray and Co., and Ors.*<sup>14</sup>, whereby, this Court considered the ban of plying of handcarts through the Mount Road and held that to the extent, it totally

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13 S.L.P(Civil).No.13838 of 2010

14 AIR 1965 Mad 301

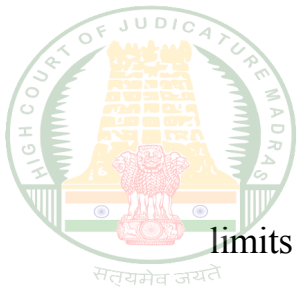


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banned handcarts, amounted to unreasonable restriction and impinging the fundamental rights under Articles 19(1)(g) of the Constitution of India and similarly, the instant notification also violates the fundamental right under Article 19(1)(g).

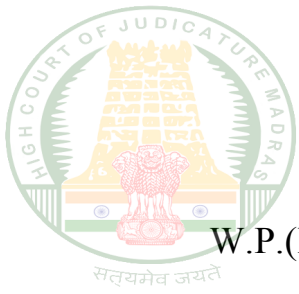
**6.16.** *Mr.A.R.L.Sundaresan*, learned Senior Counsel appearing on behalf of *Ms.Geetha*, learned Counsel for the petitioner in W.P.No.4109 of 2022, submitted that the petitioner is a person who aggrieved by the notification, being a resident/farmer of Panakanahalli village of Mandya Taluk and submitted that the impugned notification of the District Collector, dated 04.01.2019 is illegal inasmuch as it did not provide for any exemption towards protecting lives and livelihoods of the villagers by exempting the vehicles carrying the perishable goods such as vegetables, fruits, flowers and live stock, in not permitting Ambulances and other personal vehicles used by the residents, completely restricting the movement even for medical emergencies and the movement of the small and marginal farmers. According to him, the entire difficulty arises only on account of the traffic jams due to toppling of heavy vehicles with loads more than permissible



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limits and ten wheelers and 12 wheelers which are not compatible for the sharp hairpin bends.

**6.17.** It is the contention of the learned Counsel is that the impugned notification is violative of Articles 14, 19 and 21 of the Constitution of India. He would further submit once the road has been declared as National Highway as per National Highways Act, by virtue of Section 16 of the National Highways Act, 1988 any regulation shall be made only by the Central Government and therefore, the District Collector lacks jurisdiction. Further relying specifically on Section 16(2)(k), he would submit that the collection of toll on behalf of the Central Government or State Government can only be by the National Highways Authority or any person authorised by it as per Section 7 of the National Highways Act. He would further submit that as per Section 33(v)(2) of the Wildlife Protection Act, 1972, it is mandatory to involve the participation of the local people and the impugned notification is issued without any consultation of the local people whatsoever and therefore, is illegal. The learned Senior Counsel would submit that already matters have dealt with by this Court in the pending Writ Petition in



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W.P.(MD).No.19771 of 2018 etc., in the Madurai Bench of this Court and

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while steps are being taken to make consultation with all the stakeholders, the enforcement of the night ban is incorrect.

**6.18.** *Ms.D.Geetha*, the learned Counsel appearing for the Respondent No.17 in W.P.No.1830 of 2022 would submit that the powers under Section 115 of the Motor Vehicles Act has to be used to primarily concerning the public safety and convenience, which is not the consideration while passing impugned notification. She would submit that the Ghat Road which was formed in the year 1920 has been the access to the villagers of Thalavadi Taluk for the past 100 years and suddenly restriction on the same infringes the fundamental right to movement enshrined under Article 19(1)(d) of the Constitution of India. The notification has adverse effect on the very lives and livelihood itself and therefore, is in violation of the fundamental right guaranteed under Article 21 of the Constitution of India. There is no other alternative road as far as the villagers are concerned. The inhabitants of the Thalavadi Taluk are both in both revenue lands as well as the permitted inhabitants of the forest lands. The entire Thalavadi Taluk is landlocked by



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the Tiger Reserve. She would submit that the sweeping statement of the petitioner is as if all animals are nocturnal is incorrect as they are both nocturnal and diurnal. Therefore, banning of night traffic cannot be the appropriate solution. Further submitting that her client is also in favour of banning the heavy commercial vehicles, littering food and waste on the road side, instead of banning the entire traffic in the night time regulating the traffic based on wildlife crossings, seasons, speed, over weight, oversize, vehicle type etc., can be considered.

**6.19.** *Mr.K.Sasindran*, learned Counsel appearing for respondent Nos.14 and 15 submits that the respondents are also residents of the area and are primarily concerned with the unauthorised levy of entry fee from the villagers every time whenever they use the road. The same is totally impermissible and would request that this Court should totally exempt the villagers from the payment of any kind of toll charges which is violative of their basic right to access their own homes.

**6.20.** *Mr.N.G.R.Prasad*, the learned Counsel again representing



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Palanisamy and others, Respondent Nos.8 to 13 in the Writ Petition would

submit that the vehicles carrying upto 16.20 tonnes alone may be permitted.

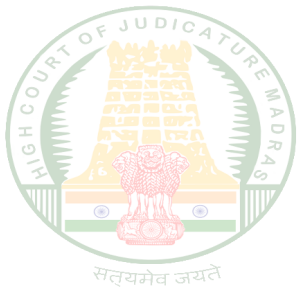
The headquarters of the District, namely Erode, is 100 kms away and therefore, unless and until people are permitted to access this road 24x7, they will be put to grave hardship.

**6.21.** *Mr.N.G.R.Prasad*, learned Counsel also relied upon the affidavits filed before this court by several villagers highlighting the hardships they are put to on account of the night traffic ban. He also produced the resolutions passed by ten Village Panchayats requesting for lifting of the ban and also the resolutions of 10 Tribal *Grama Sabhas* passed in this regard.

## **7. The Questions :**

**7.1.** We have considered the rival submissions made on behalf of either side and perused the materials on record and we are of the opinion that the following questions arise for determination in the instant case:-

*(i) Whether the impugned notification of*



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*the District Collector is violative of the fundamental rights under Article 19(1)(d), Article 19(1)(g) and Article 21 of the Constitution of India and whether is legal?*

*(ii) Whether the imposition and collection of toll pursuant to the notifications of the fourth respondent is in order?*

*(iii) What reliefs are to be granted in the instant case?*

### **8. Question No.1:**

**8.1.** To answer the first question, it is useful to extract Articles

19(1)(d) and 19(1)(g) which read as follows:-

**“19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—**

.  
. .

*(d) to move freely throughout the territory of India;*

.  
. .

*(g) to practise any profession, or to carry on any occupation, trade or business.”*

From the plain reading of the above, there can be no quarrel over the

proposition that any citizen of India has a right to move throughout the





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territory of India and also has the freedom to carry on their trade and business. However, the said rights under Articles 19(1)(d) and 19(1)(g) are subject to reasonable restrictions that can be imposed in the interest of general public under Article 19(5) and 19(6) of the Constitution of India which reads as follows:-

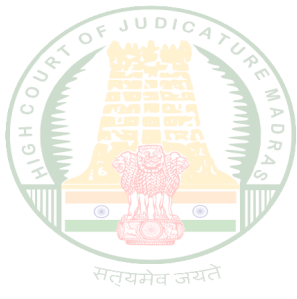
**“19. Protection of certain rights regarding freedom of speech, etc.—**

.....

*(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.*

*(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—*

*(i) the professional or technical qualifications*



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*necessary for practising any profession or carrying on any occupation, trade or business, or*

*(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”*

**8.2.** We have in Paragraph 3.1 to 3.22 of this Judgment carefully enumerated the laws enacted by the State, its salient provisions and the subordinate legislation in the form of the notifications under the said legal provisions and their effect on the freedom of movement within the Tiger Reserve. As far as the instant case is concerned, the restrictions are imposed taking into account that the highway is passing through the core protected zone of the Tiger Reserve, as a thoroughfare through the eco-sensitive zone, Sanctuary and Reserve Forest. Article 48 (A) of the Directive Principles of State Policy contained in Part-IV of Constitution of India, reads as under :

**“48-A. 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.”**



**WEB COPY 8.3.** This apart, Part IV-A of the Constitution of India enlisting fundamental duties mandates as follows in Article 51-A(g) of the Constitution of India:-

**“51-A. 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;”

**8.4.** As stated above, it may be seen that once an area is declared as Eco-Sensitive Zone under Section 3 of the Environment (Protection) Act, 1986, any direction can be issued to protect the area and violation thereof, is considered to be an offence punishable under the said Act. Section 21 of the Tamil Nadu Forest Act, 1882 also extinguishes every right of any person within the Reserve Forest except which is granted contractually by the Government. Upon declaration of a Sanctuary, Section 27 of the Wild Life (Protection) Act, 1972 makes entry into the Sanctuary restricted. To top it all, Section 38V(i) of Wild Life (Protection) Act, 1972 mandates that the



core zone of a Tiger Reserve should be kept as inviolate for the purpose of Tiger Conservation and saves only rights of the Scheduled Tribes or such other various dwellers notified as such by the State Government.

**8.5.** The first step of the Fundamental Duty of compassion towards animals is in recognition of freedom of the animals and in this regard, it is useful to quote the Judgment of the Hon'ble Supreme Court of India in paragraph Nos.64 and 91.2 from *Animal Welfare Board of India v. A. Nagaraja*<sup>15</sup>, where the Hon'ble Supreme Court of India held as follows:-

“ **64.** Chapter 7.1.2 of the Guidelines of OIE, recognises five internationally recognised freedoms for animals, such as:  
(i) freedom from hunger, thirst and malnutrition;  
(ii) freedom from fear and distress;  
(iii) freedom from physical and thermal discomfort;  
(iv) freedom from pain, injury and disease; and  
(v) freedom to express normal patterns of behaviour.

*Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” indicated that these five freedoms found their place in Farm Welfare Council 2009 UK and is also called “Brambell's*

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15 (2014) 7 SCC 547



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*Five Freedoms”.* These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of the PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

91.2. We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of the PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short “the Governments”), MoEF and AWBI.”

(emphasis supplied)

**8.6.** Further, the nature of the fundamental duty to have compassion for living creatures and humanism was expounded in paragraph Nos.67 and 68 of judgment in *Animal Welfare Board of India*<sup>16</sup> which are extracted as follows:-

**“Compassion**

*67. Article 51-A(g) states that it shall be the duty of citizens to have compassion for living creatures. In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat [(2005) 8 SCC 534] , this Court held that by enacting Article 51-A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of*

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16 Refer Footnote No.15



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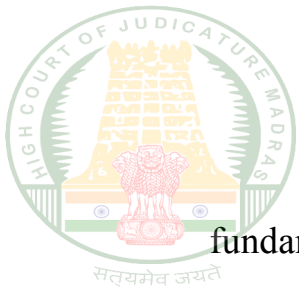
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*Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51-A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness, etc., which has to be read along with Sections 3, 11(1)(a) and (m), 22, etc. of the PCA Act.*

### ***Humanism***

*68. Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, to understand benevolence, compassion, mercy, etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of the PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51-A(h). Both Articles 51-A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.”*

**8.7.** Finally, the Hon'ble Supreme Court of India extended the



fundamental right i.e., Right to life which is guaranteed under Article 21 of

the Constitution of India to the animals also in paragraph No.72, which is

quoted as hereunder:-

***“Right to life***

*72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when*





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*they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.”*

**8.8.** Even while recognising the right to use any highways, in **Saghir**

**Ahmad v. State of U.P.**<sup>17</sup>, the Hon'ble Supreme Court of India held as follows:-

*“9..... If there is any danger to the road by reason of such user, or if such user by one interferes with the user by others, it is up to the State to regulate the motor traffic or reduce the number or weight of vehicles on the road in any way it likes, and to that no objection can possibly be taken.....”*

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17 AIR 1954 Supreme Court 78





**WEB COPY 8.9.** It is in this context of Section 115 of the Motor Vehicles Act, 1988 enables the District Road Safety Committee to pass orders imposing restrictions. The Right of the District Collector in this regard cannot be questioned. A perusal of the provision of the National Highways Act, 1956, extracted above would demonstrate that it is only in respect of levy of fee, the National Highways Authority comes into play and therefore, we reject the submissions of learned Senior Counsel that the District Collector does not have power to impose the restrictions because road is a part of a National Highway.

**8.10.** A careful reading of the Division Bench judgment relied upon by the learned Counsel in *State of Madras Vs. Murray and Co., and Ors.*<sup>18</sup>, it would be clear that whether the restriction imposed on a fundamental right is reasonable or not, has to be decided considering the nexus of the restriction to the object sought to be achieved and whether there was the intelligent care and deliberation in taking the course.

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18 AIR 1965 Mad 301



WEB COPY 8.11. The Division Bench of the Karnataka High Court in

***P.K.Fravesch and Ors. Vs. The State of Karnataka and Ors.***<sup>19</sup>, under

identical circumstances held as follows:-

*“Therefore, any restriction placed on the right of the commuters, traders, transporters or other people by transporting certain goods prohibiting them from transporting the same during the specified hours from 9 P.M. to 6 A.M. in the part of the road which passes through the critical section of 13 Kms in the case of NH-212 and 20 Kms in the case of NH-67, it can be supported from the stand point of the fundamental duty of each one of the citizens who shall protect the wild life, forest, ecology and environment. So much hardship or difficulty as is necessary to extend support for maintaining the peaceful habitation of the nocturnal animals during night hours, if undergone by the affected individuals of the locality, it will only result in these individuals discharging their fundamental duties. Any prohibition or restriction imposed on their rights commensurate with this purpose, in the wake of the availability of the alternate roads can be legally justified and the same cannot be characterized as arbitrary or unreasonable affecting the fundamental rights of these citizens under Article 19-1(g) of the Constitution.”*

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19 2010 SCC OnLine Kar 192



**WEB COPY 8.12.** As far as the forest dwellers, tribes and villagers are concerned,

it is essential to consider the law laid down by the Hon'ble Supreme Court in

***State of H.P. v. Umed Ram Sharma***<sup>20</sup>, which is extracted as follows:-

“ **11.** *It appears to us that in the facts of this case, the controversy lies within a short compass. It is well settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the absence of road. The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in*

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20 (1986) 2 SCC 68



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*reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.*

*12. We need not in this connection refer in detail to the numerous decisions. Reference may, however, be made to In re Sant Ram [AIR 1960 SC 932 : (1960) 3 SCR 499] , Kharak Singh [Kharak Singh v. State of U.P., (1964) 1 SCR 332 : AIR 1963 SC 1295 : 1963 (2) Cri LJ 329] , A.V. Nachane v. Union of India [(1982) 1 SCC 205] , Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545] , Municipal Council, Ratlam v. Vardhichand [(1980) 4 SCC 162 : 1980 SCC (Cri) 933 : (1981) 1 SCR 97] and Francis Coralie Mullin v. Administrator, Union Territory of Delhi [(1981) 1 SCC 608 : 1981 SCC (Cri) 212 : (1981) 2 SCR 516] .”*

**8.13.** It is their case that for their everyday life, they are depending only on Dhimbam Ghat Road and there is no other alternative for them. With these legal principles in background, we have to now analyse whether the restrictions imposed by the District Collector or the restrictions proposed before us after holding of the joint meeting are reasonable in nature.



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**8.14.** The primary objection in all these petitions is the imposition of night traffic ban originally from 6.00 P.M to 6.00 A.M and thereafter, modified as 9.00 P.M to 6.00 A.M. The public interest involved is to protect wild life and through which the bio-diversity and through which the very existence of humans itself as we cannot, as humans, exist alone in this planet. The enactments and the subordinate legislation are pursuant to this avowed purpose contained in the Directive Principles of State Policy. Express power has been conferred under the Motor Vehicles Act, 1988 by the Road Safety Committee and while terming the impugned notifications, the respective provisions quoted in detail supra of the Tamil Nadu Forest Act, Wild Life (Protection) Act, 1972 and the Environment (Protection) Act, 1986 and the Sub-ordinate Legislations issued thereunder have to be taken into account.

**8.15.** The Hon'ble Supreme Court of India in *DTC v. Mazdoor Congress*<sup>21</sup> had ruled that the Articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix

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21 1991 SCC (L&S) 1213



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to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. Thus, the necessity to balance the conflicting claims of the villagers -vs- the commercial truck operators and the both of them -vs- the wildlife.

**8.16.** As far as the commercial vehicles, using the National Highway as a thoroughfare, it as to be first noted that it is based on convenience rather than necessity as alternative routes of available, though they have to cover a longer distance. Second, the number of vehicles are not a few but relentless load of commercial goods are being constantly carried too and fro for various purposes of mankind. We have very many roads, modes of transport as we have disproportionately conquered the space on earth. There is very little space available for wildlife to exist, especially the endangered species and as stated supra, Sathyamangalam Tiger Reserve is one of the pristine homes for them.



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**8.17.** The District Collector in the impugned orders have banned thoroughfare only during the night and the vehicles beyond the particular height and weight which are totally unsuitable for the road, considering the 27 hairpin bends are banned throughout. Therefore, both the restrictions vis-a-vis, the commercial trucks and the other vehicles passing through Ghat Road, as a thoroughfare are reasonable and we hold that the same do not infringe the Article 19(1)(d) or Article 19(1)(g) in any manner whatsoever. Considering the inviolable nature of the core area of the Tiger Reserve, even a complete ban of these commercial vehicles will be justifiable. Imposition of Night Ban is primarily essential for avoiding disturbances to Animals, a majority of which are nocturnal. Road kill is only secondary.

**8.18.** The guidelines of the Sub-Committee (extracted in para 3.19 supra) clearly makes it mandatory for imposition of night ban and other regulations of traffic. The Hon'ble Supreme Court of India in the judgment of *Ajay Dubey Vs. National Tiger Conservation Authority*<sup>22</sup> mandates that the guidelines are to be implemented without fail. The notification of the

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22 Refer Footnote No.2



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Central Government, dated 19.02.2021 and the above mentioned guidelines

WEB COPY once again make the traffic as a regulated activity.

**8.19.** As far as the tribal population and the 17 villages of Thalavadi Taluk is concerned, in the absence of an alternative road to use, complete ban on their night use of the road, in our opinion, just crosses the limits of reasonableness, though still restrictions can be imposed even on the villagers and forest dwellers. The experts, namely the Sub-Committee, constituted by the National Board for Wild Life, have themselves in their guidelines, as quoted supra, held that the night ban of traffic is essential, but, however, the villagers can be granted passes for their right of movement as well as for their agricultural and other purposes. As a matter of fact, pursuant to the provisions contained in Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006, the Grama Sabha of the tribal villages have also passed resolutions requesting for relaxation, which is also a relevant factor, which has to be taken into account. Therefore, to that extent, the complete ban of night traffic has to be relaxed.





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**8.20.** Similarly, as far as the tourists are concerned, their rights will be completely governed by the periodic directions that may be issued by the National Tiger Conservation Authority or by the Sub-Committee or as contained in the Tiger Conservation Plan that may be framed as far as this Tiger Reserve is concerned. Therefore, we answer this question by holding that no fundamental right of the commercial truck owners or the users of the National Highways, as thoroughfare to pass through the Ghat Road or in any manner is violated by the restriction as to the night traffic ban and even the day traffic, in terms of the types of the vehicles permitted or other restrictions as to getting down along the Ghat Road, stopping/parking the vehicles inside the Tiger Reserve, ban of littering, imposing speed limit and supervising the same, physically by establishing the check-points or through C.C.T.V camera at regular intervals, are all reasonable restrictions sustainable in law.

**8.21.** As far as the villagers, forest dwellers, tribals and agriculturalists are concerned, a complete ban during the night time may impede with their rights to access medical facilities, the right to movement in case of other



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emergencies such as death etc., marketing of perishables such as flowers and other agricultural produces, their right to trade like supply of Milk and Milk products etc., and therefore, to that extent, a complete ban would be violative of their rights, but, however, we hasten to add that they can also be subjected to other reasonable restrictions which will be delineated in the later part of this order. Accordingly, question No.1 is answered.

## 9. Question No.2:

9.1. As far as the levy and collection of toll is concerned, a reading of Section 7 of National Highways Act, 1956, which is extracted supra, it is clear that the powers are vested with the National Highways Authority after obtaining due permission from the Central Government. The object of collection of fee to be in respect of service to be provided. Therefore, for the purposes of enforcement of the weight restriction, a weighing bridge has to be operated. As a matter of fact, it has been established by the Forest Department itself near the Bannari and Hasanur check-posts. Similarly, so as to man the entry restrictions, check-posts has to be installed and the



regulations have to be carried out. Therefore, only for the purposes of these services, being rendered, fees can be imposed. In this regard, already the

Hon'ble Supreme Court of India in the decision of ***Jantia Hill Truck Owners Assn. v. Shailang Area Coal Dealer & Truck Owner Assn.***<sup>23</sup>, while considering a similar provision as to the power of levy of fees is concerned, held as follows:-

*“13. It is not in dispute that the Act in unequivocal terms provides to specify among other things the weight which a carrier of a given description may carry. The said provisions are necessary not only for construction and maintenance of road but also to prevent accidents. The Act provides for registration of the motor vehicles in terms of the provisions contained in Chapter IV of the Act. Section 41 prescribes that an application therefor is required to be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government.*

*14. In terms of Section 58 of the said Act, the Central Government is authorised to notify the gross vehicle weight, and axle weight of certain types of transport vehicles. Sub-section (3) of Section 113 of the Act prohibits any person to drive or cause or allow to be driven in any public place any motor vehicle—(a) the unladen*

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23 Refer Footnote No.4



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*weight of which exceeds the unladen weight specified in the certificate of registration, and (b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.*

*17. Section 211 of the Act provides for power to levy fee. It reads:*

*“211. Power to levy fee.—Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:*

*Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.”*

*23. The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. It is true that for the said purpose rules may have to be framed. It is, however, a well-settled principle of law that even in a case where the statute provides for certain things to be done, subject to*



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*rules, any action taken without framing the rules would not render any (sic that) action invalid. If a statute is workable even without framing of the rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum. Non-compliance with the provisions relating to “laden weight” and “unladen weight”*

*being penal in nature must be held to be imperative in character.*

*26. The State for giving effect to the provisions of the statute may upon itself take the burden of providing for weighbridges and collection of fees, etc. in exercise of its power under Article 298 or Article 162 of the Constitution of India. It may, however, permit to provide parties to install weighbridges, subject to regulations. The memorandum in question provides broad terms and conditions under which the private parties were authorised to set up weighbridges and collection of fees. Power of the State to do so is not in question. It is not a case where fees are required to be prescribed for undertaking administrative action.*

*33. Services of the weighbridges are required to be obtained by the drivers/owners of the trucks for fulfillment of their statutory obligations. They cannot obtain such services free of any charges. When private parties are given the right to set up such weighbridges, indisputably they would be entitled to reasonable*

*profit. It was not the contention of the respondent-writ petitioner that the charges*



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*levied for getting their trucks weighed at the weighbridges are exorbitant or they are compelled to get their trucks weighed at several places, although they otherwise fulfil the statutory requirements laid down in Section 211 of the Act.*

*34. Our attention has been drawn by Mr Sharma to a decision of this Court in Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282] : (AIR p. 295, para 44)*

*“44. Coming now to fees, a ‘fee’ is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed.*

*Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay, ... These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.”*

*The ratio laid down therein is not in dispute.”*

**9.2.** Thus, it is clear that the State has the authority to install weighbridges and collect fee in-respect of the services rendered by it. But however, the instant Road is a National Highway and the power vests with



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the National Highways Authority or any person authorised for it. Thus, on the face of it, the collection of toll from the local villagers or forest dwellers/agriculturists is illegal. As a matter of fact, the Forest Department, is manning the check-posts and the weighing bridge, is entitled to collect entry fees only for the commercial vehicles or such other vehicles which use the Highway as thoroughfare, after obtaining approval from the appropriate authority, namely the Ministry of Road Transport and Highways Department, Government of India, in consultation with the National Highways Authority and the detail directions in this regard will be issued hereinafter in this judgment and accordingly we answer this question.

### **10. Question No.3:-**

**10.1.** As rightly pointed out by the Additional Advocate General, this is not a case where just the reliefs which flow from the conclusions alone can be granted, rather care has to be taken towards the rights and hardship of all the stakeholders. Even though it was the stand of the respondents that they may be permitted to incorporate such amendments in their notification, which is issued under the Motor Vehicles Act, 1988 during the hearing it was



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left to this Court to pass detailed directions taking care of the interests of all concerned. Further, while dealing this lis, this Court is also Green Bench as constituted by the Hon'ble Supreme Court of India in the judgment reported in *Vellore Citizens' Welfare Forum v. Union of India*<sup>24</sup>. This apart, even the notification dated 24/02/2021 issued by the Government of India constituting the Sathyamangalam as eco-sensitive zone provides and is extracted as follows:-

*“8. Supreme Court, etc. orders.- The provisions of this notification shall be subject to the orders, if any passed or to be passed by the Hon'ble Supreme Court of India or High Court or the National Green Tribunal.”*

**10.2.** In view of the same and in view of our findings and conclusions as above, we are called upon and we issue the following detailed directions to be mandatorily followed in respect of the Dhimabm Ghat Road:-

**(a) Commercial Vehicles, Cargo/Loaded Vehicles:**

(i) No vehicle, which has 12 wheels and above shall be permitted to enter Dhimbam Ghat Road for any purpose whatsoever;

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24 (1996) 5 SCC 647





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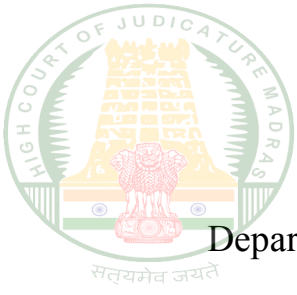
(ii) No Truck/Trailer, with a total weight of 16.2 tonnes and above will be permitted to enter the Ghat Road;

(iii) Therefore, Trucks and Trailers, upto 10 wheels and with weight less than 16.20 tonnes alone will be permitted to use the Ghat Road as thoroughfare either from Tamil Nadu to Karnataka or from Karnataka to Tamil Nadu between 6.00 A.M to 6.00 P.M.

(iv) The said vehicles which are permitted to enter can travel with the maximum speed limit of 30 kms/hr on the plains and 20 kms/hr on the Ghat Road portion.

(v) The average time taken will be calculated and will be checked at the entry and exit points so that they maintain the exact time limit and will be subject to further action and penalty, if either they over-speed or they stop in between except due to any traffic jam or accident or other reasonable causes.

(vi) No littering from these vehicles will be permitted and no person can alight except in places authorized by the Forest Department and these vehicles will strictly comply with the sign boards including honking restrictions and light restrictions that will be imposed by the Forest



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Department through visible sign boards.

**WEB COPY** (vii) They have to co-operate for weighing and checking at the check-posts and pay the requisite fee that may be charged upon them.

**(b) Buses:**

(i) The public transport, namely the buses plied by the Public Sector Transport Corporation of Tamil Nadu and Karnataka and private buses/mini buses, for which due permits have been granted under the Motor Vehicles Act can ply through the Dhimbam Ghat Road between 6.00 A.M and 9.00 P.M. These buses, if have destination to any village, can halt in the concerned village itself and the trip can be started after 6.00 A.M in the next day.

(ii) The Forest Department shall conduct periodic awareness programmes for the drivers and conductors of these buses so as to ensure that they follow the driving techniques and the rules including the no honking signs etc.

**(c) Two and three wheelers:**



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All two wheelers and three wheelers would be permitted to use the

road between 6.00 A.M and 9.00 P.M only.

**(d) Villagers, Tribals, Forest Dwellers and Agriculturists:**

(i) As far as villagers, tribals, forest dwellers and agriculturists of the area are concerned, passes with photograph of the person riding/driving the motor vehicle, along with description of the vehicle, shall be issued by the first respondent and these vehicles would be used for personal movement/work without time restrictions. The vehicle would not be a commercial vehicle or cargo loaded vehicle, but a light motor vehicle.

(ii) Heavy motor vehicles to bring vegetables or fruits from the villages inside the Tiger Reserve area would be permitted to use the road beyond the permissible hours only for the purpose of exist, but those vehicles would not be allowed to make an entry beyond the permissible hours given for the commercial vehicles or cargo vehicles. This would, however, not prohibit entry and exit of milk van.

(iii) All ambulances and vehicles used for emergencies/ medical purposes including that of Doctors/paramedical staff, who rush to the



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villages for attending medical emergency/transport of patients are permitted

without any time restrictions.

(iv) The Vehicles of regular Health Workers/Doctors shall also be issued with passes.

(v) All these vehicles used by and for the benefit of the locals, shall also follow the speed restrictions of 30 kms/hr.

**(e) General:**

(i) The respondents shall install C.C.T.V cameras at every 5 kms from the start until end entire stretch of 27 kms of the road. Wherever electricity connection is available, the same can be used and wherever it is not available, it shall be installed with the help of solar power units. The footages are to be stored for a period of 45 days.

(ii) Apart from the monitoring of the Forest Department, a link to monitor these C.C.T.V shall also be provided to the office of the District Collector, Erode and the Divisional Engineer of the National Highways Authority to crosscheck and supervise the effective implementation of the vehicular movement.



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(iii) The respondents shall make such intimations to Google Maps, I-

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maps or to such other GPS applications so as not to intimate the route during the restricted hours and notify about the night ban to the travellers.

(iv) The Forest Department shall operate weigh-bridges as well as the entry plaza and ensure the height restriction by installing the iron bars at both entries.

(v) The Ministry of Road Transport and Highways is directed to grant permission and the National Highways Authority of India is directed to authorise the first respondent to impose and collect entry fees on the commercial vehicles at such rates as may be approved by the District Collector, Erode and the same shall be collected from the commercial vehicles, which will be defrayed/utilised for maintenance of the weighing bridges, the toll plazas, C.C.T.V cameras and maintenance of sign boards and other necessities of the Ghat Road.

(vi) The entry and exit and number of persons, vehicle type, volume etc., in respect of Tourist vehicles shall be strictly governed by the regulations issued by the National Tiger Conservation Authority.

(vii) The Forest Department of Government of Tamil Nadu in



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consultation with the District Collector and National Highways Authority

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and the Government of India will undertake an exercise of exploring options of introducing under/over pass for the animals, wherever possible with due approval of the authorities including the National Tiger Conservation Authority and also follow such other duly approved practices to ensure the free movement of the animals so as to cause minimum disturbance and to completely avoid any kind of accidents/road kills whatsoever.

**10.3.** The Writ Petitions are disposed of with the above directions.

Consequently, connected miscellaneous petitions are closed.

**Epilogue:**

The above directions are nothing but the implementation of the various laws enacted by the Central Government and the State of Tamil Nadu, with the laudable object of protection of wildlife and forests, which we hope will be imbibed by everyone in letter and spirit especially in this part of the world where the Statute of Manuneethi Chozhan stands tall in this very High Court (which is incidentally a case of road-kill), and the land is replete with the legends of Sibi, Paari and Pegan and the household



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phrases of Bharathi - "உயிர்களிடத்தில் அன்பு வேண்டும்" (Compassion

for other living beings) and Thirukkural - "மன்னுயிர் ஓம்புதல் &

பல்லுயிர் ஓம்புதல்" (protection and proliferation of all lives of the soil &

bio -diversity) !!

(M.N.B., CJ)

(D.B.C., J.)

**06.04.2022**

Index : Yes

Speaking order

grs

To

1. The Principal Chief Conservator of Forests & Chief Wildlife Warden,  
Department of Forests, Govt. of Tamil Nadu,  
No.1 Jeenis Road, Panagal Buildings,  
Saidapet, Chennai – 600 015.

2. The Chief Conservator of Forests and Field Director,  
Sathyamangalam Tiger Reserve,  
Roja Nagar, Veerappanchathiram Post,  
Erode – 638 011.

3. The National Tiger Conservation Authority,  
B-1 Wing, 7<sup>th</sup> Floor, Pt. Deendayal Antyodaya Bhawan,  
CGO Complex,  
New Delhi – 110 003.  
India.

4. The District Collector cum Regional Transport Authority,  
Erode District,



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First Floor,  
Collectorate,  
Erode – 638 011.

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5. The Regional Officer,  
National Highway Authority of India,  
SRI Tower, 3<sup>rd</sup> Floor,  
DP – 34 (SP), Industrial Estate,  
Guindy, Chennai – 600 032.
6. The District Collector,  
Erode District Collector Office,  
Erode District.
7. The Chief Wild Life Warden,  
No.1 Jeenis Road, Panagal Building,  
IX Floor, Saidapet, Chennai – 600 015.





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**THE HON'BLE CHIEF JUSTICE**  
**AND**  
**D.BHARATHA CHAKRAVARHY, J.**

grs

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