

ITEM NO.2

COURT NO.5

SECTION IV-A

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

Petition(s) for Special Leave to Appeal (C) No(s). 13838/2010

(Arising out of impugned final judgment and order dated 09-03-2010 in WP No. 17498/2009 09-03-2010 in WP No. 17498/2009 passed by the High Court Of Karnataka At Bengaluru)

THE STATE OF KERALA

Petitioner(s)

VERSUS

L. SRINIVASA BABU AND ORS.

Respondent(s)

([TO BE TAKEN UP AS FIRST ITEM]

IA No. 130873/2018 - CLARIFICATION/DIRECTION

IA No. 130821/2018 - CLARIFICATION/DIRECTION

IA No. 115705/2018 - CLARIFICATION/DIRECTION

IA No. 99715/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES & IA No. 4/2010 - PERMISSION TO FILE ANNEXURES)

WITH

SLP(C) No. 16588/2010 (IV-A)

SLP(C) Nos. 24865-24866/2012 (IV-A)

Date : 07-08-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Jaideep Gupta, Sr. Adv.
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Mr. Samir Ali Khan, AOR

Mr. M.T. George, Adv.
Mrs. Susy Abraham, Adv.
Mr. Johns George, Adv.
Mr. T. G. Narayanan Nair, AOR

Ms. Manjula Gupta, AOR

Mr. P.K. Manohar, AOR

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

Having heard learned counsel for the States of Kerala and Karnataka and learned counsel for the Ministry of Road Transport and Highways, as also the PIL petitioner in the High Court, we are of the view that what we are dealing with is nothing less than a core area of Bandipur National Park, which is one of the major tiger reserves in this country.

A road being National Highway NH-212 connecting Kollegal in Karnataka with Kozhikode in Kerala via Mysore goes through this core area. Insofar as the States of Karnataka and Kerala are concerned, 24.5 Kms. of this NH-212 goes through the core area, out of which 19.7 Kms. goes through the State of Karnataka and 4.8 Kms goes through the State of Kerala. The other portion of the road ad-measuring 10.10 Kms. also goes through this Wild Life Sanctuary, being part of the buffer zone, 4.5 Kms. going through the State of Karnataka and 5.6 Kms. going through the State of Kerala, thereby totalling 34.60 Kms. Of road in all through this particular Wild Life Sanctuary area.

We may mention in passing that so far as NH-67 is concerned, and which also goes through a 36 Kms. Stretch of core and buffer zones of the Bandipur National Park, the States of Karnataka and Tamil Nadu have agreed that the status *quo* be preserved, which is that there be a ban on traffic between 9.00 p.m. and 6.00 a.m. every day, save and except for certain emergency vehicles.

We may also mention that the State of Karnataka and the State of Tamil Nadu support this ban insofar as NH-67 is concerned,

leaving only the State of Kerala, which, despite having the shortest stretch of only 10.4 Kms., is resisting this ban tooth and nail.

We were taken through the Report annexed to an affidavit dated 26.09.2015 of the Kerala Forest Reserve Institute in which the said Institute found that this ban ought to be lifted, and various suggestions made which are set out herein below:

- "Considering the observations after implementation of the night traffic ban, it is suggested that a total ban could be in place between 5.30 and 7.00 in the mornings and evenings.
- For the rest of the time during night hours, convoy system could be in place and the number of vehicles in one convoy could be limited to 20.
- The convoy will also be only once in an hour. The convoy from both the check posts (in Gundlupet and Kerala) will start at an interval of half an hour to ensure that the number of vehicles on the road at a given time is 20.
- The convoy should be guided by a vehicle with Forest department staff limiting the speed to less than 30 km/hour. The Kerala and Karnataka Forest Department will work together for the implementation of the programme.
- The vehicle could be levied a fee of at least Rs. 50/- for LMVs and Rs. 100/- for HMVs for the night traffic. This will work as a disincentive for travelling at night. No two wheelers should be permitted at night and the suggestion is for the safety of the passengers.

- Speed surveillance system should be in place at every one km and the violators could be fined heavily, preferably Rs. 1000/-.
- There should be a quarterly review of the system after implementation and a monitoring team with competent persons of scientific back ground should be formed. The Review Committee should have the representatives of both Kerala and Karnataka Forest Department and the Monitoring Team.
- The monitoring team will collect data on road kills, recording the time and species along with GPS readings of the locations. They will also collect information on the animal sightings on the road during day and night through appropriate methods. A quarterly report will be submitted to both Karnataka and Kerala Forest Officials."

We were then referred to a Report of the Committee of the Ministry of Road Transport and Highways, constituted in terms of our order dated 10.01.2018, which came to the following conclusion:

"The Hon'ble Supreme Court may be pleased to consider the measures proposed by MoRTH for sustainable development of ecosystem with all mitigation measures and avoidance of any adverse impact of road infrastructure on the wildlife. While a final decision in the matter has to be taken by the Hon'ble Supreme Court, it is important to highlight that in the event of the Hon'ble Court accepting the scheme proposed by MoRTH as a long lasting/permanent solution, it is humbly submitted that implementation of the project would face a lot of challenges in the absence very pro-active cooperation of all the

stakeholders i.e. all the concerned departments of the State Government of Karnataka and the State Government of Kerala. In that event, the Hon'ble Court may also consider issuing the following specific directions:

- i. NH-212 would be developed by the NHAI adopting all the features of the Scheme as proposed in this report;
- ii. The State Forest Department to provide for land in exchange for the land re-converted into forest for a length of 5-km under the elevated sections in order to achieve a uniform RoW of 15 mtrs;
- iii. The Wildlife Departments, together with the Forest Departments, of both States would jointly decide about the locations of elevated sections;
- iv. The State Government of Kerala to bear 50% cost of the development of this road along with provision for all the mitigation measures;
- v. The concerned Departments of both the State Governments would extend all necessary support in execution of the project;
- vi. The night-time restrictions on plying of traffic would be lifted after the project is completed."

This conclusion of the Road Transport Ministry was not agreed to by the Ministry of Environment Forests & CC as a result of which a separate Committee of Secretaries then deliberated and came out with their minutes dated 18.02.2019. In these minutes it is stated.

"4. Secretary, MoEFCC stated that Wildlife (Protection) Act, 1972 does not permit taking up of the suggested mitigation measures in the core areas of wildlife habitat. Further, G/o Karnataka has

territorial jurisdiction in respect of Bandipur National Park, and hence, its stand should prevail in the matter. He also stated that there is an alternative route available for night-time traffic, which in any case would not be too high. Therefore, Secretary, MoEFCC proposed that status quo should be maintained in the matter.

5. After detailed deliberations, it was recommended that status quo may be maintained on restriction of night-time traffic through Bandipur National Park, as it is a core area of wildlife habitat and an alternative route is already available for night-time traffic. Besides, four buses and emergency vehicles are already permitted. State Governments concerned may examine the need, if any, of strengthening the alternative route for night-time traffic."

At this point, it is also important to advert to field visits and recommendations of the National Tiger Conservation Committee. A field visit of all stakeholders was made on this particular stretch passing through Bandipur National Park, on 07.03.2018. Having seen this stretch, the D.I.G., National Tiger Conservation Authority and the Ministry of Environment Forests suggested maintenance of the status quo i.e. the ban on night traffic on this stretch between 9.00 p.m. and 6.00 a.m., and also stated that, pursuant to the High Court judgment of 09.03.2010, steps have, in fact, been taken to strengthen the alternative route to the city of Mysore, which comprises of part NH-275 and part State Highway No. 90. We have been informed by Mr. Basava Prabhu Patil, learned Senior Counsel appearing on behalf of the Karnataka that a sum of Rs.75 Crores have already been spent for this purpose.

We are, therefore, clearly of the view that regard being had to the expert opinions and, in particular, those of the Tiger Conservation Authority, the 18.02.2019 minutes of the Meeting of the Committee of Secretaries need to be accepted for the present.

However, this does not put an end to the matter. Learned counsel appearing on behalf of the PIL petitioner - Mr. Manohar has suggested to us that the road passing through the core and buffer zones of tiger conservation areas ought not to be permitted at all. In fact, Section 38V of the Wild Life (Protection) Act, 1972 added by the Amendment Act of 2006 provides in sub-section (4) (i) as follows:-

- (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.

In principle, we have no doubt that what he states is correct. However, what needs to be done, at the same time, is the strengthening of the alternative route which ought to be made at least as good as the particular route passing through the core and buffer zones of this tiger reserve.

We, therefore, direct the Ministry of Environment Forests & CC to file an affidavit within a period of four weeks from today in this behalf with suggestions as to how NH-275 and State Highway No.90 be made into a National Highway (that is that State Highway No. 90 be merged into NH-275), and to see that both the width and other features of this Highway be made at least equal to NH-212 which may then, in the long run, be closed down altogether.

List after four weeks.

(R. NATARAJAN)
COURT MASTER (SH)

(RENU DIWAN)
ASSISTANT REGISTRAR