

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

Wednesday, the 13th day of November 2024 / 22nd Karthika, 1946

WP(C) NO. 31520 OF 2024(S)

IN RE CAPTIVE ELEPHANTS

(SUO MOTU) PUBLIC INTEREST LITIGATION PROCEEDINGS INITIATED BY THE HIGH COURT IN THE MATTER OF EXECUTIVE AND LEGISLATIVE INACTION OF THE STATE GOVERNMENT IN THE MATTER OF PROTECTION OF ANIMAL RIGHTS

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FISHERIES, ANIMAL HUSBANDRY AND DAIRYING DEPARTMENT OF ANIMAL HUSBANDRY AND DAIRYING, GOVERNMENT OF INDIA, KRISHI BHAVAN, NEW DELHI, PIN 110 001
2. THE ANIMAL WELFARE BOARD OF INDIA, REPRESENTED BY ITS CHAIRMAN, NATIONAL INSTITUTE OF ANIMAL WELFARE CAMPUS P.O., 42K STONE, DELHI-AGRA HIGHWAY, NH-2, VILLAGE -SEEKRI, HARYANA, PIN 121004
3. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, THIRUVANANTHAPURAM, PIN 695036
4. STATE OF KERALA, REPRESENTED BY THE SECRETARY, ANIMAL HUSBANDRY DEPARTMENT, THIRUVANANTHAPURAM, 695036
5. STATE OF KERALA, REPRESENTED BY THE SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM, 695036
6. THE KERALA STATE ANIMAL WELFARE BOARD, THIRUVANANTHAPURAM , PIN 695036
7. THE KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY, POOKODE, LAKKIDI P.O., WAYANAD, PIN 673 576
8. THE STATE POLICE CHIEF, KERALA, THIRUVANANTHAPURAM, PIN 695010
9. ANGELS NAIR, GEN. SECRETARY, ANIMAL LEGAL FORCE INTEGRATION, AGED 54 YEARS, KAPPILLIL HOUSE, PULLUVAZHY P.O., PERUMBAVOOR, ERNAKULAM DIST., PIN-683 541.
10. M.N.JAYACHANDRAN, AGED 63 YEARS, S/O K.NARAYANAN NAIR, RESIDING AT MUNDAMATTOM HOUSE, THODUPUZZHA P.O., IDUKKI, 685 584
11. UNION OF INDIA, REPRESENTED BY THE MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE (FOREST AND WILD LIFE DIVISION, PROJECT ELEPHANT), NEW DELHI-110003
12. RADHAKRISHNAN, PANANCHERRY HOUSE, PAYYAPPILLY MOOLA, PUTHUR, THRISSUR, 680014
13. GANESAN, S/O RADHAKRISHNAN, PANANCHERRY HOUSE, PAYYAPPILLY MOOLA, PUTHUR, THRISSUR, 680014
14. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS & HEAD OF FOREST FORCE FOREST HEAD QUARTERS, VAZHUTHACAUD, THYCAUD P.O., THIRUVANANTHAPURAM, 695014
15. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (WILDLIFE) & CHIEF WILDLIFE WARDEN (KERALA), FOREST HEAD QUARTERS, THYCAUD P.O., THIRUVANANTHAPURAM, 695014

VERDICTUM.IN

16. ANEESH MATHEW, AGED 47 YEARS, S/O. MATHEW, RESIDING AT VENGALISHERRIL VEEDU, CHINNAKANAL PANCHAYAT, UDUMBANCHIRA TALUK, MUNNAR, PIN :685 618.
17. M/S WALKING EYE FOUNDATION FOR ANIMAL ADVOCACY, REG.NO. 48/2022, REG.OFFICE AT II/263 A, KAIPARAMBU, THRISSUR DISTRICT, KERALA STATE, 680546 REPRESENTED BY ITS FOUNDER AND MANAGING TRUSTEE, VIVEK K.VISWANATH, AGED 31 YEARS, S/O K.V.ACHUTHAN, HAVING A PERMANENT ADDRESS AT KURUNELLIPARAMBIL HOUSE, KAIPARAMBU P.O., THRISSUR 680546
18. V. K. VENKITACHALAM, AGED 73 YEARS, S/O LATE V. N KRISHNA IYER, RESIDING AT PATTAMALI MADOM, T.C. 35/571, THIRUVAMBADI P.O. , PIN- 680 022.
19. P.PRAVEEN, S/O PARAMESWARAN, MANGALAMKUNNU ANGADI, KATTUKULAM P.O, PALAKKAD 679 514
20. RAJENDRAKUMAR P., AGED 56 YEARS, S/O GOPALAKRISHNAN, PUTHAN VEEDU, CHERUPULASSERY, PALAKKAD 679503
21. ABDUL NASAR, AGED 64 YEARS, S/O ABOOBAKAR, KOLAKKADAN HOUSE, KIZHUPURAMBA P.O., MALAPPURAM DISTRICT [IMPLEADED AS PER ORDER DATED 06.09.2024 IN IA 10/24 IN WP(C)]
22. V.SHAJI, S/O.VISWAMBHARAN, KAVERI, KOLLAM, 691302 [SUO MOTU IMPLEADED AS ADDL.R22 AS PER ORDER DATED 27.09.2024 IN WP(C)]
23. HRITHWIK D. NAMBOOTHIRI, PALLERI MANA, ULIYANNOOR P.O, ALUVA [IMPLEADED AS ADDL. R23 AS PER ORDER DATED 27.09.2024 IN I.A.25/2024 IN WP(C)]
24. M/S KERALA ELEPHANT OWNERS FEDERATION, REPRESENTED BY ITS GENERAL SECRETARY IN CHARGE RAVINDRANATHAN, AGED 65, S/O SIVARAMAN NAIR, USHASREE, ETTUMANOOR P O, KOTTAYAM DISTRICT [IMPLEADED AS ADDL.R24 AS PER ORDER DATED 25.10.24 IN IA 28/24 IN WP(C)]
25. THIRUVAMBADY DEVASWOM, THIRUVAMBADY DEVASWOM OFFICE, THIRUVAMBADY DEVASWOM BUILDING, ROUND WEST, THRISSUR, PIN-680001, REPRESENTED BY ITS SECRETARY
26. PARAMEKKAVU DEVASWOM , PARAMEKKAVU DEVASWOM BUILDING, ROUND EAST, THRISSUR, PIN 680001, REPRESENTED BY ITS SECRETARY [ADDL.R25 & R26 IMPLEADED AS PER ORDER DATED 05.11.2024 IN IA 13/24 IN WP(C)]
27. KERALA FESTIVAL COORDINATION COMMITTEE, REPRESENTED BY ITS PRESIDENT, RAJESH PALLATT, AGED 51 YEARS, S/O P R BHASKARAN PILLAI, PALLATTU HOUSE, MELAMPARA P.O., KOTTAYAM - 686578. [ADDL.R27 IMPLEADED AS PER ORDER DATED 05.11.2024 IN IA 29/24 IN WP(C)]
28. RAGI SREEVALSAN, MANAGING PARTNER, SREE MAHESHWAR GROUP, ANNAMANADA, THRISSUR, 680741 [ADDL.R28 IMPLEADED AS PER ORDER DATED 05.11.2024 IN WP(C)]

ADDL.R29-R32 IMPEADED*

**29.THE TRAVANCORE DEVASWOM BOARD ,NANTHANCODE, KAWDIAR POST,
THIRUVANANTHAPURAM 695003, REPRESENTED BY ITS SECRETARY**

**30.THE COCHIN DEVASWOM BOARD, ROUND NORTH, THRISSUR,
KERALA,REPRESENTED BY ITS SECRETARY**

**31.THE MALABAR DEVASWOM BOARD, HOUSEFED COMPLEX, ERANHIPALLAM P.O,
ERANHIPALLAM, KOZHIKODE,REPRESENTED BY ITS SECRETARY.**

**32.THE GURUVAYOOR DEVASWOM BOARD, GURUVAYOOR,
THRISSUR-680 101,REPRESENTED BY ITS ADMINISTRATOR**

***ADDITIONAL R29 TO R32 ARE SUO MOTU IMPEADED AS PER ORDER DATED 13.11.2024 IN WP(C)
31520/24**

This suo motu writ petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of DEPUTY SOLICITOR GENERAL OF INDIA, SRI.JAISHANKAR V.NAIR & SRI.ACHUTH KRISHNAN R, CGC for R1, R2 & R11, SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL, SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR & T.S.SHYAM PRASANTH, GOVERNMENT PLEADER for R3 to R5, GOVERNMENT PLEADER for R6, M/S. YSHA YOUSEFF, MANU GOVIND, Standing Counsels for R7,DIRECTOR GENERAL OF PROSECUTION, SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR for R8, ANGELS NAIR(Party-In-Person) for R9, SRI.M.R.HARIRAJ (SR.) ALONG WITH GANGA A.SANKAR, REJIVUE K.C., THANUJA ROSHAN, CHACKOCHEN VITHAYATHIL, VISHNU RAJAGOPAL, VISWAJITH C.K, GISHA G. RAJ, ALINA ANNA KOSE, ALINA ANNA KOSE, KARTHIKA GANESH, P.I.RAHEENA, VISHNU PRASAD N.K. & SANDHRA MARIA SEBASTIAN for R10, M/S. V.M.KRISHNAKUMAR & P.S.SIDHARTHAN, Advocates for R12 & R13, SPECIAL GOVERNMENT PLEADER (FOREST) for R14 & R15, M/s. K.SANDESH RAJA, DENU JOSEPH, ASWIN T SURESH, MUHISEENA.V.Z, Advocates for R16, SMT.DHANYA P.ASHOKAN (SENIOR ADVOCATE) along with M/S. GAYATHRI MURALEEDHARAN, RAMAKRISHNAN M.N., ARATHY P., Advocates for R17, M/S. BHANU THILAK & S.R.PRASANATH, Advocates for R18, P.K.SURESH KUMAR (SR.) along with SMT. ANJALI MENON, Advocates for R19, V.SREEJITH, MANSOOR.B.H. & SAKEENA BEEGUM, Advocates for R20, M/S. SHANKAR V., T.H.ABDUL AZEEZ, MOHAMMED SADIQUE.T.A, K.P.MAJEED & K.M.MOHAMMED YUSUFF, Advocates for R21, P.B.KRISHNAN (SR.) P.B.SUBRAMANYAN, SABU GEORGE, B.ANUSREE & MANU VYASAN PETER, Advocates for R22, HRITHWIK D. NAMBOOTHIRI (PARTY IN PERSON) AS R23, G.SREEKUMAR (CHELUR), Advocate for R24, Advocates for R27, ANJALI MENON, Advocate for R28, the court passed the following:

DR.A.K.JAYASANKARAN NAMBIAR & GOPINATH P., JJ.

W.P.(C)No.31520 of 2024

Dated this the 13th day of November, 2024

ORDER

Gopinath, J.

‘*Treblinka*’ is infamous for being the second-deadliest extermination camp to be built and operated by Nazi Germany in occupied Poland during World War II. In the introduction to the book ‘*Zoopolis - A Political Theory of Animal Rights*’ the authors¹ refer to the work of *Charles Patterson*² in the following words:-

“In Charles Patterson’s provocative words, the general state of human-animal relations is best characterized as an ‘Eternal Treblinka’”

This case and the orders that we have been called upon to issue from time to time regarding captive elephants lead us to conclude that the life of an elephant in captivity is an ‘*Eternal Treblinka*’.

2. This case has been listed today for considering the issue of certain directions for the effective implementation of the *Kerala Captive Elephants (Management and Maintenance) Rules, 2012* (hereinafter

¹ *Zoopolis - A Political Theory of Animal Rights* - Sue Donaldson & Will Kymlicka (2011), Oxford University Press

² *Eternal Treblinka: Our Treatment of Animals and the Holocaust* - Patterson, Charles (2002), Lantern Books, New York

W.P.(C)No.31520/2024

referred to as ‘the 2012 Rules’) and the directions issued by the Supreme Court in ***Wildlife Rescue and Rehabilitation Centre and others Vs. Union of India; (2016) 1 SCC 716***. We have heard Sri. Asok M Cherian, the learned Additional Advocate General, Sri. Hariraj M.R the learned Senior Counsel appearing for the Additional 10th respondent, the learned *amicus curiae* and other learned counsel appearing for the parties. Though the Kerala Elephant Owners Federation was impleaded as the additional 24th respondent on its own application, Sri. Sreekumar Chelur, the learned Counsel appearing for the additional 24th respondent submits that the said organization is not interested in being a party to these proceedings and wishes to withdraw from these proceedings. In view of the submission of the learned counsel for the additional 24th respondent that he will place on record a copy of the resolution of the organization seeking to withdraw from these proceedings, we have not passed any order today on the basis of his submission. We have also heard Sri. Renjith Thampan, the learned Senior Counsel appearing for the petitioner in I.A No. 34 of 2024 which is an interlocutory application to implead the applicant therein as additional respondent in the Writ Petition. Though we have not allowed the said application for impleading, we have considered the submissions of the learned Senior Counsel. The learned Additional Advocate General

W.P.(C)No.31520/2024

states that the framing of new Rules to replace the 2012 Rules is gaining the attention of the Government and that a meeting of all stakeholders is proposed soon and, therefore, this matter may be adjourned. However, we are not inclined to adjourn this matter. Time and again and for nearly one and a half years this Court has been informed that the State is in the process of overhauling the 2012 Rules. However, we are informed that the authorities are dragging their feet reportedly at the behest of pressure groups including associations of elephant owners who want the 2012 Rules to be further diluted while the need of the hour was to make it more stringent. We believe that the issuance of directions for the proper implementation of the 2012 Rules has become imperative for reasons that are indicated hereunder. Sri Renjith Thampan contends that the Court should not make law. He places reliance on the judgment of the Supreme Court in ***Ashwani Kumar (Dr) v. Union of India & Anr, (2020) 13 SCC 585*** in support of this contention. We do not consider this submission of Mr.Renjith Thampan to be of any moment as even if we were to issue certain additional directions to ensure the proper working of the 2012 Rules, the same would also be justified on authority of the judgment of a Constitution Bench of the Supreme Court in ***Anoop Baranwal v. Union of India (2023) 6 SCC 161*** where it was held:-

W.P.(C)No.31520/2024

114. *Apart from the power to make subordinate legislation as a delegate of the legislature, do the superior courts make law or is it entirely tabooed? In other words, when the court decides a lis, is the function of the court merely to apply law to the facts as found or do courts also make law? The theory that the courts cannot or do not make laws is a myth which has been exploded a long while ago.*

115. *We may only in this regard refer to what S.B. Sinha, J. opined on behalf of this Court in the decision reported in State of U.P. v. Jeet S. Bisht [State of U.P. v. Jeet S. Bisht, (2007) 6 SCC 586] : (SCC pp. 617-19, paras 77-78 & 83)*

“77. Separation of powers is a favourite topic for some of us. Each organ of the State in terms of the constitutional scheme performs one or the other functions which have been assigned to the other organ. Although drafting of legislation and its implementation by and large are functions of the legislature and the executive respectively, it is too late in the day to say that the constitutional court's role in that behalf is non-existent. The Judge-made law is now well recognised throughout the world. If one is to put the doctrine of separation of power to such a rigidity, it would not have been possible for any superior court of any country, whether developed or developing, to create new rights through interpretative process.

78. Separation of powers in one sense is a limit on active jurisdiction of each organ. But it has another deeper and more relevant purpose : to act as check and balance over the activities of other organs. Thereby the active jurisdiction of the organ is not challenged; nevertheless there are methods of prodding to communicate the institution of its excesses and shortfall in duty. Constitutional mandate sets the dynamics of this communication between the organs of polity. Therefore, it is suggested to not understand separation of powers as operating in vacuum. Separation of powers doctrine has been reinvented in modern times.

W.P.(C)No.31520/2024

83. If we notice the evolution of separation of powers doctrine, traditionally the checks and balances dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable social and economic entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of checks and balances to include governmental inaction. Otherwise we envisage the country getting transformed into a state of repose. Social engineering as well as institutional engineering therefore forms part of this obligation.”

116-121.....

122. *In the work, The Nature of the Judicial Process by Benjamin N. Cardozo, in the lecture, “The Method of Sociology — The Judge as a Legislator” Justice Cardozo observes under the following subject:*

“THE JUDGE AS A LEGISLATOR

... No doubt the limits for the Judge are narrower. He legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him upon a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the practice of an art. Even within the gaps, restrictions not easy to define, but felt, however impalpable they may be, by every Judge and lawyer, hedge and circumscribe his action. They are established by the traditions of the centuries, by the example of other Judges, his predecessors and his colleagues, by the collective judgment of the profession, and by the duty of adherence to the pervading spirit of the law.

... The process, being legislative, demands the legislator's wisdom.

W.P.(C)No.31520/2024

... Customs, no matter how firmly established, are not law, they say, until adopted by the courts. Even statutes are not law because the courts must fix their meaning. That is the view of Gray in his Nature and Sources of the Law. "The true view, as I submit", he says, "is that the law is what the Judges declare; that statutes, precedents, the opinions of learned experts, customs and morality are the sources of the law." So, Jethro Brown in a Paper on "Law and Evolution", tells us that a statute, till construed, is not real law. It is only "ostensible" law, real law, he says, is not found anywhere except in the judgment of a court....

... They have the right to legislate within gaps, but often there are no gaps. We shall have a false view of the landscape if we look at the waste spaces only, and refuse to see the acres already sown and fruitful...

... The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

We are clear in our mind, in the facts of the present case, that we are not in the process of making any law while issuing the directions that we propose to issue in this case. At best, we are only filling up the 'gaps'. We are only ensuring the proper implementation of the 2012 Rules also taking note of the fact that though the Supreme Court had directed its strict implementation as early as on 18.08.2015, the State and its officials

W.P.(C)No.31520/2024

have failed to implement the directions and have in fact conveniently chosen to ignore the directions issued by the Supreme Court.

3. In ***Wildlife Rescue and Rehabilitation Centre and others Vs. Union of India; (2016) 1 SCC 716***, the Supreme Court, took note of the extreme cruelties being meted out to captive elephants in the State of Kerala. As early as on 18.8.2015 the Supreme Court issued a slew of directions to ensure that captive elephants are not subjected to any cruelty in the name of parading them. It would be apposite, for the purposes of this order, to extract the directions issued by the Supreme Court in its order dated 18.08.2015. They read thus:-

“8. As far as the present issue is concerned, we are inclined to direct that the Chief Wildlife Warden shall see to it that all the captive elephants existing in the State of Kerala are counted and in the absence of obtainment of requisite certificate under Section 42 of the 1972 Act and the declaration made under Section 40, appropriate action shall be initiated against the owners.

9. At this juncture, we may note with profit that a set of Rules, namely, the Kerala Captive Elephants (Management and Maintenance) Rules, 2012 (for short “the Rules”) has been framed by the State Government in exercise of power conferred by sub-section (2) of Section 64 of the 1972 Act. Rule 4 of the said Rules deals with upkeep and veterinary care of elephants. Rule 8 provides for duties and responsibilities of owner. Sub-rule (13) of Rule 8 which is relevant for the present purpose is as follows:

“8. (13) Every owner shall maintain an Elephant Data Book as specified by the Chief Wildlife Warden for each captive elephant.”

W.P.(C)No.31520/2024

The purpose of referring to the said Rule is that an owner of an elephant, apart from following the other statutory enactments and the procedure laid down therein, is also required to maintain an elephant data book, as defined in Rule 2(f) of the Rules specified by the Chief Wildlife Warden for each captive elephant. The said Rule shall be religiously followed failing which the authorities shall take appropriate action against the said person. Rule 9 deals with transport norms for elephants.

10. Rule 10 provides for constitution of the District Committee. As we find, the purpose of the said Rule is to deal with the cases of cruelty meted out to the captive elephants and the constitution of the Committee is heterogeneous in nature. We have been apprised that in addition to the members as per the 2012 Rules, at present (from January 2015), a representative of the Animal Welfare Board of India has been included apart from other authorities. Sub-rule (4) of Rule 10 which is extremely pertinent for the present purpose is reproduced below:

“10. (4) The District Committee shall take necessary measures, to ensure that the Festival Committee constituted for the smooth conduct of festivals or the persons organising such functions in which elephants are exposed, shall adhere to the following—

(i) There shall be sufficient space between elephants used in processions and parades.

(ii) No elephants in musth shall be used in connection with festivals.

(iii) Elephant which is sick, injured, weak or pregnant shall not be used.

(iv) Chains and hobbles with spikes or barbs shall not be used for tethering elephants.

(v) Elephants shall not be made to walk on tarred roads during hot sun for a long duration without rest.

(vi) Making an elephant stand in scorching sun for long durations or bursting crackers near the elephants for ceremonial purpose shall not be permitted.

(vii) It shall be ensured that sufficient food and water for the elephants are provided.

(viii) The Committee shall ensure that the flambeaus (Theevetty) are held away from elephants.

W.P.(C)No.31520/2024

(ix) *There shall be facility to keep elephants under shade during hot sun.*

(x) *It shall be ensured that adequate protection to the elephants taking part in celebrations through volunteers is provided for the purpose.*

(xi) *Services of veterinary doctor from the elephant squads shall be ensured in cases where five or more elephants are engaged in the festivals.*

(xii) *It shall be informed to the nearest Forest Range Officer/Police Officers about the proposed festivals/celebrations at least 72 hours in advance.*

(xiii) *During the time of procession the elephants shall have chains (Idachangala and Malachangala) tied to their leg.*

(xiv) *It shall be ensured that the mahouts are not intoxicated while handling elephants.*

(xv) *The weaned calf below 1.5 m height shall not be engaged for festival purposes.*

(xvi) *Sufficient rest has to be given to the elephants which are engaged for 'Para procession'. Para procession shall be restricted to 6 a.m. to 11 a.m. and 4 p.m. to 8 p.m. only.*

(xvii) *During nighttime, generators shall be provided to avoid any contingency due to failure of general power supply.*

(xviii) *It shall be ensured that elephants are brought under public liability insurance scheme for an amount of Rs 3.00 lakhs to each elephant."*

On a perusal of the aforesaid Rule, it is clear as crystal that it obliges the District Committee to take necessary measures to ensure that the Festival Committee constituted for smooth conduct of the festivals or the persons organising such functions in which elephants are exposed are required to adhere to many a measure. The District Committee is bound by the Rules and see to it that the festival committees follow the same.

11.*At this juncture, a question arose whether the temples or the Devaswom shall get themselves registered with the District Committee so that there would be effective and proper control. We think that they should be registered with the Committee and accordingly it is directed that the registration shall be done within a period of six weeks from*

W.P.(C)No.31520/2024

today. The temple and Devaswom shall, apart from other formalities, also mention how many elephants it is going to use in any festival. It will be the obligation of the State to see that the registration is carried out. It shall be the duty of the State, the District Committee, Management of the Devaswom, the Management of the Temple and the owners of the elephants to see that no elephant is meted out with any kind of cruelty and, if it is found, apart from lodging of criminal prosecution, they shall face severe consequences which may include confiscation of the elephants to the State.”

It appears that the State of Kerala has not complied with any of the directions issued. It seems that by a later order, the Supreme Court has clarified that action in terms of the directions contained in paragraph 8 of the above order may be deferred. But we have been unable to find any other order which deals with the implementation of the other directions including the direction for registration with District Committees framed in terms of the 2012 Rules. The State has clearly violated the orders of the Supreme Court by granting repeated extensions to abide by the directions of the Supreme Court. The orders issued by the Government are couched in a language that would suggest that the officials are cracking the whip and calling for strict implementation of the directions issued by the Supreme Court while in reality, they are orders extending time, again and again, to comply with the directions issued by the Supreme Court. One such order namely G.O (Ms.) No. 19/2022/F&WLD dated 20.4.2022 has been brought to our notice. On our reading, the order is nothing but a direct affront to the authority of the Supreme

W.P.(C)No.31520/2024

Court and a blatant violation of the directions issued by the Supreme Court in Writ Petition (Civil) No.743/2014. Considering the directions issued by the Supreme Court and taking the aforesaid Government Order into consideration, and in order to provide the Government with a chance to respond, we intend to direct the Principal Secretary, Forests and Wildlife Department to place on record an affidavit explaining the circumstances under which the above G.O or any later G.O on similar lines was issued. The affidavit shall also indicate whether the orders issued by the Supreme Court referred to above have been complied with and if not the reason for non-compliance.

4. Elephants in captivity are extensively used in religious festivals in the State of Kerala and their use is often sought to be justified on the touchstone of tradition and religious practice while in reality and sadly so, the animals are being commercially exploited without any care or concern for their well-being. We do not believe that there is any essential religious practice of any religion that mandates the use of elephants in festivals. We do not, however, propose to say anything more at this stage since our focus now is merely to regulate the practice of parading elephants during festivals.

5. If a calendar is made of temple festivals and other festivals, the calendar will indicate that over a period of at least nine months

W.P.(C)No.31520/2024

stretching from the month of September to the month of May in the following year (April and May being the cruellest of summer months in Kerala) festivals big and small, famous and non-descript are held in every nook and corner of this State and the elephant has become an essential part of such festivities. So much so that the poor animal is transported in trucks from one festival to another in quick succession mindless of its fatigue, requirement of adequate rest and requirement of proper nutrition. In other words, the animal is treated as a tradable commodity with its owner or custodian being concerned only with commercial returns. Reportedly, the festivals in Kerala are now so commercialised that even before a festival there is a war or a sort of competition amongst temple committees tasked with the conduct of festivals regarding the number of elephants being paraded as well as the fame of particular elephants/elephants being paraded. We are informed that about three years ago a temple in the City of Kochi spent about Rs. 55,00,000/- (Fifty-five lakhs only) in arranging elephants for an eight-day festival.

6. There is no greater proof of the fact that captive elephants are being exploited for commercial gains mindless of their well-being than the statistics of captive elephant deaths in the State of Kerala for the years 2018-2024 which indicate that nearly 33% of the total number of

W.P.(C)No.31520/2024

recorded captive elephants (being 509 in the year 2018) have died during this short period of seven years. Thus, there has been a significant reduction in the captive elephant population in the State. This is a cause of serious concern. The numbers of captive elephants that have died in captivity between the years 2018 to 2024 are given below:-

Year	Number of Elephants that have died in captivity
2018	34
2019	19
2020	22
2021	24
2022	19
2023	21
2024	21

We also note that at least on two occasions the death of elephants belonging to the Travancore Devaswom Board resulted in proceedings being initiated before this Court. The first case that came to our notice is the case of ***Sreekumar v. Travancore Devaswom Board, 2004 SCC OnLine Ker 180***. The other case is ***P. Prema Kumar v. Travancore Devaswom Board, 2022 SCC OnLine Ker 4268***. A reading of both these judgments indicate that even elephants in the control and custody of Devaswoms (which are statutory bodies under the

W.P.(C)No.31520/2024

Travancore-Cochin Hindu Religious Institutions Act, 1950) lost their lives due to ill-treatment and cruelty meted out to them by their custodians. This cannot be permitted to continue. These judgments shall be annexed to this order as **Annexures-I and II**.

7. The Asian elephant is an endangered cornerstone species, included in Schedule I of the Wildlife Protection Act, 1972 (hereinafter referred to as the '1972 Act'). Prior to 1986, Asian elephants were included in Part I of Schedule II of the 1972 Act. This enabled the capturing of elephants under a special license issued under the 1972 Act. However, since 1986, Asian elephants have been included in Schedule I of the 1972 Act. Under Sec. 2(16) of the Act, capturing animals amounts to 'Hunting'. Sec. 9 prohibits hunting except as provided under Sections 11 or 12. Sec. 12 refers to a case of special permission by the Chief Wild Life Warden (CWLW) for individuals for specific purposes mentioned therein to hunt animals on payment of a special fee for the same. Under Sec.11, any wild animal included in Schedule I can be hunted only if there is a written order of permission by the CWLW, which can be issued on being satisfied that the animal has become dangerous to human life or is so disabled or diseased as to be beyond recovery. On being hunted, the animal can be kept in captivity only if the CWLW for reasons recorded finds that it cannot be rehabilitated. Apart from these, Sec. 29 deals with

W.P.(C)No.31520/2024

the special case of hunting in a sanctuary, and Sec. 35(6) deals with hunting in a National Park. Permission under Sec. 11 is also necessary to hunt in a sanctuary or National Park but with more stringent conditions. As per Sec. 39, every wild animal, hunted otherwise than under Sec. 12, or kept or bred in captivity or hunted in contravention of any provision of the Act shall be the property of the State Government (unless the animal is hunted from a sanctuary or national park, when it shall become the property of Central Government). Thus, a wild animal which is in captivity, either legally or illegally, is Government property. A person obtaining such property shall within 48 hours report it to police or an authorized officer. Being a Schedule I animal, for an elephant to be kept in captivity, there needs to be two written orders of the CWLW, one permitting to hunt, and the other to keep in captivity. An elephant found in captivity without specific permission under Sec. 11 is held in captivity in violation of the provision. Either way, every elephant in captivity in India, is to be considered as Government property. Thus, no person can in fact own an elephant in the strict sense of the term 'ownership'. We are informed by Sri. Hariraj M.R, the learned Senior Counsel appearing for the 10th respondent that this issue has been specifically raised before the Honourable Supreme Court of India, in ***Wildlife Rescue & Rehabilitation Centre*** (*supra*). However, the decision thereof is

W.P.(C)No.31520/2024

deferred till the final disposal of the said writ petition.

8. It can be seen that under Sec. 40 of the 1972 Act, anyone with custody, possession or control (not ownership) of a captive animal mentioned in Schedule I is to declare the same to the CWLW within thirty days from the date of commencement of the Act. An amnesty was provided by the Central Government from 18-4-2003 to 18-10-2003 for this. The certificate referred to in Sec. 42 of the Act, though referred to as “Ownership Certificate,” is only a certificate for the purpose of Sec. 40. The Certificate, as per Sec. 40(2A), is required for the purpose of acquiring, receiving, keeping in control or custody or possession after the commencement of the Act, which can be done only with prior permission of the CWLW. Thus, all persons having possession of an elephant ought to have declared it under Sec. 40, and obtained certification under Sec. 42. If the acquisition of the elephant was after 1986, prior permission from the CWLW also was necessary for the same. Apparently, irrespective of the certificate issued under Sec. 42, the ownership of the animal statutorily vests with the Government. This issue however remains to be decided by the Apex Court. It is now an admitted position that a good number of elephants in Kerala do not have ownership certificates. Whether the elephants which have been given ownership certificates are those hunted in accordance with the provisions of the Act,

W.P.(C)No.31520/2024

is doubtful. No such verification, regarding the existence of orders under Sec. 11(1)(a) to hunt, and under the second proviso to Sec. 11(1) to keep the animal in captivity, issued by CWLW of the respective State, appears to be done by the State Government of Kerala. The fact that there are many elephants without ownership certificates was noticed by the Honourable Supreme Court in ***Wildlife Rescue & Rehabilitation Centre*** (*supra*). It was also directed that the State shall conduct a verification and in the absence of a declaration and certificate under Sec. 40 and 42 appropriate actions must be taken. However, what the Government of Kerala sought to do was to issue an order giving a further amnesty. An updated list of captive elephants as on 23.08.2024 submitted by the Forest Department, shows 388 captive elephants out of which 349 are with private persons. Many of the elephants, on the list have no ownership certificate. The name of the custodian, and the name of the owner as per the ownership certificate/ microchip certificate are different. As such, the possession of the majority of the elephants appears to be illegal, which needs to be verified by the Government.

9. The Prevention of Cruelty to Animals Act, of 1960 prohibits cruelty to animals. Cruelty includes (Sec. 11) causing unnecessary pain or suffering, employing in work or labour without concern to the infirmity,

W.P.(C)No.31520/2024

wound etc. of the animal or some other cause, etc. The keeping of an animal in a cage or receptacle which is not of sufficient size restraining the animal's reasonable movement, keeping it tethered for unreasonable time etc. is cruelty. Refusing proper food and water is cruelty. It is the responsibility of the State to ensure that animals which are its property shall not be subjected to cruelty.

10. It is common knowledge that elephants are fed palm leaves alone which causes indigestion/constipation in elephants. The Principal Chief Conservator of Forests has already issued a circular vide., No.1/2019 dated 22.1.2019 wherein it is observed as follows:

“Increase in mortality in captive elephants in recent times is suspected to be caused by improper upkeep, poor management (without considering biological requirements) of these pachyderms, lack of timely treatment etc. Instructions on strengthening of implemental of legal provisions and also its monitoring were issued vide. Ref.(i) and (ii) circulars. An expert committee consisting of experienced Veterinarians and chaired by the APCCF (BDC) was constituted by the Chief Wildlife Warden vide., Ref.(iii) to critically analyse these deaths and to propose remedial measures. The committee, among other things, found that prolonged malnutrition, faulty feeding practices, over work and inadequate rest caused physiological

W.P.(C)No.31520/2024

and psychological stress to the animals, which predisposed these animals to many diseases leading to their death. The Committee's findings and proposed remedial measures for ensuring welfare of these animals in captivity were critically examined and the following instructions are issued for immediate compliance by all stake holders in the management of these animals in captivity."

This circular contemplates a model feeding schedule for captive elephants in Kerala (Appendix-I to the circular). The circular is clearly violated. Therefore it must be ensured that the person seeking and obtaining permission for the parading of elephants and the owner/custodian must be made responsible to ensure that the model feeding schedule is strictly adhered to.

11. The term 'Veterinary doctor' is defined in Rule 2(i) of the 2012 Rules as a '*registered Veterinary Practitioner or an experienced Ayurvedic Elephant Expert*'. We have, in the course of the proceedings, in this case, come across situations where fitness certificates have been issued even to sick and infirm elephants and there are even instances where totally contradictory certificates are issued regarding the fitness of an elephant for parade. Since captive elephants are succumbing to injuries and ill-treatment in large numbers, we are of the opinion that

W.P.(C)No.31520/2024

the term 'Veterinary Doctor' should be confined to a Government Veterinary Doctor as is proposed in the draft Rules viz., Kerala Captive Elephants (Management and Maintenance) Rules, 2023. It is therefore necessary to direct that the fitness of elephants be examined and certified only by a Government Veterinary Doctor.

12. The learned *amicus curiae* has brought to our notice the fact that certain 'competitions' among elephants such as head lifting contests, saluting, showering of flowers etc. are being held as part of certain festivities. The learned *amicus curiae* informs us that there is a practice now introduced at the 'Thirunakkara Pooram' which is to make the elephant stand on two rear legs and salute. If such competition/show is permitted such activities will clearly fall within the purview of the ***Performing Animal (Registration) Rules, 2001***.

13. As already noted some of the festivals are held in the cruellest of summer months. The parading elephants without adequate shelter overhead clearly amounts to cruelty. We are therefore of the opinion that arrangements have to be made to ensure that the Elephant is not paraded or made to stand at a particular place for more than 10 minutes without shade. The festival organizers have to ensure that necessary arrangements are made to provide for adequate roofing when an elephant is paraded.

W.P.(C)No.31520/2024

14. Thus, keeping in mind the directions issued by the Supreme Court in the order dated 18.08.2015 in ***Wildlife Rescue and Rehabilitation Centre (supra)*** and keeping in mind the various issues that have been brought to the notice of this Court and also for the reasons indicated above, we are inclined to direct the strict implementation of the provisions contained in the 2012 Rules as also the strict implementation of the order issued by the Supreme Court on 18.08.2015. As already indicated, we are clear in our mind that the directions being issued by us are in tune with the 2012 Rules, as augmented by the directions of the Supreme Court and the directions are only intended for an effective implementation of the Statutory Rules. Taking note of the fact that the Government is in the process of framing new Rules, we have taken care not to expand on the extant Rules but merely to clarify their scope in the light of the directions issued by the Supreme Court. We have not made any additions to the extant Rules in any manner. Therefore, the following directions are issued for immediate implementation:-

(1) In addition to the members of the District Committee constituted in terms of the provisions contained in Rule 10 of the 2012 Rules, a person nominated by the Animal Welfare Board of India from among Animal Welfare Organisations in the District shall be a member of the

W.P.(C)No.31520/2024

Committee³. This direction is thus issued in conformity with what is stated in paragraph 10 of the order of the Supreme Court in ***Wildlife Rescue and Rehabilitation Centre (supra)***;

(2) The organizer of any festival where a captive elephant is proposed to be exhibited shall make an application to the District Committee at least one month prior to the date of the exhibition. **This direction reiterates the direction of the Supreme Court in paragraph 11 of the order of the Supreme Court in *Wildlife Rescue and Rehabilitation Centre (supra)*.** The application shall necessarily include:-

- a) The name and identification details of the elephant/elephants proposed to be exhibited and also the date/dates on which such exhibition is proposed;
- b) The facilities for temporary tethering of elephants brought for exhibition;
- c) The route through which processions including elephants are to be conducted and the timing for the same;

³ *The order of the Supreme Court in Wildlife Rescue and Rehabilitation Centre (supra) records that the District Committee under the 2012 Rules includes a member nominated by the Animal Welfare Board of India though the same is not mentioned in the 2012 Rules*

- d) The venue at which the exhibition/ parading of elephants would be conducted;
- e) The elephant's tour schedule covering a period 10 days prior to the proposed exhibition and 5 days after the proposed exhibition. The District Committee shall ensure that the elephant is not compelled to travel and be exhibited without sufficient rest periods between two exhibitions. Such a rest period shall not be less than three days (excluding any time taken for transportation). The District Committee may, taking into consideration the condition of any captive elephant, prescribe a longer period of rest. **This is a requirement of Rule 10 (4) (xvi) of the 2012 Rules;**
- f) Health/fitness certificate showing that the elephant is not sick, injured, weak, disabled or otherwise unfit for exhibition. **This is a requirement of Rule 10 (4) (iii) of the 2012 Rules;**
- g) Information relating to the elephant's normal musth period

W.P.(C)No.31520/2024

and a certificate from an authorised veterinary surgeon regarding the same. **This is a requirement of Rule 10 (4) (ii) of the 2012 Rules;**

h) Declaration/Information regarding any instances of the elephant running amok during the past 12 months from the date of application. **This is a requirement of Rule 10 (4) (iii) of the 2012 Rules)**

(3) The District Committee shall consider such application and grant permission for exhibition only subject to the following conditions:-

a) The exhibitor shall satisfy the committee that it has made the arrangements to provide food and water in accordance with the stipulations set out by the government in Circular 1/2019 dated 22.01.2019 of Principal Chief Conservator of Forests, Kerala, or any revised stipulation in this regard which the Government may from time to time promulgate, to all elephants brought for exhibitions during the time they are in the premises of the exhibitor. Circular 1/2019 dated 22.01.2019 of Principal Chief Conservator of Forests, Kerala shall be Annexed to this order as

Annexure-III. This direction is in conformity with Rules 6 and 10(4)(vii) of the 2012 Rules and Annexure-III circular of the Principal Chief Conservator of Forests, Kerala.

b) The exhibitor shall satisfy the committee that it has a temporary tethering facility complying with the following:-

[Note:- these requirements are mandated by Rules 3, 10(4)(vii) and 10 (4)(ix) of the 2012 Rules]

(i) The temporary tethering site shall be clean and shall provide a healthy environment with sufficient shade for the elephants during the rest period. If roofing is provided using metal or other unbreakable material, gunny bags, grass, cadjan/palm leaves, etc., must be used to cover it to keep the shelter cool;

(ii) Each elephant shall be provided with a shelter shed having a minimum floor area of 9m x 6m and the height shall not be less than 5.5 m. The tethering site must have sufficient space for the elephant to move about while tethered and the

tethers shall not be used in a manner that they fully fetter the movement of the elephant while at the temporary tethering site ;

(iii) The shelter's floor must be made of natural materials to keep it dry and clean, and appropriate drainage must be provided;

(iv) Necessary arrangements shall be in place for prompt removal of filth and refuse from the shelter and under no circumstances shall the elephants be made to stand in their own refuse;

(v) The tethering site must have a continuous supply of potable water, which shall be accessible to the elephant without the intervention of any person.

c) The District Committee shall consider the availability of space inside temples or other places where the exhibition or parading is proposed and will ensure that no permission is granted unless

W.P.(C)No.31520/2024

the venue where the exhibitions or parading of elephants is proposed has sufficient space to parade the elephants with (i) a minimum distance of 3 meters between two elephants,(ii) a minimum distance of 5 meters from the elephant to flambeau or any other source of fire, (iii) a minimum distance of 8 meters from the elephant to the public and any percussion display, (iv) Necessary barricades are placed between the public and elephants (v) minimum distance of 100 meters is maintained from any place where fireworks are used and the place where the elephants are exhibited (vi) proper shade shall be provided to ensure that the paraded elephants are not exposed to the hot sun for elephants and a facility for feeding the elephants and providing drinking water to the elephants (vii) have a proper evacuation plan separately for elephants and for the public to be used in case of any emergency approved by the fire department. In other words, the number of Elephants that can be paraded will depend on the availability of space enabling the maintenance of the minimum distance fixed above inside the temple or any other place where the parade is proposed. **These requirements are mandated by Rules 10(4)(i), 10(4)(vi), 10(4)(vii), 10(4)(viii) & 10(4)(ix) of the 2012 Rules.**

d) The route for taking out the procession of elephants through public roads shall satisfy the following:-

[Note:- these requirements are mandated by Rules 10(4)(i), (v) & (viii) of the 2012 Rules]

(i) Have sufficient space to parade the elephants with a minimum distance of 3 meters between two elephants and a minimum distance of 5 meters from the elephant to flambeau or any other source of fire ;

(ii) No procession of elephants through public roads shall be permitted between 9:00 AM and 5:00 PM.

(4) The District Committee shall also ensure the following while giving permission to exhibit an elephant:-

a) An elephant shall not be transported between 10:00 PM and 4:00 AM. During this time it shall be ensured that the elephant is kept at a proper tethering site, either temporary or permanent provided by the owner or an exhibitor. **(See Rule 9 of the**

2012 Rules)

b) An elephant shall not be exhibited for a continuous period of more than 3 hours. **(See Rule 10(xvi) of the 2012 Rules)**

c) No elephant shall be made to walk for more than 30 KM a day for the purpose of transportation. All transportation above 30 KM shall be made by vehicle approved for the purpose. The transportation of the elephant shall not be made for more than 125 KM in a day by any means. No elephant shall be transported for more than 6 hours in a vehicle in a day and the speed of the vehicle shall not exceed 25 KM per hour while transporting an elephant. The officials of the Motor Vehicles Department shall ensure that Speed Governors are fixed on all vehicles engaged in the transport of elephants and that the maximum speed setting is set at the limit fixed above. **(See Rule 9 of the 2012 Rules)**

d) An elephant shall be ensured at least 8 hours of rest during a continuous period of 24 hours. **(See Rule 10(xvi) of the 2012 Rules)**

W.P.(C)No.31520/2024

(5) Since several instances of fitness certificates being issued by Veterinary Doctors without even inspection of the animal have been brought to our notice, it is directed that the District Committee shall accept fitness certificates issued by Government Doctors only until further orders. The competent authority in the Veterinary Department, Government of Kerala will issue the necessary orders forthwith fixing the modalities for examination and issuance of fitness certificates, the period of its validity, and the fee to be remitted for issuance of fitness certificates. The Government Veterinary Doctors shall mandatorily record any injury that they notice on the elephant that they are called upon to examine and they will ensure that fitness certificates are not issued to any elephant that they feel is weak or infirm in any manner whatsoever.

(6) No contest of the nature noticed in paragraph 12 above shall be permitted under any circumstances. **This is on account of the provisions contained in the *Performing Animal (Registration) Rules, 2001.***

(7) The owner/custodian shall maintain all registers in accordance with the provisions of the 2012 Rules, and the District Committee

W.P.(C)No.31520/2024

shall verify this before permission is granted to parade any elephant.

(See Rule 8 of the 2012 Rules)

15. In addition to the above, we direct that no organiser or Devaswom shall permit the deployment of any squads which go by the name 'Elephant Squads' in any festival or exhibition where elephants are being paraded. We also prohibit the use of any 'capture belt' or such other crude and inhuman method of capturing elephants that may run amok or otherwise misbehave. **(See Rule 10(4)(iv) of the 2012 Rules)**. This shall be included as a condition upon which permission to parade is being granted.

16. We direct the Principal Secretary, Forests and Wildlife Department, Government of Kerala to place on record an affidavit explaining the circumstances under which G.O (Ms.) No. 19/2022/F&WLD dated 20.4.2022 or any later G.O on similar lines has been issued, in the face of the directions issued by the Supreme Court of India. The affidavit shall also indicate whether the orders issued by the Supreme Court referred to above have by now been complied with and if not the reason for non-compliance. The competent authority of the Government of Kerala shall ensure strict implementation of the aforesaid directions and guidelines, if necessary by issuing necessary orders and communicating the

W.P.(C)No.31520/2024

directions/guidelines framed by this Court to all stakeholders. In order to ensure effective implementation of these orders/ directions the following are *suo motu* impleaded as additional respondents 29 to 32 to the Writ Petition:-

1	The Travancore Devaswom Board, Nanthancode, Kawdiar Post, Thiruvananthapuram 695003 represented by its Secretary
2	The Cochin Devaswom Board, Round North, Thrissur, Kerala represented by its Secretary
3	The Malabar Devaswom Board, Housefed Complex, Eranhipallam P.O, Eranhipallam, Kozhikode. represented by its Secretary.
4	The Guruvayoor Devaswom Board, Guruvayoor, Thrissur-680 101 represented by its Administrator

Registry shall serve a copy of this order on the respective standing counsel appearing for Additional Respondents 29 to 32 forthwith.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

GOPINATH P.
JUDGE

acd

2022 SCC OnLine Ker 4268 : (2022) 6 KLT 140

In the High Court of Kerala at Ernakulam
(BEFORE ANIL K. NARENDRAN AND P.G. AJITHKUMAR, JJ.)

P. Prema Kumar ... Petitioner;

Versus

Travancore Devaswom Board - TDB Represented by
its Secretary and Others ... Respondents.

W.P. (C) No. 12852 of 2021

Decided on July 26, 2022

Advocates who appeared in this case:

By Advs. R. Krishna Raj

E.S. Soni

Kumari Sangeetha S. Nair

By Advs. SC, Travancore Devaswom Board - TDB

Shri Nagaraj Narayanan, Spl. G.P. (Forest)

Shri G. Biju, SC, Travancore Devaswom Board

K.R. Sunil

N. Mahesh

K. Sasikumar

Bobby George

T.P. Pradeep

Minikumary M.V.

S. Aravind

Aiswarya Venugopal

Krishna Suresh

Eashwary V.

Joy C. Paul

Sri. S. Rajmohan - Sr. Government Pleader;

Sri. K.P. Sudheer - Standing Counsel-Cochin Devaswom Board;

Sri. R. Lakshmi Narayan - Standing Counsel - Malabar Devaswom Board;

Sri. T.K. Vipindas - Standing Counsel - Guruvayur Devaswom Managing Committee;

Sri. S. Sujin - Standing Counsel - Sree Koodal Manikkyam Devaswom

The Judgment of the Court was delivered by

ANIL K. NARENDRAN, J.:— The petitioner has filed this writ petition

under Article 226 of the Constitution of India, seeking an order to constitute a high level committee to enquire into the death of an elephant by name 'Ambalapuzha Vijayakrishnan' owned by the 1st respondent Travancore Devaswom Board, which died on 08.04.2021. The petitioner has also sought for a writ of mandamus commanding the 1st respondent Board to initiate strict action against respondents 7 to 11 for the unnatural death of the said elephant; and a writ of mandamus commanding the 1st respondent Board to appoint qualified Veterinary Surgeons.

2. On 29.06.2021, when this writ petition came up for admission, this Court admitted the matter on file. The learned Standing Counsel for Travancore Devaswom Board took notice for respondents 1 and 5. The learned Government Pleader took notice for respondents 2 to 4 and 6. Notice to respondents 7 to 11 was dispensed with. Thereafter, by the order dated 14.09.2021, this Court issued notice by speed post to respondents 7 to 11.

3. On 30.11.2021, the 3rd respondent Principle Chief Conservator of Forests (Wildlife) and the Chief Wildlife Warden, Kerala has filed a counter affidavit, wherein it is stated that, in connection with the unnatural death of the elephant 'Ambalapuzha Vijayakrishnan' (Microchip No. 00065DE38C), aged 52 years, a three member special team was constituted vide Ext.R3(b) proceedings dated 09.04.2021, which submitted Ext.R3(c) report dated 02.07.2021. The findings of the special team in Ext.R3(c) report are as follows;

- "1) The first mahout Sri. B. Pradeep of TDB melted cruelty to "Vijayakrishnan" by torturing, and not providing adequate medical treatment for "Vijayakrishnan", which resulted in his death. Action to be initiated against the said mahout under the Wildlife (Protection) Act, 1972 and Kerala Captive Elephants (Management and Maintenance) Rules, 2012.
- 2) TDB officials namely, Sri. Baiju, Deputy Devaswom Commissioner, Harippad, Sri. K. Jayakumar, Asst. Devaswom Commissioner, Sri. K. Manoj Kumar, Administrative Officer, Ambalappuzha Temple, Sri. Ajeesh, Second Mahout, and Dr. Dr. Saseendradev Veterinarian engaged by TDB on contract basis erred in providing adequate protection and care for the elephant and hence departmental action has been initiated against them by the TDB authorities.
- 3) The Assistant Conservator of Forests, Social Forestry, Alappuzha to include in his investigation the allegations that the first mahout used to bring his friends for showing how to tame the elephant "Vijayakrishnan" by beating him and also the problems between the first mahout and the former mahout Sri. Gopan.
- 4) Dr. Saseendradev has reported to the Devaswom Commissioner on 11.03.2018 that some of the mahouts of TDB are drunkards

35

and are showing dereliction in care and maintenance of the elephants owned by TDB. TDB to conduct enquiry and take suitable action.

- 5) The elephants of TDB are continuously paraded for the festivals in the temples of TDB without rest and this has resulted in deterioration of the health of the elephants leading to death. Hence TDB to restrict the parading of the elephants to important festivals alone.
- 6) The Veterinary officers of the Forest Department may be entrusted to cross verify the fitness certificate for elephants as instances of issuing fitness certificates without examining the elephants were noticed.
- 7) Officers of the Social Forestry wing to inspect the registers of the elephants to ensure that the registers are properly updated.
- 8) Many of the mahouts of TDB are not having proper training or skill to maintain and care elephants and hence they may be given training by the Social Forestry wing."

4. In Wildlife Crime (O.R. No. 1 of 2021) registered on 17.01.2022 by the office of the Social Forestry Range Office, Alappuzha, in relation to the unnatural death of the elephant 'Ambalapuzha Vijayakrishnan', respondents 7 to 10 herein are arrayed as the accused. In the additional affidavit filed by the 3rd respondent it is stated that, the 10th respondent herein, who was the 1st mahout of the tusker 'Ambalapuzha Vijayakrishnan', has not been arrested, since he is absconding.

5. The 7th respondent Deputy Devaswom Commissioner has filed a counter affidavit dated 30.11.2021, wherein it is stated that, the local custodian of the elephant 'Ambalapuzha Vijayakrishnan, is the Sub Group Officer, Padanayarkulangara Devaswom. Respondents 10 and 11, who were the 1st and 2nd mahouts, without obtaining any permission, took the elephant to Thrippangott Devaswom. When it was informed to the office of the 7th respondent, he immediately directed the Sub Group Officers concerned to return the elephant to Ambalapuzha. From 04.04.2021 onwards, the elephant was not taking any food. Immediately, the 7th respondent informed the Veterinary Surgeon to examine the elephant. Accordingly, the doctors examined the elephant and treated it with medicines. However, on 08.04.2021, the health condition of the elephant became worse and it died.

6. The party respondents, namely, respondents 9 and 11 have filed individual affidavits.

7. The learned Standing Counsel for Travancore Devaswom Board has filed a statement on behalf of respondents 1 and 5, opposing the reliefs sought for in this writ petition, wherein it is stated that, though the elephant 'Ambalapuzha Vijayakrishnan' had some injuries, which

were not serious enough to cancel the programmes. Constant attention, care and treatment has been given to the elephant. However it died on 08.04.2021, at the age of 52 years. The Board has already conducted an enquiry by its Vigilance Wing, by an officer of the rank of Superintendent of Police. The Board has also initiated steps against the officials found to be involved in dereliction of duty as disclosed in the enquiry. In addition to that, the Forest Department is also investigating the cause of death of the elephant.

8. By the order dated 04.04.2022, this Court directed all concerned to ensure strict compliance of the provisions under the Kerala Captive Elephants (Management and Maintenance) Rules, 2012, while parading elephants in connection with temple festivals, functions, etc. It was ordered that, the provisions under Rule 10 of the said Rules shall be complied with in letter and spirit by all concerned and any person, who contravenes the provisions of the said Rules, shall be dealt with appropriately, as provided under Section 51 of the Wildlife (Protection) Act. By the said order, the learned Standing Counsel for Travancore Devaswom Board was directed to get instructions as to the criteria that has to be followed by allotting elephants for festivals in temples under the management of the Board, since parading of large number of elephants is the practice followed during annual festival in most of the major temples under the Devaswom.

9. On 08.04.2022, when this writ petition came up for consideration, the learned Standing Counsel for Travancore Devaswom Board has made available for the perusal of this Court the circular dated 22.10.1998 and proceedings dated 23.10.2000 regarding allotment of elephants for festivals in the temples under the management of the Travancore Devaswom Board.

10. The Circular No. ROC7199/98 dated 22.10.1998 issued by the Secretary of the Travancore Devaswom Board regarding allotment of elephants for festivals in temples under the management of the Travancore Devaswom Board reads thus;

“ഉത്സവസീസണിൽ വിവിധ ദേവസ്വങ്ങളിൽ പതിവിൻപടി അനുവാദമില്ലാതെ ആനകളെ പ്രോഗ്രാമിന് നിയോഗിക്കുന്നതിന് അനുവദിക്കുന്നത് സംബന്ധിച്ച് നിരവധി പരാതികൾ വിവിധകമ്മറ്റിക്കാരിൽ നിന്നും ഉണ്ടാകുന്നതായി ദേവസ്വം കമ്മീഷൻ സൂചന (2) നമ്പരിൽ റിപ്പോർട്ട് ചെയ്തിരിക്കുന്നു. ആകയാൽ ഉത്സവത്തിൽ പതിവുപ്രകാരം അനുവാദമുള്ള ആനകളെ മാത്രമേ ഡിപ്പാർട്ട്മെന്റിൽനിന്നും അനുവദിക്കുകയുള്ളൂവെന്നും അതു കൂടാതെ കൂടുതൽ ആനകളെ പ്രോഗ്രാമിന് ആവശ്യമുള്ളപക്ഷം ആയതിന്റെ പൂർണ്ണചിലവ് കമ്മറ്റിക്കാർ തന്നെ വഹിക്കേണ്ടതാണെന്നും പതിവുപ്രകാരം അനുവാദമുള്ള പ്രോഗ്രാമുകൾക്ക് ഡിപ്പാർട്ട്മെന്റ് ആനകളെ നൽകുന്നതിന് സാധിക്കാതെ വരുന്നപക്ഷം ആയതിന് നിലവിലുള്ള നിയമാനുസരണം ആനവാടക ചിലവെഴുതി നൽകുന്ന രീതി തുടർന്ന് അവലംബിക്കാവുന്നതാണെന്നും കൂടാതെ സൂചന (1) ഉത്തരവുപ്രകാരം പുതിയതായി ആനകളെ ചേർക്കേണ്ടതില്ലെന്നും ബോർഡുത്തരവായിട്ടുള്ള വിവരം അറിയിക്കുന്നു.”

(underline supplied)

11. Clause (1) of the proceeding dated 23.10.2000 of the Travancore Devaswom Board reads thus;

“തിരുവിതാംകൂർ ദേവസ്വം ബോർഡിന്റെ കീഴിലുള്ള വിവിധ ദേവസ്വങ്ങളിലെ ഉത്സവാദി അടിയന്തിരങ്ങൾക്ക് ആനകളെ പ്രോഗ്രാം ചെയ്യുന്നത് സംബന്ധിച്ച് താഴെ വിവരിക്കും പ്രകാരം ബോർഡുത്തരവായ വിവരം അറിയിക്കുന്നു.
1. പതിവിൽ അനുവാദമില്ലാതെ പുതുതായി അകംപടി ആനയെ അനുവദിക്കേണ്ടതില്ല. എന്നാൽ പതിവിൽ നിന്നും വ്യതിചലിച്ച് മുൻവർഷങ്ങളിൽ ആനയെ പ്രത്യേകം ഉത്തരവുവഴി അനുവദിച്ചിട്ടുള്ള പക്ഷം തുടർന്നും അനുവദിക്കാവുന്നതാകുന്നു.”

(underline supplied)

12. By the order dated 08.04.2022, in addition to the directions contained in the order dated 04.04.2022, this Court directed all concerned to scrupulously follow the conditions in circular dated 22.10.1998 and the proceedings dated 23.10.2000, insofar as it relates to the number of elephants paraded in the festivals in the temples under the management of Travancore Devaswom Board.

13. On 24.05.2022, when this writ petition came up for consideration, considering the issues involved in this writ petition, this Court *suo motu* impleaded the State of Kerala; Cochin Devaswom Board; Malabar Devaswom Board; Guruvayur Devaswom Managing Committee; and Koodalmanikyam Devaswom as additional respondents 12 to 16 in this writ petition.

14. Heard the learned counsel for the petitioner, the learned Standing Counsel for Travancore Devaswom Board for respondents 1 and 5, the learned Senior Government Pleader for respondents 2, 4, 6 and 12, the learned Special Government Pleader (Forest) for the 3rd respondent, the learned counsel for respondents 7 to 11, the learned Standing Counsel for Cochin Devaswom Board for the additional 13th respondent, the learned Standing Counsel for Malabar Devaswom Board for the additional 14th respondent, the learned Standing Counsel for Guruvayur Devaswom Board for the additional 15th respondent and also the learned counsel for the additional 16th respondent.

15. The Kerala Captive Elephants (Management and Maintenance) Rules, 2012 is one made by the State, in exercise of the powers conferred by sub-section (2) of Section 64 of the Wildlife (Protection) Act, 1972 and in supersession of the Kerala Captive Elephants (Management and Maintenance) Rules, 2003. Rule 4 of the said Rules deals with upkeep and veterinary care of the elephant. As per sub-rule (1) of Rule 4, for taking care of each elephant, the owner thereof shall engage a mahout having at least three years of experience in managing an elephant. As per sub-rule (17) of Rule 4, while issuing medical certificate, the Veterinary Doctor should verify the original documents such as ownership certificate of the elephant, (if received from forest department) microchip certificate, insurance certificate and original elephant data book to ensure the correctness. The Veterinary Doctor shall issue the health certificate of the elephant in the prescribed format shown as Appendix I. As per sub-rule (18) of Rule 4, before any captive elephant is transported from one place to another, the Veterinary Doctor shall inspect the elephant and issue a Fitness Certificate in the form given in Appendix II.

16. Rule 10 of the said Rules deals with the constitution of District Committee. As per sub-rule (1) of Rule 10, a District Committee shall be constituted by the District Collector to deal with cases of cruelty meted out to captive elephants. The District Collector shall be the Chairman of that Committee and the Divisional Forest Officer shall be its Convener. The Committee shall consists of the members enumerated in clauses (3) to (9) of sub-rule (1) of Rule 10. As per sub-rule (2) of Rule 10, the District Committee shall meet before the festival season, preferably in the month of October and take necessary measures to ensure welfare of elephants and public safety. As per sub-rule (3) of Rule 10, the District Committee shall take steps to discourage the growing tendency of increasing the number of elephants in existing traditional festivals and introducing elephants in new festivals. As per sub-rule (4) of Rule 10, the District Committee shall take necessary measures, to ensure that the Festival Committee constituted for the smooth conduct of festivals or the persons

organizing such functions in which elephants are exposed, shall adhere to the matters enumerated in clauses (i) to (xviii). As per clause (i) of sub-rule (4), there shall be sufficient space between elephants used in processions and parades. As per clause (ii) of sub-rule (4), no elephant in musth shall be used in connection with festivals. As per clause (iii) of sub-rule (4), elephant which is sick, injured, weak or pregnant shall not be used.

17. In *Sree Kumar v. Travancore Devaswom Board* [(2005) 1 KLT 43], in the context of the Kerala Captive Elephants (Management and Maintenance) Rules, 2003, a Division Bench of this Court held that the Travancore Devaswom Board is the custodian of the animals which are entrusted by the devotees with the fervent hope and expectation that they will be looked after well. These animals are in a way offerings to the deities. Therefore, it is the paramount duty and responsibility of the Board to take proper care of these animals at all costs. If the animals are not looked after well, necessarily it will amount to cruelty to them. This, in turn, will attract the provisions of the Prevention of Cruelty to Animals Act, 1960.

18. Section 51 of the Wildlife (Protection) Act, 1972, deals with penalties. As per sub-section (1) of Section 51, any person who contravenes any provision of this Act (except Chapter VA and section 38J) or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twenty-five thousand rupees or with both.

19. As per the first proviso to sub-section (1) of Section 51 of the Act, where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees. As per the second proviso to sub-section (1) of Section 51, in the case of a second or subsequent offence of the nature mentioned in this subsection, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.

20. The Kerala Captive Elephants (Management and Maintenance) Rules, 2012 is one made by the State in exercise of the powers conferred by sub-section (2) of Section 64 of the Wildlife (Protection)

Act, 1972. In view of the statutory provisions referred to hereinbefore and also the law laid down by this Court in *Sree Kumar* [(2005) 1 KLT 43] we deem it appropriate to make the interim orders dated 04.04.2022 and 08.04.2022 absolute, by directing all concerned to ensure strict compliance of the provisions under the Kerala Captive Elephants (Management and Maintenance) Rules, 2012, while parading elephants in connection with temple festivals, functions, etc. The provisions under Rule 10 of the said Rules shall be complied with in letter and spirit by all concerned and any person, who contravenes the provisions of the said Rules, shall be dealt with appropriately, as provided under Section 51 of the Wildlife (Protection) Act. In temples under the management of the Travancore Devaswom Board, all concerned shall scrupulously follow the conditions in Circular No. ROC7199/98 dated 22.10.1998 and proceedings dated 23.10.2000, which are referred to hereinbefore at paragraph 10 and 11, insofar as it relates to the number of elephants paraded in the festivals in the temples under the said Devaswom Board. In temples under Cochin Devaswom Board, Malabar Devaswom Board, Guruvayur Devaswom and also Koodalmanikyam Devaswom, the directions contained in the order dated 04.04.2022, which is made absolute by this judgment, shall be complied with letter and spirit and any person, who contravenes the provisions of the Kerala Captive Elephants (Management and Maintenance) Rules, 2012, while parading elephants in connection with festivals, functions, etc., shall be dealt with appropriately, as provided under Section 51 of the Wildlife (Protection) Act.

21. In connection with the death of the elephant by name 'Ambalapuzha Vijayakrishnan', owned by the 1st respondent Travancore Devaswom Board, which died on 08.04.2021, wildlife crime (O.R. No. 1 of 2021) has been registered by the office of the Social Forestry Range Office, Alappuzha, in which respondents 7 to 10 herein are arrayed as accused. The 1st respondent Travancore Devaswom Board has already conducted an inquiry by its Vigilance Wing, and steps have already been initiated against the officials found to be involved in dereliction of duty as disclosed in that inquiry. It is for the authorities concerned to take necessary steps to ensure that the proceedings initiated in connection with the death of the elephant by name 'Ambalapuzha Vijayakrishnan' reaches a logical conclusion, within a period of five months from the date of this judgment.

22. With the above directions, this writ petition is disposed of.

41

2004 SCC OnLine Ker 180 : (2005) 1 KLT 43

Kerala High Court
(BEFORE S. SANKARASUBBAN AND A.K. BASHEER, JJ.)

Sreekumar

Versus

Travancore Devaswom Board

W.P.(C) Nos. 25615 & 27119 of 2003

Decided on November 24, 2004

The Judgment of the Court was delivered by

S. SANKARASUBBAN, J.:— Both these Writ Petitions have been filed to bring to the notice of this Court that an elephant by name Manikantan, which was offered to Sree Vallabha Temple,



Page: 44

Thiruvalla was dead. According to the petitioners, the elephant died because no proper care was taken and that the elephant was not properly treated for the disease. Since the petitioners proved a *prima facie* case, we appointed Sri. D. Sreevallabhan, Addl. District Judge, Pathanamthitta to enquire into the matter and file a report to this Court. Accordingly, he enquired into the matter and filed an enquiry report in two volumes. The first volume contains the report and the second volume contains depositions and documents.

2. In the report at page 39, it is stated as follows: "Hence, it is clear that there was laches on the part of EW 7 Sub Group Officer, EW 9 Assistant Devaswom Commissioner and EW 1 mahout in getting medical aid for the elephant at the proper time.

3. At page 47, it is stated as follows: "Hence negligence can be attributed on the part of EW 14 in causing the death of the elephant without giving effective treatment for the elephant". In the same page at paragraph 22, it is further stated as follows: "No proper care was taken by him in diagnosing the disease or for giving necessary treatment to the elephant Manikantan. Hence, there is negligence on his part in not giving proper medical care and treatment". At page 56, in paragraph 27, it is stated as follows: "During the course of enquiry it is clearly revealed that Manikantan was not properly fed and not much care as required by the rules was taken by EWs. 7 and 9 in feeding the elephant. No earnest effort is seen to have been made by them to get proper medical aid while Manikantan was suffering from illness for days together". Learned District Judge has further stated in paragraph 31 thus: "It is already pointed out that there is only one Veterinary Officer attached to the Travancore Devaswom Board for the check-up and treatment of about 50 elephants in the various temples of the Devaswom. EW 10 had stated that there are three Devaswom Districts having its headquarters at Thiruvananthapuram, Ambalappuzha and Vaikom. In all these Districts there are elephants in several temples. All those elephants cannot be expected to get proper medical aid if there is only one Veterinary Officer". The Enquiry Officer further referred to Sub-Clauses 2 to 12 of R. 5 of the Captive Elephants (Management and Maintenance) Rules, 2003 (Kerala).

4. In the facts and circumstances of the case, we are of the view that some specific

42

directions have to be issued to the Travancore Devaswom Board and its functionaries in order to avoid recurrence of such unfortunate calamities to the animals in the custody of the Devaswom.

5. It has to be remembered that the Devaswom Board is the custodian of the animals which are entrusted by the devotees with the fervent hope and expectation that they will be looked after well. These animals are in a way offerings to the deities., Therefore, it is the paramount duty and responsibility of the Board to take proper care of these animals at all costs.

6. The learned District Judge in his enquiry report has referred to clause 15 of



Page: 45

Chapter XV of the Devaswom Manual which prescribes the duties of Sub Group Officer as regards the elephants of the Devaswom. Clauses 16 to 20 have also been extracted in the report which deal with the manner and mode in which the elephants have to be looked after and handled. The learned District Judge has also referred to clauses 9, 10 and 11 of Chapter XV which pertain to the food that has to be given to the elephants and also the pattern of feeding.

7. Captive Elephants (Management and Maintenance) Rules, 2003 (Kerala) for short "the Rules" were brought into force on March 13, 2003. The Rules provide that the owner of the elephant has to maintain certain records relating to the elephants viz., the vaccination record, disease and treatment record, movement register, feeding register, work register, etc. R. 4 of the above Rules also stipulates that the stable (tethering place) where the elephant is kept must have a clean and healthy environment with sufficient shade. If the shed is covered, the height of the structure shall not be less than the prescribed specifications. If corrugated iron sheets or asbestos sheets are used for roofing of elephants stables, they should be covered with gunny bags, grass, cadjan leaves etc. We have referred to some of the rules and the clauses in the Manual not only to remind the Board about the existence of these provisions in the statute book and the Manual, but also to remind them that these rules and clauses are meant to be complied with and also implemented in letter and spirit.

8. The respondents have admitted that they are in custody of about 90 animals of which 50 are elephants. In the course of the enquiry the learned District Judge had found that the elephant which met with the tragic end was not put in a stable constructed as per the specifications contained in the Rules. It has come on record that one Veterinary Officer, who is a retired Government servant, is in charge of all these animals. It is also the admitted position that there are three Devaswom Districts viz., Thiruvananthapuram, Vaikom and Ambalapuzha. The animals are now being kept at various places in the three Districts. It is more or less conceded by the Board that one Veterinary Officer may not be able to attend to all the animals in the three Districts. It is also submitted that the Board may not be in a position to appoint more Veterinary Officers because of financial constraints. We cannot accept the above contention. If more Veterinary Officers have to be appointed, the Board should find ways and means to appoint them and pay their salaries. If the Board is not in a position to look after these animals, they should have thought twice before accepting them from the devotees. The devotees had reposed faith in the Board that these animals would be looked after well. If the animals are not looked after well, necessarily it will amount to cruelty to them. This, in turn, will attract the provisions of Prevention of Cruelty to Animals Act.

9. Having regard to the entire facts and circumstances, we issue the following directions:



Page: 46

- 1) The Board shall take all necessary steps to look after the animals in their custody in a proper and hygienic atmosphere. The animals should be fed properly and they should be regularly got examined by the Veterinary Officer.
 - 2) The provisions contained in the Rules shall be scrupulously followed and implemented. Similarly the clauses mentioned in Chapter XV of the Devaswom Manual shall also be adhered to and implemented. The Board shall ensure that its officers maintain the various records/registers as provided in the Rules.
 - 3) The Board shall appoint one more Veterinary Officer within one month from the date of receipt of a copy of this judgment. The duties of the two Veterinary Officers in the service of the Board shall be properly distributed among them, so that the two Officers are in a position to take care of all the animals in the three Districts. The two Officers shall be stationed in the three Districts. The two Officers shall be stationed at two convenient locations so that they can reach the station wherever their services are needed within the shortest possible time. If the Board is of the view that its financial position may not permit to accept more animals from the devotees, they shall stop accepting them.
 - 4) The Board shall also ensure that the elephants which are sent to various Temples at the time of festivals are not overburdened and also that they are looked after well in the respective Temples wherever they are sent.
10. Writ Petitions are disposed of as above.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

SURENDRA KUMAR, IFS**Principal Chief Conservator of Forests (WL) &
Chief Wildlife Warden, Kerala.**

Forest Headquarters,
'Vanalakshmi', Vazhuthacaud
Thiruvananthapuram – 695014
Phone: (O) 0471 2321610
Fax: 0471 2320554
Mob: 9447979002
Email: cww.for@kerala.gov.in

No.BDC2-26574/2018

Date : 22.01.2019

Circular No. 01/2019

Sub: Forests & Wildlife Department – Alarming rate of death of Captive Elephants in Kerala – Ensuring proper management and welfare of captive elephants – Recommendations of Expert Committee on death of Captive Elephants – Instructions issued – Reg.

- Ref: 1. Circular No. 04/2018 dated 02.05.2018 of Chief Wildlife Warden, Kerala
2. Circular Nos. 05/2018 dated 10.07.2018 and 07/2018 dated 03.10.2018 of Chief Wildlife Warden, Kerala.
3. Proceedings Order No. BDC2-16169/2018 dated 28.06.2018 of Chief Wildlife Warden, Kerala
4. Circular No. 02/2018 dated 27.03.2018 of APCCF (BDC)

Increase in mortality of captive elephants in recent times is suspected to be caused by improper upkeep, poor management (without considering biological requirements) of these pachyderms, lack of timely treatment etc. Instructions on strengthening of implementation of legal provisions and its monitoring were issued vide reference 1st and 2nd Circulars. An Expert Committee consisting of experienced Veterinarians and chaired by the APCCF (BDC) was constituted by the Chief Wildlife Warden vide reference 3rd to critically analyze these deaths and to propose remedial measures. The Committee, among other things, found that prolonged malnutrition, faulty feeding practices, overwork and inadequate rest caused physiological and psychological stress to the animals, which predisposed these animals to many diseases leading to their deaths. The Committee's findings and proposed remedial measures for ensuring welfare of these animals in captivity were critically examined and the following instructions are issued for immediate compliance by all the stakeholders in management of these animals in captivity.

I. DFOs, WLWs, ACFs (SF)

1. Shall arrange training to Owners, Mahouts and members of the Festival Committees within their respective jurisdiction and sensitize them on the proper welfare measures for the Captive Elephants, scientific feeding, health care, responsible ownership and the various legal aspects of their management.
2. Ensure proper maintenance of records prescribed in Kerala Captive Elephant (Management & Maintenance) Rules 2012, which is an indispensable part of scientific management of Captive Elephants. Periodic inspections, once in three months, through an officer not below the rank of a Section Forest Officer shall be

conducted so as to ensure proper maintenance of mandatory registers like elephant data book, feeding, movement, work, treatment and vaccination registers of all the Captive Elephants.

3. Submit quarterly reports (March / June / September / December) these inspections to the CF (SF) who in turn shall prepare a consolidated report on these inspections in the Circle and submit his report to the Chief Wildlife Warden once in three months.
4. Should circulate a copy of the balanced diet plan prescribed for scientific feeding of captive elephants (**Appendix I**) to elephant owners/custodians in the district and should ensure that it is pasted in the feeding register and shall monitor the implementation of this.
5. A programme for long term health monitoring with a complete hematological and serum biochemistry analysis is insisted to ascertain the exact health status of the Captive Elephants and Assistant Conservator of Forests (SF) should monitor the compliance of this health monitoring programme by owners. Result of periodical health evaluation as part of long term health monitoring is to be obtained from concerned AFVO/FVO in the format enclosed (**Appendix. II**).
6. Major physical injuries to Captive Elephants are happening during Musth period due to unscientific tethering practices which hampers the natural movement and induce stress and predispose them to many disease conditions. DFOs / WLWs in charge of Departmental Captive Elephants will establish Musth Kraals in each of the Elephant Camp in the Department for management of camp elephants during Musth period.
7. Ensure that animals refractory to treatment even after 5 days of treatment as reported by the owner/custodian, are referred to the opinion of Panel of Expert Veterinarians for ensuring qualified veterinary expertise in treatment and health care of elephants. This Panel of Expert Veterinarians for treatment of elephants should be constituted by Assistant conservator (SF) in consultation with Chief Forest Veterinary Officer, on individual case basis.
8. Instruction regarding post-mortem and handling of carcass of dead Captive Elephants were issued vide reference 4. However, it is observed that autopsy reports of dead Captive Elephants lack uniformity. Supportive historical, toxicological or microbiological reports are not resorted to in many cases and pathological lesions are not properly recorded in many of the reports. These instructions should be scrupulously followed and ACF (SF) shall submit proper video-graphic and photographic documentation of post-mortem process along with report of death of the Captive Elephants. Mahazar should be comprehensive and must also record any external injuries, Musth conditions or such salient details. The video-graphic and photographic documentation should depict the external part of elephant carcass in addition to process of post-mortem. Postmortem report of Captive Elephants should be submitted in the format enclosed (**Appendix. III**).

II. Custodians / Owners and Mahouts of the Captive Elephants


1. Shall attend trainings organized by Kerala Forest Department from time to time on various topics in management of captive elephants such as scientific feeding, health care, responsible ownership and the various legal aspects of their management.
2. It was found that the diet given to the Captive Elephants is very low in protein and vital nutrients. Almost all animals are under-nourished and this condition makes the animal susceptible to many disease conditions. Custodian/Owners and Mahouts shall ensure that Captive Elephants are fed as per the scientific balanced diet plan prepared by the Expert Committee, a copy of which is attached (**Appendix. I**).
3. Intense overwork and inadequate rest are labeled as conditions for increasing physiological and psychological stress, which predispose these animals to many diseases. These stress conditions cannot be found out through visual examinations. A programme for long term health monitoring with a complete hematological and serum biochemistry analysis is insisted to ascertain the exact health status of the Captive Elephants. Owners / Custodians of all Captive Elephants should ensure that complete hematological and serum biochemistry analysis with following mandatory tests are conducted once in six months (April and October) for each of the Captive Elephant under their custody as part of long term health monitoring and the report shall be obtained from concerned AFVO/FVO in the format in **Appendix II**. It will be the responsibility of Owner/Custodians of Captive Elephants to conduct these tests at their costs.

(a). HB	(b). TLDC	(c). LFT	(d). RFT
(e). Urine analysis	(f). Dung analysis	(g). Testosterone level in blood	(e). Faecal cortisol level
4. Owners / Custodians of Captive Elephants shall also ensure that periodic foot and preferably dental examination are done by a registered Veterinarian at least once in six months.
5. Treatments of Captive Elephants are now being carried out without any support from clinical-pathological tests or expert panel opinions. Modern diagnostics tests were seldom conducted to assess the condition of the animal. These were the major constraints in the systematic treatment. Animal's refractory to treatment even after 5 days of treatment should be referred to the opinion of Panel of Expert Veterinarians for ensuring qualified veterinary expertise in treatment and health care of elephants. It shall be the duty of owners / custodians of captive elephants to inform concerned ACF (SF) immediately about the details of animals refractory to treatments for ensuring service of Panel of Expert Veterinarians.
6. Major physical injuries to Captive Elephants are happening during Musth period due to unscientific tethering practices which hampers the natural movement and induce stress and predispose them to many disease conditions. Therefore, the owners and

custodians of captive elephants must take action for construction of such Musth enclosures as a long term strategy for elephant friendly Musth management.

III. FVO/AFVO

1. It is found that effectiveness of treatment is low due to the poor nutrition level of the animal in most cases. Therefore, veterinarians treating the Elephants in disease conditions may recommend special diet whenever necessary for ensuring better effectiveness of treatments given to elephants. These recommendation should be pasted on the feeding register and its compliance shall be monitored.
2. AFVOs/FVO should render necessary help to owners and facilitate for conducting of the hematological and serum biochemistry analysis tests prescribed for long term health monitoring and results should be made available in the format enclosed **(Appendix. II)**.
3. The FVO and all AFVOs conducting post-mortem of Captive Elephants shall strictly follow the detailed post-mortem protocol attached and shall inform the same to CFVO and post-mortem report should include supportive histological, toxicological and microbiological test results. Report preparation and submission must be done by the Veterinary officers in the Forest Department. Details such as pathological lesions, external injuries, Musth condition and treatments given should be included in the post-mortem report.


Principal Chief Conservator of Forests (WL) &
Chief Wildlife Warden, Kerala.

Appendix

- I. Model Feeding Schedule for Captive Elephants
- II. Format for Report of periodical health evaluation of Captive Elephants
- III. Format of Postmortem report and post-mortem protocol for Captive Elephants

To

The PCCF & HoFF
All PCCFs / APCCFs
All CCFs/CFs (Territorial & Wildlife Circles)
All DFOs/WLWs/ACFs (SF) for information & necessary action
CFVO/ FVO/ AFVOs

✓ Copy to: The APCCF (FMIS) for uploading the Circular on official Web site of the Department.

Model Feeding Schedule for Captive Elephants in Kerala

Sl. No.	Item	Calves Up to 01 year	Juvenile 01 – 05 yrs	Sub-adult 05 – 15 Yrs	Adult >15 Yrs	Remarks
1	Rice	1 Kg.	1 Kg.	2 Kg.	3 Kg.	-
2	Wheat	0.5 Kg.	0.5 Kg.	1 Kg.	4 Kg.	-
3	Ragi	1 Kg.	1 Kg.	2 Kg.	3 Kg.	-
4	Horse gram	0.5 Kg.	0.5 Kg.	0.5 Kg.	0.5 Kg.	-
5	Green gram / Bengal gram	-	0.5 Kg.	0.5 Kg.	0.5 Kg.	-
6	Common salt	-	100 gm.	100 gm.	100 gm.	-
7	Turmeric powder	-	10 gm.	10 gm.	10 gm.	-
8	Jaggary	-	150 gm.	150 gm.	150 gm.	-
9	Mineral mixture	-	150 gm.	150 gm.	150 gm.	-
10	Green fodder	Below 1.5m Ht Not less than 100 kg.	1.5 to 1.8 m Ht Not less than 150 kg.	1.81 to 2.25 m Ht Not less than 200 kg.	Above 2.25 m Ht Not less than 250 kg. or 5% of its body weight	Green fodder includes a mixture of Fodder grass, Green (Country) grass and tree fodder
11	Lactogen	700 gm.	-	-	-	This can be reduced to half after 1½ years.
12	Glucose	250 gm.	-	-	-	-
13	Karipatti	100 gm.	-	-	-	-
14	Protein B	100 gm.	-	-	-	Not required after 1 year.
15	Water melon	-	-	-	-	Required only during hot months
16	Tender Coconut	-	-	-	-	Required for very young calves at the time of rescue.
17	Sugarcane	-	-	-	-	Required only as a reward during Kumki training
Feeding regime	Concentrate	Divide and feed every hour	6 times	2 to 3 times	2 times	Divide the per day total quantity as per the feeding timings prescribed
	Fodder	Continues	4 to 5 times	4 to 5 times	3 to 4 times	

KFDQ/26574/2018/BDC2-CIRCULAR No. 8/2018

Appendix II

Periodic Health Evaluation of Captive Elephant

Certified that I/we have this day the (in words) examined at the request of Sri. the Owner / Custodian of the elephant with the description given hereunder and my / our observations and comments are as follows..

- 1. Name of Elephant :
- 2. Sex :
- 3. Age :
- 4. Name and Address of Owner/Custodian :

- 5. Name of the Mahout :
- 6. Ownership Certificate number and date :
- 7. Microchip Certificate number and date :
- 8. Elephant Data Book number and date :
- 9. Insurance Policy details

Details	Elephant	Mahout	Cavady	Third party
Policy No.				
Sum Assured				
Valid till				

- 10. Registers maintenance details :

Sl. No.	Record	Date of last entry	Remarks
1	Vaccination Record		
2	Disease and treatment record		
3	Movement Register		
4	Feeding Register		
5	Work Register		

- 11. Tusks (Measurement) :

Details (in Cm.)	Outer Length	Mid Circumference	Date of last trimming	Remarks
Right				
Left				

12. Temperament of Animal
(Docile, Controllable, Aggressive etc.) :

13. Date of last health check-up of the
Mahout with remarks if any :

14. Health parameters – condition of :

Trunk	Trunk	Oral Cavity	Eyes
Temporal Glands			

Limps	Nails	Feet/Pad	Wounds/Chain	Dung/Urine
-------	-------	----------	--------------	------------

15. Other relevant observations if any :

16. Result of complete blood examination :

(Test to be done as part of monitoring long term health parameters for elephants are CDC (HB, TC/DC, LFT, RFT, Urine analysis, Dung analysis, Testosterone level in blood, Faecal Costisol etc.)

17. Specific abnormalities if any :

18. General observations :

19. Directions to Mahouts / Owner :

20. Remarks if any :

Place:
Date :

Signature of Government Veterinary Doctor
Name and Registration No.

Address:

(Note : Give notes in separate paper if required)

KFDQ/26574/2018/BDC2-CIRCULAR No. 8/2018

Appendix III

Post Mortem Report of Captive Elephant

Date :

A. Autopsy number :

B. Description of the animal:-

Microchip Certificate No. :

Ownership Certificate No. :

Data Book :

Sex : Age : Colour : Height :

Marks of identification

Date and time of death

Address of Owner / Custodian

C. Clinical Abstract :

D. Clinical Diagnosis :

1. Blood smear examination :

2. General findings :

(Rigor mortis, condition of carcass, natural orifices, superficial tumours, wounds, etc.)

3. Skin, subcutis, muscle :

4. Peritoneum and Thorax :

(Position of organs, serous membranes, of fusions, lymph nodes)

5. Pericardium and Heart :

(Appearance, colour, size, chambers valves, main vessels, serous coverings etc.)

6. Respiratory System :

(Gross appearance, weight, section, presence of parasites, lymph nodes, larynx, trachea, bronchi, lungs and pleura)

7. Diaphragm :

8. Thyroid and parathyroid :

9. Liver :

(Colour, size, capsule, substance, bile ducts, vessel, lymph nodes, presence of parasites.)

10. Gall Bladder :

11. Spleen :

- 12. Kidney, Ureter and bladder : (Appearance, capsule, cortex, pelvis, etc.)
- 13. Adrenals :
- 14. Mouth, tongue, pharynx, oesophagus :
(Appearance, foreign bodies, parasites, examine lymph nodes of head)
- 15. Thymus :
- 16. Stomachs :
- 17. Intestines and pancreas :
(Mesenteric vessels, lumen, lining, serous coats, contents, lymph nodes, parasites, etc.)
- 18. Reproductive system and mammary glands :
- 19. Brain and cord :
- 20. Report of examination of heart, blood, brain and other impression smears:
- 21. Summary of report :
- 22. Histopathological findings :
- 23. Post-mortem diagnosis and remarks :

Place :
Date :

Signature
Designation

POST MORTEM REPORT FOR VETRO-LEGAL CASES

Post-mortem Examination on the body of the Captive Elephant belonging to
 Or sent by with letter No.
 dated in charge of P.C. No. received at
 A.M./P.M on (date) at
 conducted by Veterinary (the place of death)
 of at (Veterinary Hospital /
 Dispensary) on

POST MORTEM EXAMINATION

A. Description of the animal:-
 Name or Number :

Sex : Age : Colour : Height :

Marks of identification

B. Precise of the case:-

1. Date and time of death
2. Whether death was sudden or unexpected
3. Symptoms just before death
4. Important information obtainable regarding death
5. Summary of case presented by police
6. Articles which were sent with the carcass

C. External Examinations :-

1. Condition of the carcass
2. Position of the carcass if at the spot of death
3. Rigor mortis
4. Placidity
5. P.M. discolouration
6. Marks of blood
7. Eyelids
8. Eyes
9. Nostrils
10. Muzzle and lips
11. Mouth, gum, tongue etc.
12. Ears
13. Chest
14. Umbilicus (important in new-borne)
15. Mammary glands
16. External genitals
17. Anus
18. Limbs
19. Purification or decomposition
20. Injuries

(Veterinary Officer's opinion as to probable cause and nature of production of injuries – also injuries should be verified by dissection whether they are ante or post-mortem.)

D. Internal Examination :-

1. The Abdomen

- Fat : Colour :
- Muscles
- Extravasations
- Peritoneum
- Level of diaphragm
- Position of organs in situ
- Fluid – its character, colour and quantity
- 2. The Udder – Quarters and milk sinuses
- 3. The Intestines (referring to its different parts)
 - Outer surface
 - Contents and parasites
 - Mucous membranes
 - Ileocaecal valve
 - Rectum
 - Wound or Rupture
- 4. The Stomach (in ruminants in the order of compartments)
 - Condition
 - Outer surface
 - Contents and parasites
 - Mucous membranes
 - Wound or Rupture
- 5. The Liver
 - Colour, surface and consistency
 - Weight and size
 - Section
 - Capsule
 - Gall bladder and bile duct
 - Wound or Rupture
- 6. The Pancreas
- 7. The Spleen (First examined in case of sudden death and suspected for anthrax)
 - Colour, weight and consistency

- Capsule
- Section and colour pulp
- 8. The Omentum and mesenteries
 - Condition
 - Glands
 - Effusion
- 9. The Kidneys Right Left
 - Surface and size
 - Weight
 - *Colour and consistency*
 - Capsule
 - Condition of different layers on medial section
- 10. The suprarenals
- 11. The bladder
 - Outer surface
 - Contents
 - Mucous membranes
 - Wound or Rupture
 - Prostrate
- 12. The Uterus and Ovaries
 - Condition
 - Size
 - Wound or Rupture
- 13. The Thorax
 - Pleura
 - Pericardium
 - Position or organs, in situ
 - Fluid, character and quantity
- 14. The Heart
 - Condition
 - Weight

- The Auricle
 - The Ventricle
 - Valves and endocardium
 - Blood vessels
 - Wounds or Rupture
15. Lungs
- Condition
 - Colour and Weight
 - Consistency
 - Section
 - Wound or Rupture
16. Neck and Head
- Trachea
 - Larynx
 - Pharynx
 - Oesophagus
 - Sub-maxillary glands
 - Sinuses
 - Septum nasi
17. Brain
- Membrane
 - Ventricles
 - Substance
 - Clots
 - Weight
18. Spine and Spinal Cord
- Bones Membranes Cord Clots
 - Nerve roots
19. Any special features or abnormalities
20. Viscera forwarded for chemical examination
- Stomach contents

- Intestinal contents
- Spleen
- Liver and Kidney
- Sample of spirit used

Opinion as to the cause of death
(when definite, how arrived at or reasons for it should be mentioned).

Post-mortem commenced at am/pm ended at am/pm

Station :
Date :

Signature :
Designation :

1. It should be filled in as the post-mortem examination is proceeded with and no addition should be made to it later.
2. The post-mortem notes should be written, legibly and when there is not enough space under a particular heading it should be entered on a separate flip of paper and attached firmly against the heading.
3. Copy of post-mortem examination should be sent to the controlling officer within 48 Hours after conducting post-mortem examination