

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14706 of 2022

AND

W.P. (C) Nos.9056 of 2013, 19625 of 2015,
22421 of 2015 & 14057 OF 2023

W.P.(C) No.14706 of 2022

....

Petitioner

Gita Rout

Mr. Ashis Kumar Mishra, Advocate,
Mr. Afraz Suhail, Advocate and
Mr. Omkar Devdas, Advocate

W.P.(C) No.9056 of 2013

....

Petitioners

Balagopal Mishra and another

Mr. G.P. Mohanty, Advocate

W.P. (C) No.19625 of 2015

....

Petitioner

Mrinalini Padhi

In person

W.P.(C) No.22421 of 2015

....

Petitioner

Dwija Dalpati

Mr. Gautam Misra, Senior Advocate assisted by
Mr. A. Dash, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Dr. Manoj V. Nair, Principal Chief Conservator of Forests (WL) &
Chief Wildlife Warden, Bhubaneswar,

Mr. Debakanta Mohanty, Additional Government Advocate &

Mr. Ishwar Mohanty, Additional Standing Counsel,

Mr. Bijaya Kumar Dash, Advocate FOR O.P. No.7-TPCODL,

Mr. Akhaya Biswal, Advocate for Intervener

(in I.A. No.3126 of 2023)

Advocate (in I.A. No.640 of 2023) and

Mr. J. K. Panda, Additional Superintendent of Police

W.P.(C) No.14057 of 2023

....

Petitioners

State of Odisha and others

Mr. Debakanta Mohanty, AGA and Mr. Ishwar Mohanty, ASC

-versus-

**Wildlife Society of Orissa (Elephant
Corridors) and another** **Opposite Parties**

Mr. Sankar Prasad Pani, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY**

Order No.

**ORDER
09.05.2023**

15. 1. The Vakalatnama filed by Mr. Bijaya Kumar Dash, learned counsel for Opposite Party No.7-TPCODL is taken on record.
2. Pursuant to the order passed by this Court on 13th March 2023, two affidavits have been filed. The first dated 17th April, 2023 is by the Chairperson-cum-Convenor, Joint Task Force (JTF), Dr. Manoj V. Nair providing information as regards compensation paid in respect of human losses, human injuries, animal losses, house damage and crop damage. It is stated that in the past six months, there have been 21,093 cases of crop loss on account of attacks by elephants. Dr. Nair, who appears in virtual mode, informs the Court that sum of Rs.7.22 crores has been paid on this score. The Court has also been shown a copy of the Notification dated 3rd May, 2023 issued under Rule 45-KK of the Wildlife (Protection) (Odisha) Amendment Rules, 2023 enhancing the amounts of compassionate payment in all of the above categories. For the instance, the *ex gratia* for human loss has been increased from Rs. 4 to Rs. 6 lakhs. According to Dr. Nair, there is a 40 days turnaround time for payment of compensation.

3. It appears that on 5th April 2023, there was a meeting held by the Chairperson of the JTF with the DISCOMs where *inter alia* a discussion was held on the mitigation measures that have to be put in place for avoiding deaths of elephants due to electrocution. The series of steps to be taken with the DISCOMs, pursuant to the Comprehensive Action Plan (CAP), include “barricading the open transformers, fixing of interposing poles of both HT and LT lines, conversion of LT bare conductor to AB cable, change of vacuum circuit breaker, maintenance of primary substation, sensitization of feeders & periodical checklist of feeder, fittings of spikes in the electric poles, establishment of elephant control room etc.”

4. The minutes also refers to a study undertaken by SNEHA (Support for Network and Extension Help Agency) having experience in working on human-elephant conflict issues in Karnataka. SNEHA was engaged by the DISCOMs to undertake a study in two districts i.e. Dhenkanal and Angul. Mr. Bijaya Kumar Dash, learned counsel appearing for the DISCOMs has handed over a copy of the reported submitted by SNEHA to TATA Power Limited, Mumbai where *inter alia* one suggestion given is for use of alternate 6V Solar or DC fence set-up which will “repel the wildlife or set off an alarm instead of creating causality.”

5. The Interveners in I.A. No.3126 of 2023 has also asked for similar measures to be deployed in the villages of those Applicants after undertaking a ground survey.

6. Mr. Shenhagam, who is the CEO of TPCODL, is present on line, and explains that Elephant Control Rooms have been set up by the

DISCOMs since 2020 and that on advance information of elephant movement being received from the Forest Department, they are able to take corrective action.

7. However, the Court is of the view that steps would have to be taken by the DISCOMs to interact with the residents of villages falling within their respective areas which have witnessed elephant movement in the past. The DISCOMs would do well to persuade the villagers to go in for 6V Solar fencing and offer it as a viable alternative even while disconnecting the illegally 'hooked' electricity connections which are powering the *ad hoc* electric fences put up by the villagers to prevent attacks by wild animals of either humans or crops.

8. Dr. Nair placed before the Court the statistics of elephant deaths and human deaths in the past two months. On 9th March 2023, an adult male elephant was electrocuted in Keonjhar and on 13th March, 2023 another male was electrocuted in Gumsar in Ganjam District. On 11th April 2023, one adult female elephant and an adult male elephant were electrocuted in Bonai and Subarnapur respectively. Apart from the four electrocution deaths, there have been in the last two months, 14 more deaths of elephants—2 due to disease, 2 due to natural causes, 1 due to infighting and 1 due to a train accident. Of 18 elephants that have died, there have been 11 adults and 7 very young calves. Dr. Nair adds that the reasons for the death of these 7 very young calves are still being analyzed.

9. During this period, 20 persons have lost their lives due to attacks by elephants. Dr. Nair further adds that these deaths have occurred in

areas not necessarily in or around the 14 elephant corridors in Odisha that were earlier identified by identified by the Asian Nature Conservation Foundation (ANCF). It is informed that due to passage of time only 4 such corridors are considered active and one among them has been notified as a Conservation Reserve pursuant to a judgment by the Supreme Court of India in ***Binay Kumar Dalei v. State of Odisha*** (decision dated 2nd March, 2022 in Civil Appeal Nos.1627-1628 of 2022).

10. At this juncture, it must be noted here that the Wildlife Society of Odisha (Elephant Corridors) ['WSO'] had approached the National Green Tribunal (NGT) with a petition being O.A. No.129 of 2016 questioning the inordinate delay on part of the State of Odisha in notifying the Elephant Corridors under Section 3 of the Environment (Protection) Act, 1986 (EP Act) read with Rule 6 of the Environment (Protection) Rules, 1986. It must be further noted here that in the said application, the NGT appears to have passed a 'final order' on 17th August, 2021 directing the State of Odisha to notify the 14 Elephant Corridors as earlier identified by the ANCF within a period of two months. This led to the State of Orissa filing a Review Petition pointing out that there is a petition, W.P.(C) No.275 of 2015, on this issue which is pending before the Supreme Court. Further, it was pointed out that the report of the ANCF suggests that "most of the corridors have no functional existence and most of the corridors are also not ecological feasible." Accordingly, a review was sought by the State of Odisha of the order dated 17th August, 2021 of the NGT. Even while the said review petition was pending, Execution Application No.3/2022/EZ appears to have been filed by WSO

pressing for execution of the order dated 17th August, 2021 in which the NGT passed an order on 6th April 2023, granting the State one month's time 'and no more' to notify the elephant corridors. By this time, in the hearing of the execution application, it was brought to the notice of the NGT by the State of Odisha that this Court was seized of one of the present petitions i.e. W.P.(C) PIL No.14706 of 2022 on the same issue. Against the said order dated 6th April 2023, the State of Odisha has filed W.P.(C) No.14057 of 2023 in which this Court passed an order on 4th May, 2023 staying the further proceedings before the NGT.

I. A. No.6983 of 2023 arising out of W.P.(C) No.14057 of 2023

11. WSO has filed this I.A. seeking vacation of the aforesaid stay order dated 4th May, 2023. Notice. Notice is accepted by the learned Additional Government Advocate for the State, who undertakes to file a reply thereto within four weeks, rejoinder thereto to be filed on or before the next date. The Vakalatnama filed by Sri Pani is taken on record.

12. Dr. Nair has explained two major problems coming in the way of notifying elephant corridors. The first being there is no legal provision in the Wildlife Protection Act, 1986 (WP Act), which enables the making of such notification. The second is that the EP Act only talks of eco sensitive zones, which does not fully answer the need for a comprehensive provision for this purpose.

13. Mr. Pani, learned counsel appearing for WSO sought to counter the submission by referring to Section 3(2) (v) of the EP Act, which empowers the Central Government to take 'measures to protect and

improve environment’ and in that process, notify 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.” In the considered view of the Court, Section 3(2)(v) of the EP Act operates in a very narrow sphere as it does not contemplate loss of human lives, crops and vegetation etc. as a result of movement of wild animals including elephants and it is doubtful therefore if the measures taken under the above provision to answer the problem brought about as a result of elephant-human conflict.

14. In any event, it does appear that identifying elephant corridors precisely is a complex task as pointed out by the ANCF and which was also voiced today during the course of hearing by Dr. Nair. It is significant that many of the deaths that this Court has noted in the present order or in the earlier orders of elephants and humans have occurred in areas not strictly in an around the elephant corridors earlier identified.

15. Consequently, at this stage, the Court does not consider it advisable to vacate the order passed by it on 4th May, 2023 in W.P.(C) No.14057 of 2023 and would consider that question after response is received to the application filed today by the WSO.

16. In the considered view of the Court, not enough steps have been taken to prevent deaths of elephants due to electrocution in Odisha. This is despite the CAP being made available to the DISCOMs for nearly two months now. A direction is issued that the CEOs of the four DISCOMs will immediately convene a meeting within a week

from today in which the Chairperson of the JTF will also participate and chalk out a time bound plan for completing the survey of all the villages of their respective zones which have witnessed movement of wild animals, attacks by wild animals, destruction of crops and deaths of wild animals due to electrocution and rule out a plan for replacing of the electric fences wherever found with solar power fences as suggested by SNEHA.

17. It is absolutely essential for the DISCOMs to immediately identify all such instances of illegal hooking of electricity transmission lines to power such electric fences illegally put up in the villages and discontinue the practice forthwith. Sensitization meeting with the villagers by the officials of DISCOMs required to be undertaken in coordination with the Forest Officials. The Court would like to be informed by the next date of the exact extent of such 6V solar power/DC fences that have been erected in place of the electric fences which were earlier being used.

18. The second affidavit has been filed by Shri J. K. Panda, Additional S.P. and a member of the JTF where the details of the 6 ongoing criminal cases that having been registered in Athagarh, Similipal, Gumsur and Dhenkanal Divisions have been set out. The Court is assured by Mr. Panda that all possible steps have been taken to carry each of the criminal cases to the logical end by completing investigation, filing charge-sheet, arresting the persons accused and ensuring that the case progresses. A further affidavit updating the status of these criminal cases be filed before the next date.

**I. A. No.640 of 2023 and I.A. No.3126 of 2023 arising out of
W.P.(C) No.14706 of 2022**

19. The Intervener in I.A. No.640 of 2023 has prayed for processing of all compensation claims for the loss of human lives and crop loss by the State Government and for all such claims to be settled in a time bound manner. Notice was issued in the said I.A. on 13th March, 2023 and no replies have yet been filed. Meanwhile, an additional affidavit has been filed by the Intervener on 5th May 2023, copy of which has already been served on learned Additional Government Advocate for the State. Let a copy thereof be served on learned counsel for the Petitioners as well other counsel appearing today. Replies to both the I.As. i.e. I.A. No.640 of 2023 and I.A. No.3126 of 2023 be filed by the State within four weeks and rejoinder thereto, if any, be filed before the next date.

20. Dr. Nair informs the Court that on 17th April, 2023, a High Power Committee (HPC) has been constituted with the Principal Secretary, (Energy) being one of the Members and all the DISCOMs being the special invitees. He informs the court that the HPC would meet very soon. Apart from inviting the DISCOMs, the Court directs that the representatives of the Applicants in I.A. No.640 of 2023 and I.A. No.3126 of 2023 also be invited to present their issues before the said Committee. The HPC will also invite SNEHA apart from Dr. Sukumar to participate in virtual mode at its meeting. The minutes of the meeting of the HPC be placed before the Court along with an affidavit before the next date.

21. Dr. Nair will file his affidavit explaining the progress in the implementation of the CAP.

22. List on 19th July, 2023 at 10.30 am.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

M. Panda

