

IN THE HON'BLE NATIONAL GREEN TRIBUNAL, EASTERN BENCH

Original Application No. 61 of 2021

IN THE MATTER OF:

Wildlife Society of Odisha

...Petitioner

V/s.

State of Odisha & Ors

...Respondents

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...Respondents

**Reply Affidavit On Behalf of Ministry of Environment, Forest and
Climate Change (Respondent No.3)**

I, Padma Mahanti aged around 45 years, resident of Bhubaneswar,
do hereby solemnly affirm and state as under :-

1. That I am working as the Deputy Inspector General of Forests at Integrated Regional Office, Eastern Zone, Bhubaneswar of the Ministry of Environment, Forest & Climate Change in Bhubaneswar.
2. That I am fully conversant with the facts and circumstances of the case from records maintained in the office. I have read and understood the contents of the petition thereof and as such authorized and competent to swear the present affidavit.
3. That the Hon'ble Tribunal, Vide Order dated 27.09.2021 has directed the Respondents to file their counter affidavits regarding the allegations made in the Application.
4. The answering Respondent respectfully submits :-
 - a. That under Wildlife (Protection) Act, 1972 (hereinafter referred to as the "Act"), Elephant (also known as *Elephas maximus*) is regarded as Schedule- I species and was also declared as 'Heritage Animal of India' by the Government in 2010 and therefore, highest degree of protection has been accorded to the Elephants in India under provisions of this Act. The Elephants also help to maintain the ecological balance and are also considered as umbrella species as they indirectly help in

conservation and preserving other wildlife and ecosystem. For these purposes, the Government of India, in 1991-1992, launched "Project Elephant" as a Centrally Sponsored Scheme of the Ministry of Environment, Forest and Climate Change for providing financial and technical assistance to the elephant ranging states of India for protection of elephants, their habitats and corridors and also address issue of human-elephant conflict. The mandate of the Scheme of Project Elephant is to look after the administrative as well as policy related matters for conservation and preservation and elephants and their habitat.

- b. That a communication was sent to the Principal Chief Conservator of Forests (PCCF) and Chief Wildlife Warden (CWLW), Government of Odisha and the Director, Wildlife Institute of India (WII) requesting them to provide their comments or Action Taken Report, if any regarding the challenge made by the Petitioner in the present petition.
- c. In the response received from the WII, it was stated that the recommendation in the report of Wildlife Institute of India, 2016 is 50m structure, but the structure is only possible with piers suggesting at 25m, which is the technical requirement for construction of flyovers. Thus, there are no modifications to the proposed structure done by the Chief Wildlife Warden. Copy of the letter received from WII dated 09.09.2021 is herewith attached and marked as **Annexure- I**.
- d. That the Hon'ble Supreme Court of India in the matter of *Civil Appeal No. 3438-3439/2020, (Hospitality Association of Mudumalai Vs. In Defence of Environment and Animals & Ors.)* observed the importance of elephant corridors for protection and securing the elephants and their habitat and while delivering its judgment dated 14.10.2020, stated as follows:-



“Elephant corridors allow elephants to continue their nomadic mode of survival, despite shrinking forest cover, by facilitating travel between distinct forest habitats. Corridors are narrow and linear patches of forest which establish and facilitate connectivity across habitats. In the context of today’s world, where habitat fragmentation has become increasingly common, these corridors play a crucial role in sustaining wildlife by reducing the impact of habitat isolations. In their absence, elephants would be unable to move freely, which would in turn affect many other animal species and the ecosystem balance of several wild habitats would be unalterably upset. It would also eventually lead to the local extinction of elephants, a species which is wildly revered in our country and across the world. To secure wild elephants’ future, it is essential that we ensure their uninterrupted movement between different forest habitats. For this, elephant corridors must be protected.”



- e. That the matter may be ascertained on the basis of the factual report presented by the Chief Wildlife Warden, Government of Odisha and the report submitted by the Wildlife Institute of India regarding the design and modifications of the alleged Animal Underpass in the stretches of National Highway- 55 from Cuttack to Angul to Sambalpur and whether the said design is in conformity to the WII Report, 2016- **Eco-Friendly Measures to Mitigate Impacts of Linear Infrastructure on Wildlife.**
- f. That the responsibility for regulation, conservation and management of elephant habitat and minimization of activities in elephant passage, both inside and outside the forest area lies with the State Forest Department in order to provide improved habitat to the elephants.

NOTARISED

5. The answering Respondent also craves liberty to file additional information, if any, till pendente lite.
6. In view of the above, it is prayed that this Hon'ble Tribunal may take on record and consider above submissions made by the Ministry while passing an appropriate order/ direction which the answering respondent shall duly comply with.

Padma Mahant

DEPONENT

उप-वन महानिरीक्षक (के)/ Dy. IGF (Central)

भारत सरकार / Govt. of India

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय/Min. of Env.

पूर्वी क्षेत्रीय कार्यालय / Eastern Regional Office

भुवनेश्वर / Bhubaneswar

IDENTIFIED BY ME

ADVOCATE

31.12.2021

SWORN BEFORE ME

VERIFICATION

I, the aforementioned Deponent do hereby declare on this 30th day of December, 2021 at Bhubaneswar that the contents of the affidavit are true to my knowledge and belief and nothing material has been concealed therefrom.



31.12.2021
DUSASAN SAMANTARAY
NOTARY, GOVT. OF ODISHA
BHUBANESWAR, ODISHA
REGD. NO. - 88/2012
MOB-9439143015

Padma Mahant

DEPONENT

उप-वन महानिरीक्षक (के)/ Dy. IGF (Central)

भारत सरकार / Govt. of India

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय/Min. of Env. Fo

पूर्वी क्षेत्रीय कार्यालय / Eastern Regional Office

भुवनेश्वर / Bhubaneswar



To,

Dr. K. Muthamizh Selvan, Scientist D
 Government of India, Ministry of Environment
 Forests and Climate Change,
 Project Elephant, Division,
 Indira Paryavaran Bhawan,
 Jor Bagh Road, Ali Ganj,
 New Delhi – 110 003

Subject: Original Application No. 61 of 2021 in the matter of Wildlife Society of Orissa Vs State of Odisha & Ors- reg.

Sir,

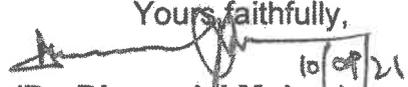
This has reference to your letter No F. No. 6-5/2021-PE dated 27th August, 2021 on the above mentioned subject; the modifications of Animal Underpass in the Stretches of NH – 55 from Cuttack to Angul to Sambalpur in contravention to the approved wildlife management plan and the report of Wildlife Institute of India 2016 regarding design of underpass for elephants the comments are as follows:

1. The petitioner believes that the PCCF Wildlife has agreed to modifications sought by the NHAI and these modifications are very serious.
2. It is pertinent to mention that the size of overall mitigation measures has not been changed at all. We think the confusion is concerning the placement of pillars in the proposed mitigation measures. The presence of pillar type (not wall type piers) is decided as per the substratum in the landscape to enhance the strength of structures and reduce the possibility of any damage to the structures. In the case of 50 m underpasses, the pillars are usually recommended at an interval of 25 m. While for larger structures, the pillars can be at 25–30 m depending on the substratum. However, it is finally determined by substrate and the engineering consideration.
3. Flyovers by NHAI in Uttarakhand at Rajaji National Park (736m, 500m, and 400 m) are with pillar-type piers at 30 m. It is impossible to construct large spans without piers.
4. To avoid the tunneling effect and allow passage of animals, especially group-living social animals like elephants, WII has recommended isolated piers (page No, 78). A copy of the report of Wildlife Institute of India 2016 (Eco-friendly Measure to Mitigate impacts on linear infrastructure on wildlife) is available at the Institute website <https://www.wii.gov.in>.

.....Continue on page no -2

5. On page no 80, the recommendation of WII is 50 m structure, but the structure is only possible with piers suggesting at 25 m, which is the technical requirement for the construction of flyovers, for engineering consideration the same may kindly be verified from concerned department.

In view of above, it appears that there are no modifications to the proposed structures done by the State Chief Wildlife Warden.

Yours faithfully,

(Dr. Dhananjai Mohan) 10/09/21
Director