

CORRECTED

ITEM NO.4

COURT NO.8

SECTION PIL

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 107/2013

SHAKTI PRASAD NAYAK

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln. (s) for clarification/modification of court's order)

Date : 02/09/2014 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Sanjeeb Panigrahi, Adv.
Mr. Ravi Chandra Prakash, Adv.
Ms. Filza Moonis, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. L. Nidhi Sharma, Adv.
Mr. Purushottam Sharma Tripathi, Adv.

For Respondent(s) Mr. Ranjit Kumar, S.G.
Ms. Ranjana Narayan, Adv.
Mr. S.N. Terdal, Adv.

St. of U.P. Mr. Rajat Singh, Adv.
Mr. Abhishek Chaudhary, Adv.

St. of W.B. Mr. Avijit Bhattacharjee, Adv.
Mrs. Sarbanai Kar, Adv.

St. of T.N. Mr. R. Rakesh Sharma, Adv.
Mr. S. Anand, Adv.
Mr. B. Balaji, Adv.

St. of Chhatisgarh Mr. C. D. Singh, Adv.
Ms. Shreya Dubey, Adv.

St. of M.P. Mr. Mishra Saurabh, Adv.
Ms. Vansaja Shukla, Adv.
Mr. Ankit Kr. Lal, Adv.

Mr. Shreekant N. Terdal, Adv.

Mr. Sibbo Sankar Mishra, Adv.

Mr. Tapesb Kumar Singh, Adv.
Mohd. Waquas, Adv.

Mr. V. N. Raghupathy, Adv.

Ms. Bina Madhavan, Adv.

Ms. Vartika Sahay, Adv.
M/s Corporate Law Group, Adv.

Ms. Rachana Srivastava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The present writ petition fundamentally pertains to avoidance of railway accidents by which the life of elephants, which is regarded as national wildlife wealth, is endangered as number of deaths occur due to such accidents. The depletion of the clan of the elephants has been a worrying feature for protection and sustenance of wildlife. There has been a constant uproar about the apathy shown to such accidents which are avoidable in today's progressive technology.

When this matter was filed, it was restricted to North-Eastern region of the country where there was no arrangement by the Railways. However, by order dated 10.12.2013, the canvas was expanded and the response from all the States was called for.

In course of hearing of the writ petition on that day,

certain suggestions, namely, reduction of the speed limit of the running trains, discontinuance of the movement of the goods trains at nights between Siliguri and Alipurduar and diversion of fast moving night trains through Siliguri-Falakata route etc. were given. Taking note of the suggestions, the Court passed the following order:

"Today, both the MoEF as well as the Railways are unrepresented so that the aforesaid details could not be ascertained. In such circumstances, we are inclined to direct the respondents to immediately give effect to the following suggestions made in the Inspection Report:

(A) Necessary steps should be taken by the Railways all over the country to reduce the speed limit of running trains that are passing through dense forests. In case a speed limit is not followed, appropriate action should be taken against the erring drivers and officials concerned.

(B) Railways to take steps to discontinue the movement of goods trains at night between Siliguri and Alipurduar.

(C) Divert fast moving and night trains through Siliguri-Falakata route.

The State of West Bengal also would apprise the Court of the steps they have taken on the basis of the recommendations made after the meeting with the Railway Authorities."

An application has been filed for modification of the aforesaid directions. We shall advert to the same at a later stage.

After the aforesaid order, three affidavits have been filed giving the status report, in a way, what has been

done by the Railways. What has been stated in the said affidavits basically are the Ministry of Railways in consultation with the Ministry of Environment and Forest ("MoEF" for short) has issued a general advisory to zonal railways on 30.03.2010 prescribing clearance of vegetation on the sides of railway tracks, provision of signage boards to pre-warn the train Loco-pilots, conducting sensitizing programmes for Train Loco-pilots/Guards/Station Masters, use of elephant trackers by MOEF and communication with Station Masters, keeping railway track free from food waste that attract elephants, construction of underpasses/ramp passes across the railway track for movement of elephants. In that regard, certain steps have been taken. Certain specific suggestions have been given in respect of Northeast Frontier Railway (West Bengal area), which are as follows:

(a) Construction of passes in Chapramari wild life sanctuary - The work of providing passes at Km 66/2-3, 67/3-4, 67/8-9, 67-9-68/0 & 68/3-4 as well as closing passage at KM 67/4-5 has been completed.

(b) Construction of ramp passes in Jaldapara wild life sanctuary - The work of providing two ramps of 20 m wide at Km 128/6-9 & 130/8-9 between Madarihat and Hasimara has been completed.

(c) Construction of two girder bridges in Mahananda wild life sanctuary - The work of construction of girder bridges at Km 24/-67 and erection of fencing at Km 25/9-26/0-1 between Gulma and Sevok is in progress. The work is likely to be completed by March 2014. Balance amount of Rs.48.34 lakhs is to be provided by MOEF for early completion of works.

(d) Besides, imposition of speed restrictions of 50 Kmph in different stretches covering 95.3 Kms between Alipurduar and Siliguri, various other measures have been taken in this region. These

are:

- Forest Guards have been deployed at Divisional Control Office, Alipurduar between 18.00 hrs to 06.00 Hrs to convey message regarding movement of wild elephants near the railway track;

- Special drives are launched on a continuous basis by deploying Officers/Supervisors to check speed of the train as well as alertness of Loco Pilots/Asst. Loco Pilots;

- Speed radar guns have been installed to monitor speed of Locos enroute and to check cases of overspeeding, if any;

- 25W VHF sets tuned to the frequency of VHF sets of forest department has been commissioned for immediate transmission of information regarding elephant movements;

- Sensitization programmes for Loco Pilots/ Asst. Loco Pilots/Guards and Track Staff has been launched with help of Forest Department; signage boards have been provided at all identified elephant corridors to pre-warn Loco pilots;

- Passengers and Pantry car staff are motivated/ counseled through posters, public address systems not to throw waste food materials on the railway track which could otherwise attract wild animals towards the railway track.

In respect of South Eastern Railway, namely, Jharkhand area, certain works have been done, as mentioned in the affidavit, which are as follows:

"In Monoharpur-Posoita section, elephant fences have been built for approximately 4 Kms on either side of track using rail section on deposit terms. This work was completed in phases in year 2004-05 and 2011-12. Further, one more work of construction of fence at a cost of Rs.70.72 lakhs is in progress."

As far as the East Coast Railway (Odisha area) is

concerned, it is stated that:

"Elephant Proof Solar Electric Fence under Berhampur Forest Division has been very recently commissioned by the Forest Department of govt. of Odisha in between Kms. 561/24 to Kms 564/0 in the Rambha - Humma section which has had past history of accidents."

In respect of Karnataka area, the affidavit states thus:

- "Digging and maintaining elephant-proof trenches of cumulative length over 500 Km, installing and maintaining 600 Km of solar fencing and keeping anti-depredation squad engaged for sending stray elephants back into forests.
- Rapid Action Force team equipped with modern equipments to drive elephants straying into human habitat back into the forest are stationed at 5 district headquarters (Mysore, Hassan, Chamrajnagar, Kodagu and Shimoga).
- Electricity companies are advised to ensure a minimum of 20ft ground clearance in elephant corridor.

The above measures are exclusive initiatives of the State government.

The assertion has been made in the affidavit that several steps have been taken by the Ministry of Railways along with MOEF for the mitigation of the problem.

In the affidavit dated 16.04.2014, it is asseverated that the Ministry of Railways has planned for immediate future and medium/long-term future, which reads as follows:

"(i) Immediate Future: Divert immediately the Sampark Kranti Express, a superfast train not

having any stoppage between Siliguri and Alipurduar, from the Northern alignment via New Mal to the Southern alignment via Falakata with effect from 1.7.2014 i.e. from the commencement date of the new Railway time table.

(ii) Medium/Long Term Future: A new third alignment between New Maynaguri and New Cooch Behar is a sanctioned work and will provide an alternate route for accommodating demand for running additional trains to the North Eastern States. With the commissioning of this new link (expected time frame of 5 years), it will be possible to divert a few trains, particularly goods trains, from the Northern alignment to this line."

It is also asserted in the said affidavit that Railways has evolved strategic action plans along with the Forest Department and the recent development, as has been thought of, relates to identification of vulnerable stretches relating to the presence of elephants in close proximity of railway tracks and use of technological solutions like the electronic eye project and use of thermal imaging cameras for the purpose of effective tracking of the elephants.

In course of hearing of the writ petition following suggestions have been made thought of:

(A) MOEF, in coordination with the Railways, should first identify the path/corridors, which the elephants shall take, regard being had to their instinct so that the other prospective steps can be appositely taken.

(B) After identification of such corridors, trenches can be made so that the elephants would be prevented from crossing the railway track.

(C) The Railways can make the underpass in the identified corridors so that the elephants would not get into the railway track.

(D) Certain areas are to be identified by the authorities regard being had to the corridors so that the trains are directed to move at the lowest speed to avoid accidents.

(E) The Modern Wireless Animal Tracking system may be used so that accidents of this nature are avoided.

(F) Satellite Space Navigation System may be utilised so that the drivers become cautious in the areas where the elephants are likely to cross the railway tracks.

(G) Use of technology, namely, Battlefield Surveillance Radar System may be consigned, so that it would help in avoiding the accidents.

We hasten to add that aforesaid suggestions are required to be considered by the MOEF, as the singular purpose is to avoid deaths of elephants in railway accidents.

Be it stated, the depleting rate of elephants in the country has been a concern of everyone who has interest in the environment. Needless to say that it is a necessity to sustain the environment and ecological balance. In the present era, sustenance of species is a categorical imperative and neither MOEF nor the Railways can treat it as a matter of non-concern by not taking steps or causing delay in taking steps.

Presently, we shall advert to the I.A., as stated

earlier. As far as the first direction is concerned, no modification is necessary, for the Railways have already complied with the same. However, we would like the railway authorities to file a status report after the corridors are identified. As far as direction (B) is concerned, we modify the direction to the effect that if the movement of the goods trains at night between Siliguri and Alipurduar, which is 168 Kms., the trains shall move at the speed of 25 KM per hour, as suggested by the MOEF vide letter dated 17.10.2007 in four identified sanctuaries so that the accidents do not occur. Be it further clarified this present modification/arrangement is only to save the movement of availability of goods in North-Eastern Region, but that does not mean the Railways would get into slumber for not taking steps to discontinue the movement of goods trains at night on the said route. We say so as that would be permanent arrangement. Hence, the modification is in praesenti. As far as direction (C) is concerned, it shall be adverted to afterwards.

At this juncture, we must express our displeasure as the MOEF has not appeared today. The present lis is one where the presence of MOEF, through its counsel, is absolutely necessary. The Railways alone cannot determine about the safety of the elephants and other wildlife, for it is the obligation of the MOEF to do so and if required to advise and see that the advice is carried out, but unfortunately, the MOEF has started behaving like a Rit Van Winkle remaining in happy slumber in this matter. We do not appreciate it and, therefore, it is directed that the Secretary, MOEF shall remain personally present on the next date of hearing so that he may be in a position to assist the Court. The Secretary, MOEF shall file an affidavit on the aspects that we have mentioned today,

clearly indicating what steps the MOEF has taken in this regard so far. Mr. Ranjit Kumar, learned Solicitor General, who has appeared for the Railways, is requested to inform the Secretary, MOEF to remain personally present and file the affidavit. Let it be ingeminated that apathy from the MOEF is decried.

At this juncture, we are obliged to take note of the submission made by Mr. Tapesh Kumar Singh, learned counsel appearing for State of Jharkhand that State of West Bengal has decided to take a regressive step by introducing contraceptives so that the elephants do not procreate and consequently the accidents of the present nature are avoided. If it is so, it is absolutely impermissible and also condemnable. Mr. Avijit Bhattacharjee, learned counsel appearing for the State of West Bengal shall take instructions in this regard and file an affidavit of the competent authority. However, as advised at present, we restrain the authorities of the State of West Bengal from taking any steps to administer any kind of contraceptives or introducing any method of sterilization which hinders natural procreative process of the elephants or any wildlife.

Ms. Aparna Bhat, learned counsel, submits that she has filed a writ petition W.P(C) No. 743/2014 pertaining to protecting the life of elephants. Let that petition be listed along with this writ petition.

List on 23.09.2014.

(NAVEEN KUMAR)
COURT MASTER

(SUMAN JAIN)
COURT MASTER