

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE**

ORIGINAL APPLICATION NO. 40 OF 2020

IN THE MATTER OF:

GANESH SURESH BORHADE

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

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Through



RITWICK DUTTA



**RAHUL CHOUDHRY
ADVOCATES**

Counsel for the Applicant

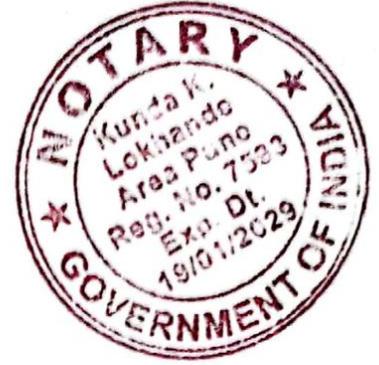
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Dated:- 09.04.2024

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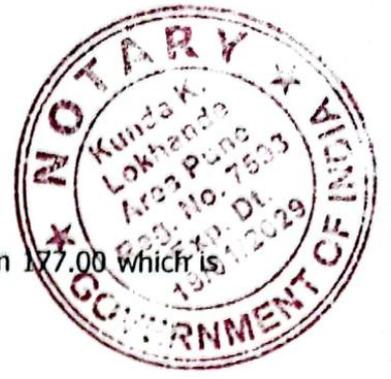
...RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF THE APPLICANT

I, Ganesh Suresh Borhade, son of Suresh Pandharinath Borhade, resident of Zole, Post Chandnapuri, Taluka Sangamner, District Ahmednagar, Maharashtra do hereby solemnly affirm and declare as under:

1. That I am the Applicant in the above titled application and am conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the above titled Original Application has been filed before the Hon'ble Tribunal raising substantial question relating to environment protection, arising out of serious concerns regarding violations of the Environmental Clearance conditions by Respondent No. 04, the National Highway Authority of India (hereafter referred to as NHAI) issued under the provisions of the EIA Notification, 2006, granted by Respondent No. 1, MoEF&CC for the project of up-gradation of 2-lane carriageway

(S) [Signature]



to 4-lane of Khed-Sinnar Section of NH-60 from km 42.00 to km 177.00 which is a 135 km stretch in the State of Maharashtra.

3. That vide Order dated 12.02.2024, this Hon'ble Tribunal had directed the Applicant as well as Respondent No. 2 to clarify how "Eco-friendly measures to mitigate impacts of linear infrastructure on wildlife" of Wildlife Institute of India are applicable on Respondent No. 2- NHAI. This Hon'ble Tribunal recorded the following:

"7. We find annexed with the reply of the applicant submitted against the additional affidavit of respondent No.4-NHAI dated 17.11.2023, a document at page 739 of the paper-book, which is part of the Wildlife Manual of 2016, wherein it is recorded that the figure 8.2 shows the required underpass height in relation to animal size. In landscapes where sambar, gaur and tiger are the largest animals present, a minimum underpass height of 5 m would be acceptable if the viaduct were 300 m long and the span of the underpass were 28-30 m. For any other underpass with a viaduct of less than 300 m, and in landscapes where elephant and rhino are the largest animals in the community, the minimum height of the underpass should be 6-8 m to provide an openness ratio that could provide an optimum passage for these animals. In the present case, the only wildlife animal, which is found, is leopard. Therefore, if the guideline is to be followed, 5 mtrs height of underpass would be required if the viaduct is 300 mtrs long and underpass were 28-30 mtrs. Prima facie, we do not find this guideline to be applicable here because the viaduct is more than 25 mtrs as disclosed by the learned counsel for respondent No.4 as against 300 mtrs which is provided in the guideline. Therefore, respondent No. 2 and the applicant are directed to disclose as to how they want

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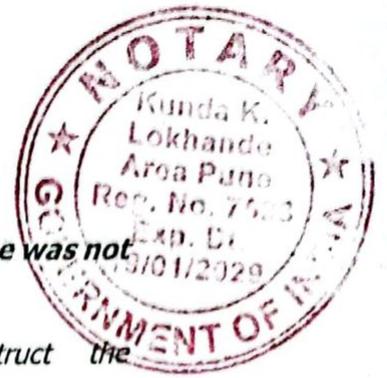
respondent No. 4 to stick to the guideline and indicate that the height of underpass should be less than 5 mtrs. We want an affidavit from them to be filed within two weeks in this regard. Besides that, we also direct respondent No.2 to provide sketches indicating therein the specifications/dimensions of which underpasses are made by respondent No.4."

SUBMISSION ON BEHALF OF THE APPLICANT

4. That at the outset, it is submitted that the Joint Committee constituted in the present matter as well as MoEF&CC have clarified that the underpasses /overpasses will have to be constructed in accordance with the manual of Wildlife Institute of India.
5. That the Joint Committee had submitted a Report dated 29.05.2022 (at Page 704) wherein it has been observed that Respondent No.4- NHAI has to comply with the guidelines of Wildlife Institute of India in constructing overpasses/ underpasses. Under Point 3 of 'Other Observations', it was observed that no underpasses or overpasses have been constructed on the highway for the movement of wildlife and Respondent No. 4- NHAI was suggested to construct the same in consultation with the State Forest Department. The Joint Committee also stated that such underpasses/ overpasses have to be constructed in consonance with manual of Wildlife Institute of India. Relevant excerpt from the Joint Committee Report is reproduced below:

"1. Leopard Kill Incidents

...The Condition for the construction of underpasses for the passage of wild animals was stipulated in both EC

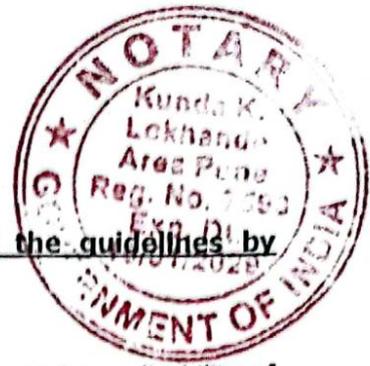


and FCs granted by Ministry. However the same was not complied by NHAI...

It is suggested that NHAI should construct the underpasses/overpasses at suitable places in consultation with State Forest Department. Further, for dimensions of all such under/over passes; the Wildlife Institute of India's manual entitled "Eco-friendly Measures to Mitigate Impacts of Linear Infrastructure on Wildlife, published in 2016" shall be referred."

6. That Applicant submits that adherence to "Eco-friendly Measures to Mitigate Impacts of Linear Infrastructure on Wildlife", published in 2016 has been suggested by the Joint Committee itself. The Joint Committee consisted of representatives of MoEF&CC, State Forest Department and Respondent No. 4-NHAI. It is submitted that Respondent No. 4 had signed the Report and had agreed to the observations/ recommendations of the Joint Committee, and had provided no objections to compliance with guidelines of Wildlife Institute of India. Therefore, at the present stage, Respondent No. 4 may not be allowed to take a stand, different from what was agreed by them in the Joint Committee.
7. That the MoEF&CC in its Additional Affidavit dated 10.02.2024 has also stated that compliance with the Manual of Wildlife Institute of India is mandatory, in the following manner:

"5. The Wildlife Institute of India's Manual for linear projects is mandatory to Forest department and User Agency. Therefore all specific dimensions of underpasses should be made as per manual. So the user agency follow the said manual while constructing the underpasses."



Clarification by the Applicant on applicability of the guidelines by

Wildlife Institute of India

8. That following is the clarification by the Applicant with respect to applicability of guidelines of the Wildlife Institute of India in the present matter:

A. That vide Order dated 12.02.2024, this Hon'ble Tribunal had sought clarification on the applicability of guidelines, in case the viaduct is less than 300 meters. It is submitted that on a careful reading of the provision referred to by the Hon'ble Tribunal, it is clear that in cases where the viaduct is less than 300 meters, the minimum height of the underpass has to be 6-8 meters.

The relevant provision reads as follows:

*"In landscapes where sambar, gaur and tiger are the largest animals present, a minimum underpass height of 5 m would be acceptable if the viaduct were 300 m long and the span of the underpass were 28-30 m. **For any other underpass with a viaduct of less than 300 m, and in landscapes where elephant and rhino are the largest animals in the community, the minimum height of the underpass should be 6-8 m to provide an openness ratio that could provide an optimum passage for these animals.**"*

B. It is the pertinent to note that the width of the road is 60 metres (as per the Environmental Clearance at Page 574) and therefore, the span of underpass will also be a minimum of 60 metres.

C. It is the submission of the Applicant that this provision provides two situations in which the height of the underpass has to be 6-8 metres:

(24) 8/5/



(i) *Firstly*, in a situation where the largest animals are elephants and rhinos and

(ii) *Secondly*, where the viaduct is less than 300 metres.

D. That both these situations are independent of each other and in both the situations, the underpass has to be of 6-8 metres.

E. That the above-quoted provision has to be understood as per the rule of language which states that if a comma is followed by 'and', the sentences separated by the comma have to be understood as two separate and independent sentences.

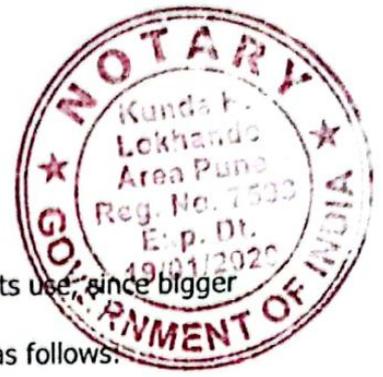
F. That therefore, if the oral statement made by the counsel of Respondent No. 4 is to correct that the viaduct is 25 metres, which is less than 300 metres, then the height of underpass has to be 6-8 metres.

G. That additionally, the fact that the height of underpasses cannot be less than 5 metres is corroborated from the fact that the Manual at Page 741 provides information on mitigation measures for tiger landscapes. The Manual defines tiger landscapes as "*landscapes where elephants are not present*". The dimensions of underpasses in tiger landscapes is provided as follows:

"A minimum span of 30 m with a height of 5 m and a width of 5-8 m would work for most species in tiger landscapes. The 30 m span refers to clear open passageways- often these underpasses would have support pillars for the infrastructure and they should be excluded from the span measurement."

H. That the Applicant would also like to bring the notice of the Hon'ble Tribunal to Chapter 7 of the Manual which states that the size of the crossing structure

25/11/2021



(underpass/ overpass) is important as it greatly influences its use, since bigger the structures, more is the usage by the animals. It reads as follows.

"A crossing structure will only be effective if it is accessible and acceptable to the species that will potentially utilise it: its design and size can greatly influence its use.

...In general, the bigger these structures, the more they are used..."

Recent incidents of leopard deaths reported on the National Highway, specifically at Chandnapuri

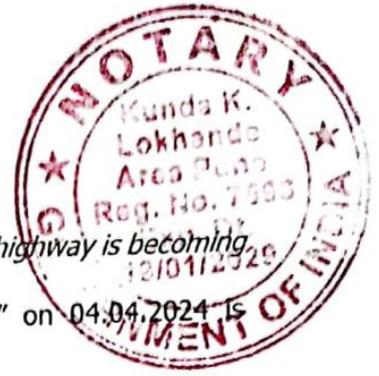
9. That as many as 5 leopard deaths have taken place on National Highway 60 in 2024, 3 of which took place in Chandnapuri. Chandnapuri is one of the locations where NHAI ought to have constructed underpasses, in compliance with the Joint Site Visit Report dated 02.09.2023 (at page 674).

Copy of information provided by the Forest Range Officer, Sangamner, Maharashtra is annexed herewith as **ANNEXURE A-1**.

10. That leopard deaths due to being hit by a vehicle at multiple locations on the National Highway, including Chandnapuri has also been reported in a newspaper article published in Marathi titled "*Pune Nashik highway is becoming a death knell*" (translated) published in a Marathi newspaper "Daily" on 04.04.2024. It read as follows:

"In the same way in the month of March in Chandnapuri area in dash of vehicle, a female leopard has died. This is the third death of female leopard in the month of February."

2/1/24



Copy of article published in Marathi titled "*Pune Nashik highway is becoming a death knell*" (translated) in a Marathi newspaper "Daily" on 04.04.2024 is annexed herewith as **ANNEXURE A-2**.

11. That while deciding on the issue of height of underpasses, this Hon'ble Tribunal ought to look at the best interest of the species involved in the matter. This Hon'ble Tribunal, in the present matter, ought to assess what is in the best interest of leopards, while deciding the height of underpasses.

Principles of 'species best interest' and eco-centrism should be applied in the present case

12. That the principle of "*species best interests*" has been reiterated by the Hon'ble Supreme Court in multiple cases, including *Centre for Environment Law, WWF-I v. Union of India & Ors. (2013) 8 SCC 234*, wherein the following was held vide Order dated 15.04.2013:

"47. We re-iterate that while examining the necessity of a second home for the Asiatic lions, our approach should be eco-centric and not anthropocentric and we must apply the "species best interest standard", that is the best interest of the Asiatic lions. We must focus our attention to safeguard the interest of species, as species has equal rights to exist on this earth.

...

56...The cardinal issue is not whether the Asiatic lion is a "family member" or is part of the "Indian culture and civilization", or the pride of a State but the preservation of an endangered species for which we have to apply

(24) - 8/1/24



the "species best interest standard". Our approach should not be human-centric or family-centric but eco-centric. "Scientific reasoning" for its re-location has to supersede the family bond or pride of the people and we have to look at the species best interest especially in a situation where the specie is found to be a critically endangered one and the necessity of a second home has been keenly felt."

(Emphasis supplied)

Copy of judgment of Hon'ble Supreme Court in ***Centre for Environment Law, WWF-I v. Union of India & Ors. (2013) 8 SCC 234*** is annexed herewith as **ANNEXURE A-3.**

13. That it is also pertinent to note that it is a settled principle of law that in cases of conflict between environment protection and economic development, precedence has to be given to environment protection. In the case of ***T.N. Godavarman Thirumulpad Versus Union Of India And Ors, (2022) 9 SCC 306***, it was held that:

"19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always

(24) 1-8/29



necessary that there should be direct evidence of harm to the environment."

(Emphasis supplied)

Copy of judgment of Hon'ble Supreme Court in ***T.N. Godavarman Thirumulpad Versus Union of India and Ors, (2022) 9 SCC 306*** is annexed herewith as **ANNEXURE A-4.**

14. That in the case of ***T.N. Godavarman Thirumulpad v. Union of India & Others, (2012) 3 SCC 277***, while considering the case of protection of wild buffaloes, the Hon'ble Supreme Court applied eco-centric approach instead of anthropogenic approach. While defining eco-centric approach and anthropogenic approach, the Hon'ble Supreme Court vide Order dated 13.02.2012 held that the former overrides the latter:

"17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature centred where humans are part of nature and non-human has intrinsic value. In other words, human interest do not take automatic precedence and humans have obligations to non- humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature include both human and

(24) 1/15



non-humans. National Wildlife Action Plan 2002-2012, and centrally sponsored scheme (Integrated Development of Wildlife Habitats) is centred on the principle of ecocentrism."

(Emphasis supplied)

Copy of judgment of Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad v. Union of India & Others, (2012) 3 SCC 277** is annexed herewith as **ANNEXURE A-5.**

(Handwritten signature)
DEPONENT



BEFORE ME
(Handwritten signature)
Miss. Kunda K. Lokhande
Advocate & Notary
Govt. of India
Reg. No.: 7593

Noted & Registered
at Sr.No. 876K (2024)

08 APR 2024

(Handwritten signature)

विषय:- राष्ट्रीय महामार्ग क्र.६० वरिल संगमनेर प्रवरा नदी पुल ते बोट (घारगाव)पर्यंत रस्ता अपघातात मृत बिबट माहिती सन-२०२३-२०२४ पर्यंत.

अ.क्र	दिनांक	वनपरिमंडळ	माहितीची पुर्तता
सन-२०२३-२०२४			
१	०९/०१/२०२४	चंदनापुरी	मौजे चंदनापुरी रात्री ९.०० वा. च्या दरम्यान दुरध्वणी द्वारे खबर राष्ट्रीय महामार्ग पुणे-नाशिक क्र ६० हायवेवर मौजे चंदनापुरी रोड बिबट (मादी) अज्ञात वाहनाच्या धडकेत मृत अवस्थेत आढळून आली.
२	२२/०२/२०२४	घारगाव	मौजे घारगाव आज रोजी सकाळी ७.०० वा दरम्यान मिळालेल्या माहिती नुसार पुणे-नाशिक राष्ट्रीय महामार्ग बोट गांवाजवळ एक बिबट मादी अज्ञात वाहनाच्या धडकेत मृत अवस्थेत आढळून आली.
३	२८/०२/२०२४	घारगाव	मौजे घारगाव आज रोजी सकाळी १०.३० वा. दरम्यान मिळालेल्या माहिती नुसार पुणे- नाशिक महामार्ग बोट गांवाजवळ एक बिबट नर अज्ञात वाहनाच्या धडकेत मृत अवस्थेत आढळून आली.
४	२२/०३/२०२४	चंदनापुरी	मौजे चंदनापुरी आज रोजी सायकांळी ६.०० वा. दरम्यान मिळालेल्या माहिती नुसार दुरध्वणी द्वारे राष्ट्रीय महामार्ग पुणे- नाशिक मौजे चंदनापुरी येथे बिबट मादी अज्ञात वाहनाच्या धडकेत मृत अवस्थेत आढळून आली.
५	०२/०४/२०२४	चंदनापुरी	मौजे चंदनापुरी आज रोजी सकाळी ६.०० वा. दरम्यान दुरध्वनीद्वारे खबर मिळालेल्या माहिती नुसार राष्ट्रीय महामार्ग पुणे- नाशिक मौजे डोळासणे (बांबळेवाडी) येथे बिबट मादी अज्ञात वाहनाच्या धडकेत मृत अवस्थेत आढळून आली.


 वनपरिक्षेत्र अधिकारी
 संगमनेर भाग-1

Sub: Information of the leopards died till 2023-2024 on National Highway No 60 in the road accidents took place from Sangamner Pravara River Bridge to Bota (Ghargaon)

Till year 2023-2024

Sr. No	Date	Forest Circle	Fulfillment of information
1	09/01/2024	Chandnapuri	In village Chandnapuri at around 9.00 pm news came on phone that on Pune-Nasik Road National Highway No 60 at Village Chandanapuri a female leopard found dead due to dash of unknown vehicle.
2	22/02/2024	Ghargaon	As per the information received at around 7.00 am at village-Ghargaon on Pune-Nasik Road National Highway near village Bota a female leopard found dead due to dash of unknown vehicle
3	28/02/2024	Ghargaon	As per the information received at around 10.30 am at village-Ghargaon on Pune-Nasik Road National Highway near village Bota a male leopard found dead due to dash of unknown vehicle
4	22/03/2024	Chandnapuri	As per the information received at around 6.00 pm at village-Chandnapuri

			on Pune-Nasik Road National Highway near village Chandnapuri a female leopard found dead due to dash of unknown vehicle
5	02/04/2024	Chandnapuri	As per the information received at around 6.00 am at village-Chandnapuri on Pune-Nasik Road National Highway near village Dolasne (Bambalewadi) a female leopard found dead due to dash of unknown vehicle

SD
Forest Range Officer
Sangamner Part-1

t.t.c.





पुणे-नाशिक महामार्ग ठरतोय मृत्यूघंटा

तीन महिन्यांत तीन बिबट्यांचा मृत्यू : संबंधितांकडून उपाययोजना नाहीच

संगमनेर, ता. ३ : तालुक्यातून जाणारा पुणे- नाशिक राष्ट्रीय महामार्ग खऱ्या अर्थाने बिबट्यांसाठी आता मृत्यूघंटा ठरला आहे. मंगळवारी (ता. २) सकाळी माहुली घाटात वाहनाच्या घडकेत बिबट मादीचा मृत्यू झाला आहे. गेल्या तीन महिन्यांत तीन बिबट मादींचा दुर्दैवी मृत्यू झाल्याच्या घटना घडल्या आहेत, तर बिबट्यांचे अपघात रोखण्यासाठी संबंधित विभागाकडून उपाययोजना झाल्या नाहीत.

सध्या उन्हाची तीव्रता दिवसेंदिवस वाढत असून, भक्ष्यासह पाण्याच्या शोधात बिबटे मानवी वस्त्यांकडे येत आहे. मंगळवारी सकाळी पुणे-नाशिक राष्ट्रीय महामार्गावर असलेल्या माहुली घाटात अज्ञात वाहनाच्या घडकेत बिबट मादीचा दुर्दैवी मृत्यू झाला आहे. या घटनेची माहिती समजताच वनपाल हारून सय्यद यांच्यासह डोळासणे पोलिस मदत केंद्राचे मनेष शिंदे, उमेश गव्हाणे, योगीराज सोनवणे यांनी

घटनास्थळी धाव घेतली. त्यानंतर मृत बिबट्याला सरकारी वाहनातून चंदनापुरी घाटातील निसर्ग परिचय केंद्रात नेण्यात आले होते. शवविच्छेदन झाल्यानंतर या बिबट मादीवर अंत्यसंस्कार करण्यात आले.

अशाच पद्धतीने मार्च महिन्यात चंदनापुरी शिवारात वाहनाच्या घडकेत बिबट मादीचा मृत्यू झाला होता आणि तिसरा बिबट मादीचा मृत्यू फेब्रुवारी महिन्यात बोटा बाह्यवळण येथे झाला

होता. म्हणजे तीन महिन्यांत तीन बिबट मादींचे पुणे-नाशिक राष्ट्रीय महामार्गावर दुर्दैवी मृत्यू झाल्याच्या घटना घडल्या आहेत. यापूर्वी बिबट्यांचे अपघात कमी होत होते. मात्र, पुणे-नाशिक महामार्गाचे चौपदरीकरण झाल्यापासून बिबट्यांच्या अपघातात वाढ झाली असून, यामध्ये आदी वन्य प्राण्यांचाही समावेश आहे.

बिबट्यांचे अपघात होऊ नये म्हणून संबंधित विभागाकडून अद्यापही

“ बिबट्यांचे अपघात होऊ नये म्हणून पुणे-नाशिक राष्ट्रीय महामार्ग यांनी अंडरपास करणे गरजेचे होते. मात्र, ते केले नाही. अंडरपास झाले असते, तर मोठ्या प्रमाणात फरक पडून बिबट्यांचे अपघातही कमी झाले असते. यासंदर्भात लवकरच निर्णय होणार आहे.

- सचिन लोंढे, वनपरिक्षेत्र अधिकारी-भाग एक

पुणे-नाशिक राष्ट्रीय महामार्गावर काहीच उपाययोजना करण्यात आल्या नाहीत. त्यामुळे बिबट्यांच्या मरण्यातना तरी कधी थांबणार आहे, असा प्रश्न आता निर्माण झाला आहे.

PUNE NASIK HIGHWAY IS BECOMING DEATH KNELL

Three leopards died in three months: There is no solution from the concerned people

Sangamner-3:

The Pune-Nasik Highway passing through the Taluka has really become a Death Knell for the leopards. On Tuesday 2nd in the morning in Mahuli Ghat due to dash given by a vehicle a female leopard is died. In last three months unfortunately three female leopards succumbed to death; but for preventing the accidents of leopards any action has not been taken by concerned Department.

At present the intensity of sunlight is increasing day by day hence in search of their prey and water the leopards are coming to human colonies. In the morning on Monday on Pune-Nasik National Highway in Mahuli Ghat due to dash of unknown vehicle a female leopard got unfortunate death. After knowing about this incident along with the Forester Harun Sayyed the persons of Police Help Centre named Manesh Shinde, Umesh Gavhane, Yogiraj Sonavaner have ran to the occurrence spot. Thereafter the dead leopard was taken in Government vehicle to Natural Introduction Centre in Chandanapuri Ghat. After post-mortem the final rituals have been done on this female leopard.

In the same way in the month of March in Chandanapuri area in dash of vehicle a female leopard had died. Third death of female leopard had taken place in the month of

February at Bota External road. It means in three months three female leopards have got unfortunate death on Pune-Nasik National Highway. Earlier the accidents of leopards were being taking place on quite few occasions. But since the four lane expansion of Pune-Nasik Highway the accidents of leopards have increased in which other forest wild animals are also included.

To prevent such accidents of leopards still the concerned department has not taken any action on Pune-Nasik National Highway. Hence now the question has taken place as to when the death torture of leopards would come to an end.

To ensure that there should not be any accident of leopards, Pune-Nasik National Highway should have provided underpass; but that was not done. If the underpasses were provided the accidents of leopards would have been quite low. In this regard very soon some decision would be taking place.

Sachin Londhe,
Forest Range Officer

t.t.c.



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20. It is stated on behalf of the petitioner that after the order was passed, the petitioner has obtained all necessary statutory clearances/permissions from the MoEF and the other statutory authorities. Having obtained the clearances, the petitioner made an application for vacating/modifying the prohibitory order of the High Court passed on 9-8-2005. The application was filed sometime in March 2012, but for one reason or the other it has so far not been heard by any Bench and no order has been passed on it.

21. In the facts and circumstances of the case, we ask the Chief Justice of the High Court to ensure that the petitioner's application is taken up and a final order is passed on it within one month from the date of receipt/production of a copy of this order before the High Court. If need be, the Chief Justice shall constitute a Special Bench for hearing the application.

22. The special leave petition is disposed of with the aforesaid observations and directions.

Court Masters

(2013) 8 Supreme Court Cases 234

(BEFORE K.S.P. RADHAKRISHNAN AND C.K. PRASAD, JJ.)

CENTRE FOR ENVIRONMENTAL LAW,
WORLD WIDE FUND-INDIA

.. Applicant;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

IA No. 100 in WP (C) No. 337 of 1995[†] with IA No. 3452 in
WP (C) No. 202 of 1995, decided on April 15, 2013

A. Environment Protection and Pollution Control — Wildlife — Endangered species — Protection and conservation — Policy decision regarding — Scope of judicial review — Expert opinion — Role of — Delay in implementation of policy to re-introduce into second habitat at Kuno, Asiatic lion from Gir — Directions issued

— Asiatic lions (endangered species) at present having only one habitat i.e. Gir in Gujarat — Policy decision taken regarding ex situ conservation of Asiatic lions of Gir in a second wild habitat in Kuno (M.P.), Kuno being their historical habitat — Said policy decision taken to save them from extinction which could be caused due to an epidemic at their sole habitat (Gir) or other eventualities in the dynamics of extinction — National Board for Wildlife (NBWL) supporting this re-introduction project — As per Wildlife Act, 1972, NBWL being the paramount scientific body and policy framer/advisor/reviewer regarding conservation — However, State Board for Wildlife (SBWL), Gujarat and Gujarat Government (though not being statutorily endowed with said functions as NBWL) opposing the same — MoEF, Central Government and M.P. Government had taken all initiatives to make said second habitat at Kuno (also a historical habitat) suitable for

[†] Under Article 32 of the Constitution of India

Anthropocentric versus ecocentric

45. We may point out that there has been wide-ranging discussions and deliberations on the international platforms and conferences for re-building of certain principles laid down in the earlier conventions on the Principles of Sustainable Development. The United Nations Commission on Environment and Development defined the “sustainable development” as follows: a

“Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (World Commission on Economic Development [WCED], 1987 : 43) b

46. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focussed thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans. c
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47. We reiterate that while examining the necessity of a second home for the Asiatic lions, our approach should be ecocentric and not anthropocentric and we must apply the “species best interest standard”, that is the best interest of the Asiatic lions. We must focus our attention to safeguard the interest of species, as species has equal rights to exist on this earth. Asiatic lion has become critically endangered because of human intervention. The species originally existed in North Africa and South-West Asia formerly stretched across the coastal forests of northern Africa and from northern Greece across South-West Asia to eastern India. Today the only living representatives of the lions once found throughout much of South-West Asia occur in India’s Gir Forest. Asiatic lion currently exists as a single sub-population and is thus vulnerable to extinction from unpredictable events, such as an epidemic or large forest fire, etc. and we are committed to safeguard this endangered species because this species has a right to live on this earth, just like human beings. e
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48. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life. In *M.C. Mehta v. Kamal Nath*⁷, this Court enunciated the doctrine of “public trust”, the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified g
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⁷ (1997) 1 SCC 388

Schedules I to IV and found wild in nature. “Wildlife” has been defined under Section 2(37) to include any animal, bees, butterflies, crustacean, fish and moths, and/or land vegetation which forms part of any habitat. Section 9 prohibits hunting of wild animals, specified in Schedules I, II, III and IV except as provided under Section 11 and Section 12. Section 40 of the Act obliges a person to make a declaration and Section 41 enables the Chief Wildlife Warden to make an enquiry and preparation of inventories and Section 42 deals with the issue of certificates and confers no ownership of the wild animals to a particular State or others. Animals in the wild are properties of the nation for which no State can claim ownership and the State’s duty is to protect the wildlife and conserve it, for ensuring the ecological and environmental security of the country.

53. Several migratory birds, mammals, and animals in wild cross-national and international borders created by man and every nation have a duty and obligation to ensure their protection. No nation or organisation can claim ownership or possession over them, the Convention on the conservation of migratory species of wild animals held at Bonn, 1979, supports this principle and the Convention recognises that wild animals in their innumerable forms are irreplaceable part of the earth; natural system and must be conserved for the good of the mankind. It has recognised that the States are and must be the protectors of the migratory species of wild animals that live within or pass through their national jurisdictional boundaries. Convention highlights that conservation and effective management of migratory species of wild animals require the concerted action of all States within the national jurisdictional boundaries of which such species spend any part of their life cycle. India is also a signatory to that Convention.

54. The State of Gujarat has taken up the stand that it has got its own conservation programme in respect of Asiatic lion. Due to the effective conservation programme carried out by the State of Gujarat at Gir, it was pointed out, that the number of Asiatic lions in the wildlife has increased, the range of these lions has increased, the statutorily protected habitat has increased, so also the area occupied by these lions has increased. The State has maintained the stand that there is no present or immediate danger to the Asiatic lions warranting any emergency measures.

55. The State Board for Wildlife, Gujarat (SBWL, Gujarat), which has been constituted by the State Government under Section 6 of the Wildlife (Protection) Act, 1972, convened a meeting on 16-3-2012 to discuss the issue relating to translocation of Asiatic lion from Gujarat to Madhya Pradesh. SBWL, Gujarat and took the view that the issue of giving or not giving lions to Kuno is not an issue of conflict between the States, but it is a collective Indian cultural approach in the interest of long-term conservation of lions as part of our family. SBWL further maintained the stand that Asiatic lion being a “family member” is beyond and higher than the “scientific reasoning”. SBWL, therefore, did not agree with the proposal for translocation of lion from Gujarat to Kuno, a stand endorsed by the State of Gujarat.

56. Approach made by SWBL and the State of Gujarat is an anthropocentric approach, not ecocentric though the State of Gujarat can be

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CENTRE FOR ENVIRONMENTAL LAW, WORLD WIDE FUND-INDIA v. 259
UNION OF INDIA (*Radhakrishnan, J.*)

a justifiably proud of the fact that it has preserved an endangered species from becoming extinct. We are, however, concerned with a fundamental issue whether the Asiatic lions should have a second home. The cardinal issue is not whether the Asiatic lion is a “family member” or is part of the “Indian culture and civilisation”, or the pride of a State but the preservation of an endangered species for which we have to apply the “species best interest standard”. Our approach should not be human-centric or family-centric but

b ecocentric. “Scientific reasoning” for its re-location has to supersede the family bond or pride of the people and we have to look at the species best interest especially in a situation where the species is found to be a critically endangered one and the necessity of a second home has been keenly felt. We, therefore, find it difficult to agree with the reasoning of SBWL, Gujarat and the State of Gujarat that the Asiatic lion is a family member and hence be not

c parted with.

d **57.** The views of NBWL constituted by the Central Government in exercise of its powers conferred under Section 5-A of the Wildlife (Protection) Act, have to prevail over the views expressed by SBWL. The duties conferred on the National Board under Section 5-C of the Act and on the State Board under Section 8 of the Act are entirely different. NBWL has a duty to promote conservation and development of wildlife and frame policies and advise the Central Government and the State Governments on the ways and importance of promoting wildlife conservation. It has to carry out/make assessment of various projects and activities on wildlife or its habitat. NBWL has also to review from time to time the progress in the field of wildlife conservation in the country and suggest measures for improving thereto. Those functions have not been conferred on the State Board. The State Board

e has been conferred with a duty to advise the State Government the selection and management of areas to be declared as protected areas and advise the State Government in formation of their policies for protection and conservation of the wildlife and specify plans, etc. Statutorily, therefore, it is the duty of NBWL to promote conservation and development of wildlife with a view to ensuring ecological and environmental security in the country. We

f are, therefore, of the view that the various decisions taken by NBWL that Asiatic lion should have a second home to save it from extinction, due to catastrophes like epidemic, large forest fire, etc., which could result in extinction, is justified. This Court, sitting in the jurisdiction, is not justified in taking a contrary view from that of NBWL.

Historical habitat — Re-introduction

g **58.** No species can survive on the brink of extinction indefinitely and the probabilities associated with a critically endangered species make their extinction a matter of time. Convention biology is the science that studies bio-diversity and the dynamics of extinction. Eco-system approach to protecting endangered species emphasises on recovery, and complement and support ecosystem based conservation approach. Re-introduction of an animal or plant

h into the habitat from where it has become extinct is also known as ex situ conservation. India has successfully achieved certain re-introduction

t.c.

Radhakrishnan

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3J

(BEFORE L. NAGESWARA RAO, B.R. GAVAI AND ANIRUDDHA BOSE, JJ.)

(In the Matter of)

T.N. GODAVARMAN THIRUMULPAD

.. Petitioner;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

IA No. 61370 of 2021 (Report No. 06 of 2021) in Application
No. 1440 of 2020, IA No. 107884 of 2021 and IAs Nos. 30853 and
30858 of 2022 in WP (C) No. 202 of 1995[†], decided on May 9, 2022

Environment Law — Wildlife (Protection) Act, 1972 — Ss. 18-A, 29 and 38-O(1)(g) r/w S. 3 of the Environment (Protection) Act, 1986 — Protection to sanctuaries — Wildlife clearance — Doubling of railway line — Approval granted by Standing Committee of National Board for Wildlife — Recommendation by Central Empowered Committee for revocation of — Whether to be accepted

— Ministry of Railways failed to provide any substantial basis for requirement of doubling railway line by addressing its impact on habitat and damage that it would cause to environment — Therefore conclusion of CEC upheld, and approval granted by Standing Committee of NBWL for doubling railway line between Castlerock to Kulem, revoked

— Doubling of railway line between Castlerock to Kulem is a part of critical project undertaken by Ministry of Railways in public interest — Ministry of Railways or RVNL failed to provide any substantial basis for requirement of doubling railway line by addressing impact which it would have on habitat and damage that it would cause to environment — RVNL attempted to justify its decision on ground that there is a likelihood that requirement of coal and other raw materials would be doubled in future and proposed project is very much essential for transportation of said goods — Requirement of coal can be met by utilising Krishnapatnam Port which is a viable alternative for transportation of coal — Said suggestion would also prevent degradation of Western Ghats — Even according to RVNL, traffic on Konkan Railway line is frequently dislocated due to landslides, breaches, etc. especially during rainy season — In view of difficult terrain having sharp curves and gradient as high as 1:37 for proposed project, any further construction would invite a great disaster in sensitive areas of Western Ghats as well

— Landscape in which railway line is proposed to pass is an important tiger corridor, connecting three States of Goa, Karnataka and Maharashtra — Report prepared by National Tiger Conservation Authority (NTCA) regarding viability of such a railway line is only for Karnataka part of project — No such report has been prepared for Goa part — Standing Committee of NBWL ought to have sought for a report from NTCA on Goa part of project before granting

[†] Under Article 32 of the Constitution of India [Allowed]

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destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment⁴.

17. In *Vellore Citizens' Welfare Forum v. Union of India*⁵, this Court held that the "precautionary principle" is an essential feature of the principle of "sustainable development". It went on to explain the precautionary principle in the following terms: (SCC p. 658, para 11)

"11. ... (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign."

18. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential³.

19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest⁶. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.

20. Keeping in mind the aforesaid principle of law on sustainable development and precautionary principle, we proceed to examine whether the recommendation made by CEC should be accepted. Doubling of the railway line between Castlerock to Kulem is a part of the critical project undertaken by the Ministry of Railways in the year 2011 in public interest. Whether the justification for doubling the railway line would outweigh the environmental concerns raised by the Goa Foundation which found favour with CEC is the

⁴ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281

⁵ (1996) 5 SCC 647

³ *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718

⁶ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

t.c.

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T.N. GODAVARMAN THIRUMULPAD v. UNION OF INDIA

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(BEFORE K.S.P. RADHAKRISHNAN AND C.K. PRASAD, JJ.)

a T.N. GODAVARMAN THIRUMULPAD . . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

IAs Nos. 1433 and 1477 of 2005 in WP (C) No. 202 of 1995,
decided on February 13, 2012

b **A. Environment Protection and Pollution Control — Wildlife (Protection) Act, 1972 — Sch. I Pt. I List 41 and Ss. 8, 9, 11 and 12 — Endangered species of wild buffalo under List 41 — Rescue plan — Implementation — Directions to State of Chhattisgarh — State of Chhattisgarh directed: (a) to implement Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 so as to save wild buffalo from extinction, (b) to ensure that interbreeding between wild and domestic buffaloes does not take place and their genetic purity is maintained, (c) to undertake intensive research and monitor wild buffalo population in areas concerned, (d) to prepare their genetic profile for future reference, (e) to initiate wildlife training programmes for officials concerned, (f) to submit Annual Plan of Operations to Central Government detailing proposed course of action, if not already done, as per Scheme, within three months, and (g) to take all effective steps to protect Asian wild buffalo (*bubalus bubalis*) which is declared as a State animal by State of Chhattisgarh — In view of funding pattern and scheme by Central Government, plea of State of Chhattisgarh with regard to lack of funds for implementation of scheme, held, is not tenable — Moreover, constitutional duty in this regard pointed out — Constitution of India, Arts. 21, 14, 51-A(g) and Sch. VII List III Entries 17-A and 17-B (as inserted vide Forty-second Amendment Act, 1976) (Paras 23 and 31)**

f **B. Environment Protection and Pollution Control — Wildlife — Endangered species — Recovery programmes for saving critically endangered species and habitats distinguished from conservation programmes — Objectives of said recovery programmes are to protect wildlife outside protected areas (PAs)/wildlife sanctuaries or reserves — Provisions for assessment of such recovery programmes, indicated (Paras 19 to 22)**

g Categories of endangered species prepared by International Union for Conservation of Nature (IUCN), *referred to*
[**Ed.:** The IUCN Red List of threatened species classified under 7 heads i.e. (a) least concern, LC, (b) near threatened, NT, (c) vulnerable, VU, (d) endangered, EN, (e) critically endangered, CR, (f) extinct in the wild, EW and (g) extinct, EX can be found at: <http://www.iucnredlist.org> as verified on 27-2-2012.]

h **C. Environment Protection and Pollution Control — Wildlife — Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 — (a) Objectives of 2009 Scheme, (b) rationale behind introduction of two more protected areas (PAs) vide S. 36-A, 1972 Act [new PAs being**

T.N. GODAVARMAN THIRUMULPAD v. UNION OF INDIA (*Radhakrishnan, J.*) 283

Development of people is always welcome but not at the cost of negative ecological effect to the ecosystem.

- a **16.** The Report clearly states that development activities cause more interference in forest and also the privacy of wildlife and these ultimately cause conflict with wildlife. Man-animal conflict often takes place when wild animals cause damage to agricultural crop and property, killing of livestock and human beings. Human population growth, land use transformation, species' loss of habitat, ecotourism, too much access to reserves, increase in livestock population bordering the forest, depletion of natural prey base, etc., are often stated to be reasons for such conflict. The Central Government, the State Governments, and the Union Territories should evolve better preservation strategies, in consultation with Wildlife Boards so that such conflicts can be avoided to a large extent. Participation of people who are staying in the community reserves is also of extreme importance. The necessity of implementing proper management measures for preserving the wild buffalo has also been elaborately stated in the Report.

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- d **17.** Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.

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- f **18.** The National Wildlife Action Plan (2002-2016) is intended to provide adequate protection to wildlife in multiple use areas such as government forests outside PAs, various community conserved areas like sacred groves, community and panchayat forests, identified private forests such as interspersed forests in tea, coffee and cardamom gardens and other protection landscapes, farmlands, wastelands, wetlands, coastal habitats, heronries, wintering wetlands of birds, catchment forests, turtle nesting sites, pastures for livestock and wild herbivore, deserve ecosystems, etc.

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Recovery programmes

- h **19.** The Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 also deals with recovery programmes for saving critically endangered species and habitats. It was noticed that, due to variety of reasons, several species and their habitats have become critically

t.c.

Radhakrishnan