

**BEFORE THE HON'BLE HIGH COURT OF KERALA,
ERNAKULAM**

W.P. (C) No. of 13275/2019 (S)

M.N. Jayachandran

... Petitioner

Vs.

State of Kerala &ors.

... Respondents

REPORT FILED BY THE AMICUS CURIAE

1. This report is filed in due compliance of the Order dtd. 07.05.2019 of this Hon'ble Court in the above WP (C).
2. Assistance of Dr. P.S. Easa, former Director of the Kerala Forest Research Institute (KFRI) appointed by this Hon'ble Court was duly sought and the expert report provided by Dr. P.S. Easa is produced as Annexure to the Amicus Curiae briefs directed by this Hon'ble Court.
3. Petitioner has in the WP sought the following reliefs:
 - (i) *Call for the records leading to Ext. P6 and quash the same by issuance of a writ of certiorari or any other appropriate writ, direction or order;*
 - (ii) *To issue a writ of mandamus or any other appropriate writ, direction or order commanding the 2nd respondent to invoke his jurisdiction under the Wildlife (Protection) Act, 1972 and prosecute persons...*

- the Act and the Rules as also to take steps to cancel the ownership certificates of the captive elephants found injured, sick weak and used in festivals or other functions;*
- (iii) To declare that members of the District Committee would become personally liable, along with the owners of the captive elephants to compensate the public for damages to their life and property, in cases where damage was done by the captive elephant to which clearance was given by them by issuance of a writ, order or direction;*
 - (iv) To issue a writ, direction or order commanding the District Committees to strictly adhere to the Rules and prohibit weak, sick and injured captive elephants from being used in temples festivals and other functions to safeguard the life and property of the general public;*
 - (v) To issue such other writ, direction or order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case and to award cost;*

4. Relief (i) in the WP specifically relates to the issuance of Ext. P6 by the 3rd respondent (Principal Chief Conservator of Forests & Head of Forest Forces) which directs to keep in abeyance Ext. P5 issued earlier by the 2nd respondent (Chief Wild Life Warden). Petitioner assails Ext. P6 *inter alia* on the ground that it is arbitrary, unreasonable and ultra vires the

5. Relief's (ii) to (v) in the WP are of wider scope and relates to issues concerning the implementation and working of the legal norms relating to the captive elephants in the state of Kerala. While prayer (ii) seeks to compel the 2nd respondent who has jurisdiction under the Wildlife Protection Act, 1972 to effectively exercise his jurisdiction, prayers (iii) and (iv) relates to the District Committee constituted under the Captive Elephants Management and Maintenance Rules, 2012 and seeks to command them to adhere to the Rules and to make its members personally liable for the consequences of the clearance issued by them. Prayer (v) seeks to hold the veterinary doctors in Government service liable for dereliction of duty in issuing certificates of fitness to captive elephants otherwise than in accordance with law. Relief's (ii) to (v) thus by its very nature justifies an appreciation of the working of the law relating to captive elephants in the state of Kerala.
6. The principal statutes and Rules having direct bearing on the welfare of captive elephants in Kerala are the following:
1. Wildlife (Protection) Act, 1972.
 2. Prevention of Cruelty to Animals Act, 1960.
 3. The Declaration of Wildlife Stock Rules, 2003
 4. Kerala Captive Elephants (Management and Maintenance) Rules, 2012.
 5. Performing Animals (Registration) Rules, 2001.

Further, Circulars and Orders issued by various statutory authorities as well as binding precedents rendered by the Hon'ble Supreme Court and this Hon'ble Court completes the legal norms governing the maintenance, management and welfare of Captive Elephants in Kerala.

WILDLIFE (PROTECTION) ACT, 1972 : NORMS RELEVANT TO CAPTIVE ELEPHANTS.

7. Indian Elephant (*Elephas Maximus*) is listed at Serial No. 12-B in Schedule 1 of the Wild Life (Protection) Act, 1972. Sec. 2 (37) of the Act, defines a wild animal to mean *any animal specified in Schedules I to IV and found wild in nature*. Captive elephant though included in Schedule I, is not an animal found wild in nature. Sec.2 (5) of the Act, defines a 'captive animal' to mean any animal, specified in Schedule I, Schedule II, Schedule III or Schedule IV, which is captured or kept in captivity. Thus captive elephant could fall within the definition of 'captive animal' in the Wild Life (Protection) Act, 1972. The Hon'ble Supreme Court has in Chief Forest Conservator (Wildlife) v. Nisar Khan AIR 2003 SC 1867 considered the definition of 'Captive Animal' which is different from livestock as well as domestic animals. The criteria being that the animal, other than vermin in captivity, should be in any of the schedule of the Wild Life (Protection) Act, 1972. It follows that

the elephant is not a 'domestic animal'. It is a captive animal

and never loses its character as a 'wild animal'. It would be relevant to point out that elephant has been included under the definition of "Cattle" in Sec. 2 (a) of the Kerala Forest Act, 1961.

8. Chapter V of the Wild Life (Protection) Act, 1972 dealing with Trade or Commerce in Wild Animals, Animal Articles and Trophies assumes relevance for captive elephants. **Sec. 40(1)** thereof *inter alia* stipulates that every person having at the commencement of the Act the control, custody or possession of any captive animal specified in Schedule I shall within thirty days from the commencement of the Act declare to the Chief Wild Life Warden or authorized officer the number description of the animal under his control, custody or possession and place where such animal is kept. **Sec. 40 (2)** *inter alia* stipulates that no person shall after the commencement of the Act acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer. Though by way of an amendment in the year 2003, sub sections (2 A) and (2 B) were included in Sec.40 whereby, no person other than a person having a certificate of ownership shall acquire, receive, keep in his control, custody or possession any captive animal, except by way of inheritance, the proviso to the said subsections excludes 'live elephant' from its purview. **Sec. 40 (4)** *inter alia* empowers the State Government to, by notification,

require any person to declare to the Chief Wild Life Warden or authorized officer, any animal specified in Schedule I in his control, custody or possession in such form, in such manner and within such time as may be prescribed. The 2003 amendment to the Act also added Sec. 40 A which envisaged an immunity in certain cases and empowered the Central Government to require by notification that any person who has any captive animal in his control, custody or possession in respect of which no declaration had been made to make the same in such form, in such manner and within such time as may be prescribed.

9. Sec. 42 of the Act stipulates that Chief Wild Life Warden may for the purpose of section 40 issue a certificate of ownership in such form as may be prescribed to any person who, in his opinion, is in lawful possession of any wild animal. . It would be relevant to note here that the power to issue a certificate of ownership is vested by this section exclusively on the **Chief Wild Life Warden** and no power of delegation is granted in this respect. **Proviso to the Sec. 42** (inserted by the 2003 amendment to the Act) states that before issuing the certificate of ownership in respect of any captive animal, the Chief Wildlife Warden shall ensure the applicant has adequate facilities for housing, maintenance and upkeep of the animal.

10. Sec. 43 of the Act was substituted by the amendment of 2003, and it now *inter alia* stipulates that no person having in his

possession a captive animal in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature such animal. Thus by virtue of Sec. 43, all transfers of captive elephants by way of sale or offer for sale or by any other mode of consideration of commercial nature is prohibited. There could be transfers falling within other categories and such transfers are not prohibited under Sec. 43. It is further mandated under Sec. 43 (2) *inter alia* that where a person transfers or transports from the State in which he resides to another state or acquires by transfer from outside state, any captive animal in respect of which he has a certificate of ownership, he shall within thirty days of transfer or transport report the transfer or transport to the Chief Wild Life Warden or authorized officer within whose jurisdiction the transfer or transport is effected. (Inter play of sec. 40 (2) and Sec. 43 (2) of the Act was considered by this Hon'ble Court in WA No.1650, 1961, 1981 and 1991 of 2014 & WP (C) No. 34517 of 2014 & W.P. (C) No. 17841 of 2014)

11. Sec. 44 of the Act *inter alia* mandates that a '**dealer in captive animals**' should obtain a license as granted under sub section 4 of Sec. 44 and that he should within 15 days of the commencement of the Act declare to the Chief Wild Life Warden the captive animal. 'Dealer' has been defined in Sec. 2 (11) to include a person who undertakes business in any single transaction.

12. Sec. 51 of the Act stipulates penalties for violation of its provisions and the first proviso to Sec. 51 *inter alia* provides that where the offence committed is in relation to any animal specified in Schedule I, 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. Sec. 57 provides for the presumption to be made in certain cases and *inter alia* provides that where in any prosecution for offence against the Act, it is established that a person is in possession, custody or control of any captive animal, it shall be presumed that such person is in unlawful possession custody or control of such captive animal until contrary is proved and the burden of proving it is on the accused.

13. The **Declaration of Wild Stock Rules, 2003** evolved under the Wildlife (Protection) Act, 1972 *inter alia* provides for the procedure and details of issuance of certificate of ownership to an applicant by the Chief Wildlife Warden under Sec. 42 of the Act, who in his opinion is in possession of a **wild animal**. The said Rules of 2003, provides a Form of the application to be submitted which has to be mandatorily complied with. In the said Form, the following undertaking is *inter alia* seen mentioned "I further declare that I have read and understood the provisions

above shall not be transferred to anyone by any mode except by way of inheritance." (emphasis supplied)

SPECIFIC VIOLATION OF PROVISIONS OF THE WILDLIFE (PROTECTION) ACT, 1972 RELATING TO CAPTIVE ELEPHANTS.

Rampant Hire, Lease and Sale of Captive Elephants Violating Sec.43:

14. Sec. 43 of the Wildlife (Protection) Act, 1972 prohibits all transfers of elephants by way of sale or offer for sale or by any other mode of consideration of commercial nature. Thus the practice of leasing out captive elephants for a fixed sum commonly known as **ekkam** elaborated by the expert appointed by this Hon'ble Court in his report violates the prohibition under Sec. 43 and is fit to be banned across the state of Kerala. Persons found violating Sec. 43 with respect to captive elephants ought to be tried in accordance with law and if found guilty should be visited with the penalties as envisaged under the Act.

15. Though Sec. 40 (4) *inter alia* empowers the State Government to by notification require any person to declare to the Chief Wildlife Warden or authorized officer, any animal specified in Schedule I in his control, custody or possession in such form, in such manner and within such time as may be prescribed and notwithstanding the norms evolved by the State Government in the said respect, the Hon'ble Supreme Court in its Interim Order dtd.18.08.2015 had to

direct as follows: "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."

16. First portion of prayer (ii) in the WP filed by the petitioner seeking issuance of a "writ of mandamus or any other appropriate writ, direction or order commanding the 2nd respondent to invoke his jurisdiction under the Wildlife (Protection) Act, 1972 and prosecute persons who violated the provisions of the Act and the Rules" assumes relevance in this context.

17. The undertaking insisted from every owner as per the Declaration of Wild Stock Rules, 2003 not to transfer the animal, the ownership certificate of which is applied for and obtained, to anyone by any mode except by way of inheritance should have acted as a tool to prevent leasing and other such forms of transfer of the captive elephants said to be prevalent in Kerala.

in capacity or confinement, whether permanent or temporary, or which is subjected to any appliance of contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is pinioned or which is or appears to be maimed. Sec. 2 (d) defines a 'domestic animal' as any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose or use of man or which, although it neither has been nor is intended to be so tamed, is or has become in fact wholly or partly tamed.

19. Captive elephant is a 'captive animal' falling within the purview of Prevention of Cruelty to Animals Act, 1960. Chapter III of the Act deals with cruelty to animals and Sec. 11 thereof, provides and enumerated list of cruelties which if committed to any animal by any person including owner, shall be punishable with fine and in case of second or subsequent offence within three years of previous offence, with both fine and/or imprisonment.

20. It is relevant to point out here that the Kerala Captive Elephant (Management and Maintenance) Rules, 2003 in Rule 12 had an enumerated list of cruelties, which are similar to Sec.11 of the Prevention of Cruelty to Animals Act, 1960. However, the said section is seen deleted in its entirety in the Kerala Captive Elephant (Management and Maintenance) Rules, 2012. The Tamil Nadu Captive Elephant (Management and Maintenance) Rules, 2011 has

a similar enumerated list of acts which would tantamount to cruelty to captive elephants.

21. Chapter V of the Prevention of Cruelty to Animals Act, 1960 . . . deals with Performing Animals and it has been a moot point as to whether captive elephant could be termed as a '*Performing Animal*' within the sweep of the said chapter in the Act. Since some captive elephants in the state of Kerala are being used for entertainment safari's in tourist locations like Thekkadi and Munnar, the question whether the said elephants are being "**exhibit**" as envisaged in Sec. 21 of the Act assumes importance. Sec. 21 *inter alia* states that '**exhibit**' means exhibit or any entertainment to which Public are admitted through sale of tickets. The term 'train' means train for the purpose of any such exhibition. Sec. 22 of the Act stipulates that no person shall exhibit or train (i) **any performing animal** unless he is registered in accordance with the provisions of chapter V of the Act and (ii) the central government may by notification in the official gazette, specify an animal which shall not be exhibited or trained as a performing animal. Sec. 26 of the Act provides for the penalties to be visited on persons who contravene the prohibitions under chapter V.

22. **Performing Animals Rules** have been evolved under **Performing Animals Rules, 1973** and the **Performing Animals (Registration) Rules, 2001**, have been evolved under the

Prevention of Cruelty to Animals Act, 1960. The 1973 Rules in Rule 2 (b) defines a performing Animal as *'any animal which is used at, or for the purpose of any entertainment to which the public are admitted through sale of tickets.'* The 2001 Rules in Rule 2 (h) provides that performing animal *"means an animal which is used at or for the purpose of any entertainment including film or an equine event to which the public are admitted."*

23. Captive elephants which are being used in the entertainment safari's in various tourist locations of Kerala to which general public are admitted with sale of tickets for elephant rides could be termed as 'performing animals' since they are being used for the entertainment of the tourists and are only being 'exhibited' but are also specially being 'trained' to carry more than one or even a group of people in a 'howdah' or trekking chair/bench perched on its back.

24. The Government of Kerala Revenue (Devaswom) Dept by its Order dtd. 23.06.2008 bearing No. 35346/Dev 2/08/R.D. *inter alia* directed that All elephants under the Devaswom Board should be registered with Animal Welfare Board of India.

Use of captive elephants in the state of Kerala for tourist

district." He has further reported that "The Animal Welfare Board of India had written to the district collectors of Kerala on March 3, 2016 requesting initiation of action against the illegal elephant safaris. The Divisional Forest Officer, Social Forestry Idukki has also issued stop memos to these citing that these are not registered with the Animal Welfare Board of India under the Performing Animals (Registration) Rules 2001."

26. This Hon'ble Court has in judgment dtd. 09.12.2014 in WP (C) No. 10424/ of 2014 Ordered that elephant rides without Registration is illegal.

27. The Hon'ble High Court of Uttarakhand had in the case of *Himalayan Yuva Gramin Vikas Sanstha v. State of Uttarakhand* (Writ Petition (PIL) No. 6 of 2012) had issued a direction banning commercial use of elephants in the entire State of Uttarakhand until further orders, including joyrides /rides by owners of resorts. The Hon'ble Division Bench had also directed the Chief Wildlife Warden, through the DFOs, to take over possession of elephants from their owners, by issuing them proper receipt for their treatment, medical examination and proper upkeep, within 24 hours.

28. Notwithstanding the judgment of this Hon'ble Court, if captive elephants are being used for elephant safaris without registration, stringent action has to be directed to be initiated against the

violators and also against officials who are negligent and lackadaisical in implementing the law.

29. It would be relevant to point out that the Hon'ble Supreme Court has in the interim Order dtd. 18.08.2015 in WP (Civil) No. 743/2014 produced as Exhibit P1 mentioned in page 5 the contention that unless an animal is performing, it need not be registered under the 1960 Act. Hon'ble Supreme Court has in the said Order observed that *"As far as the registration with the Animal Welfare Board of India is concerned, the said facts shall be addressed at a later date."*

SPECIFIC VIOLATION OF PROVISIONS OF THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960.

30. The deletion from the 2012 Rules of the enumerated list of acts that would tantamount to cruelty to captive elephants has had a detrimental impact on the welfare of the captive elephants in the State. By such deletion, Officers entrusted with the task of ensuring compliance of the Rules, have now to look elsewhere for ascertaining whether a specific act would amount to cruelty or not. Though the enumerated list of cruelties under sec. 11 of the Prevention of Cruelty to Animals Act, 1960 could still be attracted and applied to captive elephants, lack of certainty regarding the applicability of the Act to captive elephants have effectively rendered the Sec.11 otiose with respect to captive elephants in Kerala. A legal

clarification that Sec. 11 of the Prevention of Cruelty to Animals Act, 1960 applies with equal force to the captive elephants would go a long way in ensuring the welfare of the captive elephants in the state of Kerala.

KERALA CAPTIVE ELEPHANT (MANAGEMENT AND MAINTENANCE) RULES, 2012.

31. Rules concerning management and maintenance of captive elephants in Kerala were first evolved in the year 2003. The said Rules have been subsequently superseded by the Rules evolved in the year 2012. A draft notification has been issued by the Kerala Forest and Wild Life Dept with respect to the Kerala Captive Elephants (Management and Maintenance) Rules, 2018 which is to override the 2012 Rules.

Relevant mandates of the 2012 Rules:

32. The 2012 Rules define elephant to include any elephant captured or kept or bred in captivity. The term veterinary doctor has been defined to include a registered veterinary practitioner as well as an experienced ayurvedic elephant expert. The rules envisage housing of elephants in stables (tethering places) of specified dimensions which is clean and in a healthy environment with sufficient shade during rest periods. The rules mandate elaborate provisions for the up keep and veterinary care of the elephant and *inter alia* stipulate routine examination by prescribed

veterinary doctor. The format in which the health certificate is to be issued by the veterinary doctor has been prescribed as Appendix I. A fitness certificate issued by the veterinary doctor in the form prescribed in Appendix II is mandated before the captive elephant is transported from one place to another. Cutting and shaping of tusks is to be carried out after obtaining permission from the Chief Wildlife Warden by a competent person in the presence of an officer specified in the Rules. The Chief Wildlife Warden can issue a certificate to the owner for keeping the cut tusks in accordance with the provisions of the Act. The Rules stipulate the feeding pattern and in Rule 6 (4) in addition to the Owner of the elephant stipulates a duty on the **contractor or hirer** too with respect to providing sufficient potable drinking water to the elephant. Work Norms including the scale of load for the elephant has been stipulated in Rule 7 of the 2012 Rules. It has been mandated in Rule 7 (9) that elephant owners shall maintain captive elephant data book as prescribed by the Chief Wildlife Warden. Duties and responsibilities of the owners have been elaborated in Rule 8. As regards an elephant that has gone amok and has caused death of human beings, Rule 8 (4) mandates that such elephant shall be banned from taking part in temple festivals for consecutive fifteen days. For such an elephant to take part again in temple festivals examination and certification by a three member team of specified veterinary doctors that the animal is physically and psychologically fit has

been mandated. Transport norms for elephants have been laid down in Rule 9 which for transportation from Kerala to any other state mandates and application for permission from the owner to the authorized officer, fifteen days prior to the actual date of transport. No objection certificate from the Chief Wildlife Warden of the state to which the elephant is transported has to be produced for issuing transport permit as well as a valid fitness certificate in the prescribed form from a veterinary doctor to the effect that the elephant is fit to travel by road or rail is to be obtained. It has been stipulated that no elephant shall be made to walk for more than 3 hours at a stretch and for not more than 30 kilometers a day. For transportation for more than 50 kilometers a vehicle is to be used and the elephant should not be transported at a stretch for not more than 6 hours. Sufficient feeding and rest for at least 6 hours should be given to the elephant before resuming the transportation. It has been specified in Rule 9 (23) that inter-state transport permit shall be issued for a specified time and specified place and the owner shall bring back the elephant within the stipulated time. Under Rule 10, a District Committee has been constituted to deal with cases of cruelty meted out to captive elephants and the said District Committee has been entrusted with the task of ensuring that the festival committees and person organizing functions adhere to the specified mandates which *inter alia* include prohibition in using for festivals elephants which are sick, injured, weak or

pregnant, prohibition in making elephants walk on tarred roads during hot sun for long duration without rest, stand in scorching sun for long durations or bursting crackers near elephants for ceremonial purposes etc. Under Rule 10 (4) (xii) it has been mandated that the nearest Forest Range Officer/ Police officers shall be informed about the proposed festival/ celebration at least 72 hours in advance. That sufficient rest has to be given to the elephants which are engaged for "para procession" and that the para procession should be restricted to 6. A.m. to 11.a.m. and 4.p.m. to 8 p.m. only has been specified in Rule 10 (4) (xvi). The retirement of the elephant has been dealt with in Rule 11 and it stipulates that an elephant shall normally be allowed to retire from its work on attaining an age of 65 years. However, the Rules proceed to further state that healthy elephants above 65 years of age shall be allowed to be put to light work under proper health certificate issued by the Veterinary Doctor.

33. The Government of Kerala Revenue (Devaswom) Dept had by its Order dtd. 23.06.2008 bearing No. 35346/Dev 2/08/R.D. *inter alia* directed that *Details of the parading elephants should be informed before the Forest Range and Station House Officers at least 72 hours before.* It has also been directed that An elephant should not be made to walk more than 20 kilometres a day and that an elephant should not be paraded continuously for more than 3 hours. It has also been directed therein that an elephant should not be made to

travel for more than 6 hours continuously and that after six hours of transport, the elephant should be given six hours rest.

LEGAL LACUNAE AND ENFORCEMENT PIT FALLS:

34. **Arresting the High mortality rate of captive elephants:** The expert appointed by this Hon'ble Court has in his report annexed hereto highlighted the mortality rate of the captive elephants in Kerala. He has stated that the current number of captive elephants in Kerala could be 507 and that of these 410 are males and 97 are females. He has also reported that there are 43 elephants used for safari in nine places in Idukki district. According to the expert, the number of elephants in captivity has come down drastically because of mortality. There had been a recorded 17 deaths in 2017, 34 deaths in 2018 and 14 deaths in 2019 till the date of his report. The expert has also reported that a Committee chaired by an Addl. Principal Chief Conservator of Forests and three Veterinarians as Members which was entrusted by the Forest Department to analyze the details of deaths of elephants and propose corrective measures have after examining the postmortem and other records of selected twenty elephants concluded that, *"prolonged malnutrition, faulty feeding practices, intense overwork and inadequate rest results in physiological and psychological stress to the animals, which predispose them to many diseases leading to these deaths"*.

35. The 2012 Rules as it stands now silent regarding the nature of food to be fed to the captive elephants. Death due to impaction has been pointed out by the expert as a major cause for high mortality rate. It has been pointed out in the report of the expert that 'natural food of elephants are mostly different varieties of grass and hence traditional method of giving only palm leaves must be avoided and they must be fed diverse foods.' Similarly, lack of exercise is another aspect pointed out as leading to health problems in at least some of the captive elephants. Rules require updating to meet the above said felt necessities of times.

36. Rampant misuse and indiscriminate issuance of health and fitness certificates by veterinary doctors flouting the prescribed norms has to be effectively prevented: The prescribed format of the health/fitness certificate must not be permitted to be altered under any circumstances. Protocol to be followed and its adherence should be recorded while physical examination of elephants are undertaken by veterinary doctors. Place and time of examination of the elephant as well as a photograph with time and date should be included in the format. Endorsement that 'treatment register' has been verified and properly maintained by the concerned Veterinary doctor should be included in the format. Registers ought to be maintained by the veterinary doctors who issue the health and fitness certificates. List of elephants issued with health/ fitness certificates must be reported by the issuing

officer to the nominated authority through e-mail every fortnight in a prescribed format. Strict enforcement has to be effected of the norms for maintaining register by the owners, with proper entries on each aspect prescribed.

37. **Need to define the crucial terms used in the Rules** : Clarity should be made in the Rules so as to differentiate 'Blindness's like that of one eye, both eye, partial blindness etc. Words like 'Injured' and 'sick' ought to be defined with clarity so as to prevent the present misuse in issuing health/fitness certificates. The term 'Work' needs to be defined with special attention to the age, fitness and health condition of the elephant. Clarity as to what amounts to 'Light work' need to be made in the Rules.

38. **Prohibiting commercial Hire, Lease and Sale of Captive Elephants:** The expert appointed has in his report pointed out that *"middle men are dealing with elephant owners and they take elephants on lease for a fixed period for a fixed ekkam (rent)".* It is also pointed out by him that *"More often the festival committees are in touch with these middle men for hiring elephants. The advantage, as the festival committees claim, is that in case an elephant is not available for the festival due to unforeseen reasons, the middleman will substitute and the committees need not worry at crucial moments. It is alleged that these middle men are not much bothered about the well-being of the elephant as these are only on lease."* The

expert appointed by this Hon'ble Court has in his report pointed out that *"middle men are dealing with elephant owners and they take elephants on lease for a fixed period for a fixed ekkam (rent)"*.

39. Commercial hiring and leasing of the captive elephants based on 'ekkam' has to be prohibited. Sec. 43 of the Wildlife (Protection) Act, 1972 prohibits all transfers of elephants by way of sale or offer for sale or by any other mode of consideration of commercial nature. Thus the practice of leasing out captive elephants for a fixed sum commonly known as **ekkam** violates the prohibition under Sec. 43 and is fit to be banned across the state of Kerala. Persons found violating Sec. 43 with respect to captive elephants ought to be tried in accordance with law and if found guilty should be visited with the penalties as envisaged under the Act.

40. **Avoiding exploitation of elephants by 'Middle Men'**: The expert has reported about the existence of 'middle men' who profit out of the exploitation of elephants. Expert has reported that *"The middlemen are a group of people who do not figure in any of the Government documents or Rules. They are the people who are dealing with the elephant owners and take elephants on lease for a fixed period for a fixed ekkam (rent). More often the festival committees are in touch with these middle men for hiring elephants. The advantage, as the festival committees claim, is that in case an elephant is not available for the festival due to unforeseen reasons,*

the middleman will substitute and the committees need not worry at crucial moments. It is alleged that these middle men are not much bothered about the well-being of the elephant as these are only on lease."

41. Reference in the 2012 Rules to "Contractor or hirer" paves way for middle men and persons other than owners or lawful custodians to exploit the elephants. Transfer of elephants by any mode with commercial consideration has to be prohibited by specific inclusion of legal provisions in the Rules. So as to weed out 'middle men' all agreements concerning elephants ought to be between elephant owners/custodian named in the data book. Situations where owner slips into the back ground and the middle men deciding on the movement and use of festivals which is now prevalent has to be contained to protect the interests of the captive elephants.

42. Effective Management of 'musth': It has also been reported by the expert that "The Committee observed that most of the major fatal injuries are during musth period because of the unscientific tethering practices preventing natural movement (this may last to two or three months in some cases) causing stress. Musth enclosures are suggested for housing elephants during musth. The unhealthy practices in the management and treatment of elephants have been highlighted in the Report. Lack of qualified veterinary expertise is one

of the major constraints and hence a Captive Elephant Medical Board in each district has been suggested for proper care of sick elephants.

43. In view the above, strict enforcement of Rule 10 (4) (ii) is mandated.

44. **Total revamping existing transportation norms:** As regards the transportation of the elephants, the expert has in his report stated as follows: "The provision in the Captive elephant Management Rules for transportation using trucks was with the good intention of avoiding walking during hot season through the black topped roads. Unfortunately, this was used for moving the elephants from festival to festival thereby denying rest both for the elephants and mahouts. This calls for restrictions in the number of festivals that can be allowed and the interval between festivals."

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~~44.~~ Increase in the number of festivals and decrease in the number of captive elephants have led to pressure and stress on existing elephants. Frequent transportation from one festival venue to another is a cause of great stress and health hazard to captive elephants. Existing safe guards in the 2012 Rules have proved to be very inadequate. Restricting travel within the district wherein the elephant is registered or within two or three adjacent districts ought to be considered. To prevent the rampant misuse of transportation certificates, GPS facility ought to be made mandatory for the vehicle that is used for transportation. Online data base of the travel permissions issued must be maintained which is accessible from

anywhere so as to ascertain the status and physical presence of the elephant at a given point of time. Online data base will facilitate the monitoring the movement of elephants and thus make the enforcement mechanism effective.

46 Retirement of all captive elephants aged above 65 years

from work: It has also been reported by the expert that *Parading of old and weak elephants with injuries, impaired vision, lameness, diseases condition, etc. could lead to problems while parading leading to death of people and even the elephants.* An absolute prohibition of putting to "work", elephants aged above 65 years and its strict enforcement is highly mandated.

47 Unlawful cutting or pruning of tusks: This practice which is rampant as per the expert has to be effectively prevented by incorporating necessary rules. A physical verification and auditing of tusks and their weight have to be undertaken by a carrying out a comprehensive audit of the tusks retained by all entities including private persons and bodies.

48 Enumerated list of acts of cruelties: The list of acts of cruelties to elephants and offences against elephants which were existing in the 2003 Rules and were deleted in the 2012 Rules ought to be re-introduced.

Lack of sufficient staff and enforcement mechanism: The expert has in his report lamented the acute shortage of staff in the social forestry wing of the Forest Dept., which has detrimentally effected the enforcement of the Rules. At least during the festival season, arrangement ought to be in place to depute additional staff from other wings to the social forestry for effective implementation of the norms evolved with respect to captive elephants.

48. As been pointed out in the explanatory note to draft notification of the 2018 Rules, elephants in the wild are free ranging animals spending major part of their day on the move. They possess several biological features like continuous feeding, lack of sweat glands on most part of their body, soft and sensitive feet, annual *musth* (for the male elephants) with reversal of dominance, etc. Any law for managing the elephants under captivity should take note of the biological specificities of elephants so that they achieve their normal life span with minimum stress. Working and implementation of the norms concerning management and maintenance of the 507 captive elephants in the state of Kerala leaves much to be desired in the said respect.

The report submitted by the expert appointed by this Hon'ble Court is annexed hereto.

Dated this the 5th day of September, 2019.


V.M. Syam Kumar
Amicus Curiae