

IN THE HIGH COURT OF JUDICATURE AT BENGALURU
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION WRIT PETITION

NO. OF 2020

In the matter of Articles 21, 48(A), 51 (g) and 226
of the Constitution of India;

AND

The Wildlife (Protection) Act, 1972

AND

Karnataka State Board for Wildlife Rules, 2006

IN THE MATTER OF

1. Project Vruksha Foundation

Through its President

House No. 26/B (2646), 36th 'a' Cross Road

Jayanagar 9th Block

Bangalore- 560069

PETITIONER

VERSUS

1. State Board for Wildlife (SBWL)

Through the Member Secretary

Aranya Bhavan, 2nd Floor,

18th Cross, Malleswaram, Bengaluru-560003

Email: pccfwl@gmail.com

Adv
Sujit

Chij T. S. Kanth

2. State of Karnataka

Through the Additional Chief Secretary (FEE)
Forest, Environment and Ecology Department
Karnataka Government Secretariat,
Room No. 447, 4th Floor, Gate No. 2,
M. S. Building, Bangalore-560001
Email: prsfee@gmail.com

3. National Tiger Conservancy Authority,

Through the Member Secretary,
NTCA HQ (New Delhi)
B-1 Wing, 7th Floor,
Pt. Deendayal Antyodaya Bhawan,
CGO Complex,
New Delhi-110003
Email: ms-ntca@nic.in

4. Standing Committee of the National Board for Wildlife

Through the Member Secretary
6th Floor, Vayu Wing
Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi 110 003
Email: ecy-moef@nic.in

5. Ministry of Environment, Forest and Climate Change (MoEF & CC)

Regional Office (Southern Zone)
Santhosapuram, 1st Block Koramangala
Kendriya Sadan, Kormangla
Bangalore- 560034

RESPONDENTS

Adv
SJB

Shri Dushantha

PUBLIC INTEREST LITIGATION PETITION

A. Particulars of The Cause/ Order Against Which the Petition Is Made:

1. The instant petition raises question of *vires* on the decision of the Chairman of the Karnataka's State Board for Wildlife taken at the 14th meeting held on 20th March, 2020 of the Board to recommend HARP for Wildlife Clearance ignoring objections of the majority Board members. Such decision of the Chairman overturns the final decision of the Board of rejecting HARP for Wildlife Clearance taken in the 13th meeting held on 9th March, 2020 of the Karnataka-SBWL.
2. The 14th meeting held on 9th March, 2020 of the Karnataka-SBWL was convened by the Chairman in violation of the Rule 4 (2) of the Karnataka State Board for Wildlife Rules, 2006 by issuing only a 3 days prior notice and in violation of Rule 9 of the Karnataka State Board for Wildlife Rules, 2006 which only allows the Chairman to invite people with experience in wildlife conservation to any meeting of the Board, but instead the Chairman invited the Chief Secretary of the State, Minister of Industries, Ministry of Labour and previous longest serving Industry Minister of the State.
3. The "Special Invitees" of the Chairman were the only people in the 14th meeting held on 20th March, 2020 to forward pro-project arguments as oppose to unanimous rejection of HARP by the majority Board members. Thereby, the Chairman being influenced by the pro-project arguments forwarded by his "Special Invitees" decided to recommend HARP for Wildlife Clearance, against the decision of the majority members of the Board. Also, Chairman failed to record any reasons for overturning the final decision of the Board taken in the

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13th meeting held on 9th March, 2020.

B. Particulars of the Petitioner:

2. The Petitioner is a Trust registered under the Indian Trust Act 1982 under Registration No. 952/2015-2016 and its members are dedicated in urban conservation and animal activism. The president of the foundation is a member of Bangalore Biodiversity Management Committee.

A copy of the Registration Certificate of the Foundation Trust and a copy of the resolution by the Petitioner Trust dated 20th May, 2020 to approach this Hon'ble Court with the instant PIL is marked and annexed herewith as **Annexure- 2** (colly).

C. Particulars of the Respondent:

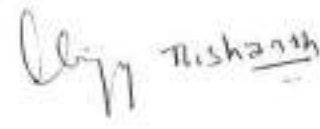
3. **The Respondent No. 1** is the Karnataka State Board for Wildlife (SBWL), which is constituted under Section 6 of the Wildlife (Protection) Act, 1972 inserted by the Wildlife (Protection) Amendment Act, 2003 in order to advise the State Government of the respective State in matters related to wildlife conservation and protection. The Karnataka – SBWL is the Board whose chairman convened the impugned 14th meeting on 20th March, 2020 and decided to recommend/ approve HARP for wildlife clearance by overturning Board's unanimous decision of rejecting Wildlife Clearance to HARP taken on 13th meeting of the Board held on 9th March, 2020;
- Respondent No.2** is the Karnataka Forest Department, Government of Karnataka who is the custodian of Forest and Wildlife in the State of Karnataka and also the Department who processes Wildlife Clearance Proposals and provides recommendation to reject or approve Wildlife Clearance vide Part- III, IV & V of the Wildlife Clearance Proposal;
- Respondent No.3** is the National Tiger Conservation Authority constituted under Section 38 L of the Wildlife (Protection) Act, 1972, inserted by the

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Wildlife (Protection) Amendment Act, 2006 to perform such function as mentioned under Section 38-O of the Wildlife (Protection) Act, 1972, especially to assess and evaluate various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as mining, industry and other projects within the tiger reserve and to ensure that tiger reserves and areas linking one protected areas with another protected area or tiger reserve are not diverted for ecologically unsustainable uses; **Respondent No. 4** is the Standing Committee of National Board for Wildlife constituted under Section 5-B of the Wildlife (Protection) Act, 1972 for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board; **Respondent No. 5** is the Regional Office (Southern Zone) of the Ministry of Environment, Forest and Climate Change (MoEF & CC) who is the nodal office for processing Forest and Wildlife Diversion Proposals in the Southern Zone of India.

D. Declaration and undertaking of the Petitioner: -

- (i) The Petitioner state and submit that the present Petition is being filed in public interest and the Petitioner have no personal interest in the matter.
- (ii) That the entire litigation costs, including the advocate's fee and other charges are being borne by the Petitioner.
- (iii) That a thorough research has been conducted in the matter based on which the grounds are raised in the petition.
- (iv) That to the best of the knowledge of the Petitioner and research done by them that the issues raised in this petition were not dealt with or decided in any other petition and that a similar or identical petition was not filed earlier by them.
- (v) That the Petitioner have understood that in the course of hearing of this

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petition the court may require any security to be furnished towards costs or any charges and the Petitioner shall comply with such requirements.

- (vi) The Petitioner state and submit that there is/was no litigation or case filed or pending against the Petitioner in any civil, criminal, revenue court or any other court in respect of the issues raised in the petition or in respect of the property in respect of which the petition is filed.

E. Jurisdiction:

The petitioner have invoked the Writ Jurisdiction under the Hon'ble High Court under Article 226 of the Constitution and this Court has jurisdiction to issue a Writ of Mandamus to quash and set aside the proceeding and decision of the 14th meeting of Karnataka State Board for Wildlife (SBWL) held on 20th March, 2020 taken by abuse of discretion by the Chairman of the Karnataka State Board for Wildlife (SBWL) to recommend/Approve the HARP for Wildlife Clearance by over-turning the Board's unanimous decision of rejecting it in the 13th meeting of the Board held on 9th March, 2020. This Hon'ble Court also has the jurisdiction to issue a Writ of Mandamus to upheld the decision of the Board's 13th meeting held 9th March, 2020 as the final decision of the Board.

F. Facts in brief, constituting the cause:

4. The Hubli-Ankola Railway Line Project (herein after "HARP") was conceived in 1998 by the Ministry of Railways. This railway line was primarily planned to serve freight traffic. As per the earlier project documents, the main purpose for proposing a new broad gauge line was primarily for transportation of iron and manganese ore from Bellary - Hospeth region to upcoming two new ports of Tadri (near Ankola) and Karwar on the western coast of Karnataka and also to the existing ports of

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Vasco and Madgaon in Goa. The estimated cost of the project which was then Rs 483.15 crores has been now revised to Rs 3984.637 crores. (based on Cost-Benefit-Analysis submitted along with the Forest Diversion Proposal for HARP)

A copy of the Cost-Benefit-Analysis submitted along with the Forest Diversion Proposal for HARP is herewith marked and annexed as Annexure- 3.

5. The proposed broad-gauge line between Hubballi – Ankola passes through the Western Ghats, which has been declared as a world heritage site by the UNESCO in 2012. The Western Ghats are unique in terms of their geomorphological features and are known for high degree endemism, biological diversity and ecological processes that influence the monsoon. The entire catchment of Western Ghats is known to provide water security to the peninsular India. The proposed alignment passes through the Western Ghats forests and the project region is part of Bedthi Conservation reserve (at Yellapur), close to Dandeli Hornbill Conservation reserve and located in the buffer region of Anshi-Dandeli Tiger Reserve (is about 6.5 km from Anshi-Dandeli Tiger Resrve).
6. The User Agency in September, 1998 applied for forest diversion of 965 ha of forest land falling in Dharwad, Yellapur and Karwar forest division of Dharwad and Uttara Kannada districts of Karnataka for HARP. The Principal Chief Conservator of Forest (PCCF), Karnataka vide letter dated 20th November, 2002 addressed to the Principal Secretary (Forest), Government of Karnataka stated that there appears to be no case or national interest served by constructing Hubli-Ankola rail line. He rejected the project from Forest and Environmental aspect, from railway economic aspect and also from the mining and steel plant aspect.

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7. Overlooking the objection raised by the Principal Chief Conservator of Forest (PCCF), Karnataka PCCF, the State of Karnataka vide letter dated 29th November, 2003 forwarded the forest diversion proposal to the Ministry of Environment and Forest (herein after "MoEF") with their observation that this new railway line will further fragment the forests and expose fresh areas to anthropogenic pressures. He concluded however, those appeared inevitable given the importance of the line for the State.
8. Rule 4 The Forest (Conservation) Rules 1981 mandates that for forest diversion proposal which requires more than 40 ha of forest land, site inspection shall be done by the officers of the Regional Office of MoEF and that the Forest Advisory Committee (FAC) shall examine such proposal along with the site inspection Report of the Regional Office of MoEF.
9. Thus, accordingly the Deputy Conservator of Forest (Central), Regional Office, MoEF, Bengaluru carried out a site inspection of the forest land proposed for diversion for the proposed project and thereafter the Chief Conservator Forest (CCF) (Central), Regional Office, MoEF, Bengaluru vide his letter dated 15th April, 2004 submitted a detailed report to the MoEF and recommended rejection of the proposal based on his site inspection. He stated that there appears no justification for the railway line on the other hand it would be a tragedy on the prime forests of Western Ghats. The areas in the project region would be subjected to soil loss, bio-diversity degradation and it will lead to adverse impact on hydrological system of major rivers and irreversible effect of fragile ecological system of Western Ghats.
10. The Forest Advisory Committee (FAC) in its meeting on 27th May, 2004 considered the said proposal along with site inspection report of the CCF (Central) and also opined that there appears to be no justification for the

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railway line project through the eco fragile area of Western Ghats. Other alternative railway line is already available for transportation of ore. Therefore, the FAC rejected recommendation for the diversion of 965 ha of forest land on account of its adverse impact on the prime forests of Western Ghats because of soil erosion, biodiversity degradation, adverse impact on hydrological system and irreversible effect on fragile ecosystem of Western Ghats. Thereafter, based on the observation made by the Forest Advisory Committee (FAC), the MoEF vide letter dated 10th June, 2004 addressed to the Government of Karnataka rejected the forest diversion proposal on merit.

11. To sum it up, up-to the year 2004, the forest diversion proposal for HARP was rejected by the PCCF, Karnataka in 2002, also by the Regional Office of MoEF in 2004, thereafter, by the Forest Advisory Committee in 2004 which then lead to final rejection by the Ministry of Environment and Forest (MoEF) in 2004.
12. After such rejections, the User Agency revised the forest land required for HARP and applied for a fresh forest diversion proposal for diversion of 720 ha on 23rd June, 2005.
13. In fact in 2006, an application numbered 952/2006 was filed before the Central Empowered Committee (herein after "CEC") of the Hon'ble Supreme Court by Parisara Samrakshana Kendra and Wilderness Club against the diversion for forest land falling in ecologically sensitive western Ghats in the State of Karnataka for laying of the new 168.289 km Hubli-Ankola Broad Gauge Railway line.
14. The User Agency in 2008 further revised the forest land required for the project to 683.62ha and submitted fresh forest proposals to the Karnataka

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Forest Department, which in turn was forwarded to Regional Office of MoEF at Bangalore.

15. While the matter was sub judice before the CEC of the Hon'ble Supreme Court, the Infrastructure Development Department (IDD), Government of Karnataka on 19th February, 2011 engaged the Indian Institute of Science (IISc), Bangalore to undertake the investigations related to biodiversity, Environment Impact Assessment (EIA) and suggest mitigative measures in respect to HARP.
16. Meanwhile, the Hon'ble Supreme Court of India in a series of directions passed in W.P (C) No. 562/ 2009 since May, 2011 regulated mining in an environmentally sustainable manner in Bellary-Hospet Sector and also in Districts of Chitra Durga and Tumkur in the State of Karnataka. The Hon'ble Supreme Court vide its judgment dated 18th April, 2013 has prescribed a ceiling of 25 Million Metric Tons (MMT) for total production of iron ore from all the mining leases in Bellary District and a ceiling of 5 MMT for production of iron ore from all the mining leases in District Chitra Durga and Tumkur together. The Hon'ble Supreme Court has directed that the Iron ore which becomes available should be used for meeting the iron ore requirement of the steel plants and associated industries located in Karnataka and also of those plants located in the adjoining states which have been using the iron ore from the mining leases located in these Districts, Exports, outside the country should be permissible only in respect of the material which the steel plants and associated industries are not willing to purchase or on above the average price realised by the monitoring Committee for the corresponding rates of fines/lumps during the sale of about 25MMT of the existing stock of iron ore. Similarly, the iron ore produced by the beneficiation plants after processing should not be

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permitted to be exported outside the Country. The Steel Plants and associated industries have reportedly placed before the Hon'ble Supreme Court to increase the above said total ceiling of 30MMT on the ground that their total annual requirement of iron ore is much more.

17. The Hon'ble Supreme Court has till date not agreed to increase the above said ceiling of 30 MMT of annual production. During the last four years there has been no export of iron ore from Bellary-Hospet sector. In the above background there is practically of large-scale export of iron ore taking place from Bellary-Hospet area in the near future.

18. The CEC on 18th April 2013 carried out a site investigation of the HARP site and thereafter, conducted meeting with Chief Secretary and other officers of the Government of Karnataka. The IISc gave a presentation too on their mitigation measure study conducted on the HARP region.

19. In 2015, the CEC submitted their report before the Hon'ble Supreme Court and expressed their opinion that the project would cause huge and irreparable damage to the forests, wildlife and biodiversity of the Western Ghats and which would far outweigh the actual tangible benefits of HARP. The report also notes that even reduction of the forest land will make no material difference. The adverse impact of HARP on forests, wildlife habitat and bio-diversity is not likely to remain confined to only the forests area diverted but to a much larger area around the HARP region because of fragmentation of habitat, encroachments, illegal felling, diversion of forest land for housing, infrastructure development and other projects. According to CEC, no amount of mitigative measures would be adequate to contain the severe adverse impact of HARP on the biodiversity rich Western Ghats. The report also highlighted the fact that the Forest Diversion Proposal was previously rejected on merits by the MoEF& CC on ecological and

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environmental consideration and thus, the HARP should not be reviewed or approved.

Thus, CEC advised the Hon'ble Supreme Court to direct the Ministry of Environment and Forest (MoEF & CC) not to re-consider/ approve the proposal for the forest diversion for HARP.

The entire history of the HARP and issues related to forest diversion has been narrated in the instant petition from the Central Empowered Committee's report submitted before the Hon'ble Supreme Court of India in 2015.

A copy of the CEC report submitted before the Hon'ble Supreme Court of India is herewith marked and annexed as Annexure-4.

20. Thereafter, The Hon'ble Supreme Court transferred the case to the Hon'ble National Green Tribunal. The National Green Tribunal without adjudicating on the merits of the case, directed the State Government to submit a fresh Forest Diversion Proposal vide its order dated 10th February, 2016.

A copy of the order dated 10th February, 2016 of the Hon'ble National Green Tribunal directing the State Government to submit fresh Forest diversion proposal is herewith marked and annexed as Annexure-5.

21. Thereafter, The User Agency applied for a fresh Forest Diversion Proposal on 23rd April, 2016 and applied for a Wildlife Clearance proposal on 17th June 2016 in the website of MoEF & CC "PARIVESH" respectively, both proposals were numbered as. FP/KA/RAIL/19023/2016.

A copy of the screenshot of the timeline of the Forest Diversion Proposal and a copy of the screenshot of the timeline of Wildlife Clearance proposal accessed from the website of MoEF & CC is herewith marked and annexed as Annexure-6 (colly).

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22. In 2017, the Regional Office, MoEF & CC, Bangalore while processing the forest diversion proposal for the HARP, realising its location in the Western Ghats biodiversity rich region constituted a committee for critical appraisal of the project area. The Committee after thorough field appraisal submitted their report. The report brings on record the need for conducting an EIA as the number of trees to be felled are very high, the fact that the project area lies between Kali and Gangavalli (Bedthi) river which supports the existing and spill over wildlife population of Dandeli Wildlife Sanctuary and Kali Tiger Reserve. The critical points raised by the committee were referred to the State. The State in their reply did admit the fact that the, proposed alignment passes through the default eco-sensitive zone of 10kms of Kali Tiger Reserve covering the critical stretches of the proposed railway line. (the findings of the REC constituted committee are recorded in the minutes of 20th meeting REC held on 29th August, 2017)

23. The REC in their 12th meeting held on 29th August, 2017 recommended the project for Stage-I approval under the Forest (Conservation) Act, 1980 and directed the State Government to pursue the wildlife clearance. Also, the REC observed that the project is located in the Western Ghats region, an important biodiversity hotspot thus, a critical appraisal of the project from the wildlife conservation prospective needs to be done.

A copy of the minutes of REC's 12th meeting held on 29th August, 2017 is herewith marked and annexed as Annexure-7.

24. In December, 2017, the Additional Director General of Forest (PT) & Member Secretary of NTCA (MoEF & CC) directed Inspector General of Forest, NTCA, Regional Office to conduct a site appraisal and evaluate the proposed diversion of 595.64 ha of forest land vis-à-vis tiger distribution, its dispersal, and suggest mitigation measures and their feasibility if any.

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Subsequently, the NTCA conducted a site appraisal on 23rd February, 2018 of the Kali Tiger Reserve, Karwar, Yellapur and Dharwad division and submitted a report recommending complete rejection of the project.

A copy of the NTCA's regional office's Wildlife Appraisal report is herewith marked and annexed as Annexure-8.

25. Thereafter, the Standing Committee of the National Board for Wildlife (NBWL) deliberated on the wildlife clearance proposal for the first time during their 48th meeting held on 27th March, 2018. The Standing Committee of the NBWL noted that the project has been rejected by the NTCA based on their wildlife appraisal report as the proposed rail line passes through very dense forest cover and cuts across the Western Ghats and the area is old migration path of Indian Elephants and is the habitat of thriving population of tigers. Bearing all this in mind, the Standing Committee of the NBWL formed a committee constituting of: one representative of Wild Life Institute of India; one representative of NTCA; and one person from the Wildlife Division of MoEF & CC. The Site Inspection Committee was directed to visit the site and submit their report to the Ministry. The Committee thus constituted submitted its report in August 2018.

A copy of the minutes of the 48th meeting held on 27th March, 2018 of the Standing Committee of NBWL whereby they constituted the committee of three expert members is herewith marked and annexed as Annexure-9.

26. The Site Inspection Committee constituted by the Standing Committee of NBWL submitted their report in August, 2018 and it was discussed and deliberated by the Standing Committee of the NBWL in the 50th meeting held on 7th September, 2018. The Deputy Inspector General of Forest (NTCA) informed the Standing Committee that the Site Inspection

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Committee has not recommended the project and read out the conclusion of the report, as recorded in the minutes as:

"the proposed railway line from Huballi-Ankola passes through very forest cover and cuts across the Western Ghats, which are biodiversity hotspot and a world heritage site. He also stated that the proposed line fragments the old migration path of India elephants, and is also one of the six tiger occupied landscape of India and currently the Western Ghats landscape possesses best habitat connectivity and contiguity."

A copy of the Site Inspection Committee's report submitted to the Standing Committee of the NBWL in August, 2018 is herewith marked and annexed as **Annexure-10.**

27. Thereafter, the DIGF (NTCA) also pointed out during the Standing Committee of the NBWL 50th meeting held on 7th September, 2018 that the State Board for Wildlife is yet to provide their recommendation. The Standing Committee thereby decided to send back the Wildlife Clearance Proposal to the State Government along with the reports of the NTCA and the Site Inspection Committee with advice to get the issue examined by the State Board for Wildlife and submit the recommendation of the SBWL.

A copy of the minutes of the 50th meeting held on 7th September, 2018 of the Standing Committee of NBWL whereby the report submitted by the Site Inspection Committee was discussed is herewith marked and annexed as **Annexure-11.**

28. Thereafter, the Karnataka-SBWL considered the Wildlife Clearance Proposal during their 11th meeting held on 9th January, 2019, 12th meeting held on 26th September, 2019, the minutes of the 11th and 12th meeting records:

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"The subject was discussed in detail. The Board decided to defer the subject as the facts before the Board were insufficient to take a decision of the subject"

A copy of the minutes of the 11th meeting held on 9th January, 2019 and a copy of the minutes of the 12th meeting held on 26th September, 2019 is herewith marked and annexed as **Annexure-12 (colly)**

29. Thereafter, Wildlife Clearance Proposal was again placed before the Board in their 13th meeting held on 9th March, 2020. The proposal was discussed extensively by the members, where by the Board unanimously decided to reject the proposal, including the Chief Minister/ chairperson of the Board and the Minister for Environment, Ecology & Forest Department, Government of Karnataka rejected the proposal.

A copy of the 13th meeting held on 9th March, 2020 of the Karnataka-SBWL is herewith marked and annexed as **Annexure-13.**

30. In the 14th meeting held on 20th March, 2020 of the Karnataka-SBWL, the Chairman of the Board overturned the decision taken by the Board in the 13th meeting held on 9th March, 2020 of the Karnataka-SBWL. The decision of the Chairman was taken by being influenced by the presence of his 4 'special invitees' who forwarded pro-project arguments in favour of HARP. Such 4 special invitees were, the Minister for heavy industries, Minister for Labour, Ex-Minister of Industries and the Chief Secretary of the State who argued in favour of the Wildlife Clearance for HARP grounds such as; the project inaugurated by the then Prime Minister Shri Atal Bihari Vajpayee; that the project was approved by then Chief Minister of Karnataka in 2003 on the file; it is a prestigious project for the people of North Karnataka; the existing fully double rack railway line via Londa- Madgao to Belekere port being 80 km more in distance than the proposed line.

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A copy of the 14th meeting held on 20th March, 2020 of the Karnataka-SBWL and a copy of the 14th meeting notice and agenda dated 17th March, 2020 is herewith marked and annexed as Annexure-14 (colly).

G. Issues raised with respect to the impugned decision:

The concerns raised with respect to the impugned decision are:

- A. Whether the 14th meeting held on 20th March, 2020 was convened in violation of the Rules of the Karnataka State Board for Wildlife Rules, 2006?
- B. Whether the Chairman has the power to re-convene a meeting only to re-discuss HARP when the Board had already unanimously taken their final decision with regard HARP in the 13th meeting?
- C. Whether the Chairman has failed to record any reason to substantiate his decision in the 14th meeting held on 20th March, 2020?
- D. Whether the decision of the Chairman in the 14th meeting of the Board qualify as a decision taken by a Statutory Body in absence of detailed reasons?
- E. Whether the Chairman has exercised discretion beyond the statutory mandate envisaged under the Wildlife (Protection) Act, 1972?
- F. Whether the decision of the Chairman in the 14th meeting of Board is in consonance with the legislative intent of the Wildlife (Protection) Act, 1972?
- G. Whether the decision of the Chairman in the 14th meeting of Board is in consonance with India's Wildlife Action Plan (2017-2031)?

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A. The 14th meeting held on 20th March, 2020 of the Karnataka -SBWL was convened in violation of the provisions of the Karnataka State Board for Wildlife Rules, 2006

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B. Presence of special Invitees raises conflict of Interest

31. The agenda and the notice for the 14th meeting convened on 20th March, 2020 of the Karnataka- SBWL was circulated by the Member Secretary of the Board only three days prior to the meeting i.e. on 17th March, 2020. It is submitted that sending such short notice violates Rule 4 (2) of the Karnataka State Board for Wildlife Rules, 2006, the Rule mandates, the Member Secretary after seeking approval of the Chairman to circulate the agenda and notice of the meeting to all the members of the Board at least 15 days prior to the date of such meeting.

32. That, Rule 9 of the Karnataka State Board for Wildlife Rules, 2006 only allows the Chairman of the Board to invite any person or persons having experience in Wildlife conservation to attend the meeting of the Karnataka-SBWL as invitees. But in complete violation of Rule 9, the Chairman invited, Shri Jagadish Shettar (Minister of Large and Medium Scale Industries), Shri Shivaram Hebbar (Minister of Labour and Minister of Sugar), Shri R.V. Deshpande (MLA and former Minister for large and Medium Scale Industries) and the Chief Secretary of the State of Karnataka, all of whom have no experience in wildlife conservation and no credibility to preside over the meeting of State's highest wildlife related decision making Board.

33. It is imperative to point out that Shri Jagadish Shettar (Minister of Large and Medium Scale Industries), has been publicly denouncing his vested

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interest in getting the HARP approved by the Karnataka- SBWL. He is simply making such public remarks for his electoral gain in Hubballi-Dharwad region. Thus, his presence in the meeting of the State's highest Wildlife decision making Board vitiates the entire proceeding as it raises serious conflict of Interest and is detrimental for the interest of environment and wildlife of the State of Karnataka. The Deccan Herald newspaper published and circulated on 29th January, 2020 records his keen interest of getting the proposed railway project cleared by the Chief Minister/ Chairperson in the meeting of the SBWL.

A copy of the newspaper clipping of Deccan Herald dated 29th January, 2020 is herewith marked and annexed as Annexure-15.

34. Mr R V Deshpande another invitee is the sitting MLA from the project district of Uttar Kannada and the longest serving Industry Minister of Karnataka. It is submitted that HARP was conceived in 1997-1998 when he was the Industry Minister in the J H Patel Ministry. In fact, he was the Industry Minister of the State between 2015-2018 when again the forest clearance and wildlife Clearance for HARP was applied for by the User Agency. Moreover, over the years he has shown keen interest in getting the HARP out of procedural troubles and environmental concerns. He tweeted in July, 2017 that the MoEF has cleared HARP, which by itself is a misinformation.

A screenshot copy of the Tweet of July, 2017 by Mr R V Deshpande is herewith marked and annexed as Annexure-16.

35. It is imperative to highlight from the minutes of the 13th meeting held on 9th March, 2020 that the Chief Secretary of the State was invited to the proceedings of the 13th meeting of Board as well and he was the only person in the meeting who spoke in favour of HARP by stating that the Central

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interest in getting the HARP approved by the Karnataka- SBWL. He is simply making such public remarks for his electoral gain in Hubballi-Dharwad region. Thus, his presence in the meeting of the State's highest Wildlife decision making Board vitiates the entire proceeding as it raises serious conflict of Interest and is detrimental for the interest of environment and wildlife of the State of Karnataka. The Deccan Herald newspaper published and circulated on 29th January, 2020 records his keen interest of getting the proposed railway project cleared by the Chief Minister/ Chairperson in the meeting of the SBWL.

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Government had approved the project since 1990's, the Central Government is reviewing the project and enquired for the delay, project can be implemented with mitigation measures, the then Chief Minister had approved in the file and no wildlife sanctuary falls within the project region. Thereafter, 8 members of the Karnataka-SBWL forwarded their objection based on the wildlife Appraisal Report submitted by NTCA and Site Inspection Committee of NBWL and thereby a unanimous decision to reject HARP was taken.

36. Thus, presence of such "Special Invitees" who seems to have attended the 14th meeting of Karnataka-SBWL with the sole objective of forwarding pro-project frivolous arguments based on their vested interest in getting the HARP approved by overshadowing the majority members of the Board and by influencing the Chairman raises serious conflict of Interest.

C. The Chairperson has failed to record any reason to substantiate his change of decision

37. It is submitted that the Chairman in the 14th meeting held on 20th March, 2020 of the Karnataka-SBWL has failed to record any reasons as to why he chose to overturn his earlier decision taken during the 13th meeting held on 9th March, 2020 of rejecting the proposal for Wildlife Clearance based on unanimous decision of the Board.

38. The only reason apparent from the minutes of the 14th meeting for such change of decision of the Chairman is being influenced by the pro-project arguments forwarded by his four "Special invitee" who have no experience in wildlife conservation. The pro-project arguments forwarded by such "special invitees" can be summed up as: the development of this railway line will lead to holistic development of the area; Development of

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infrastructure project will bring development in the region; IISc has submitted feasibility report with mitigation measures for wildlife; reduction in travel time to Ankola; Central Government to bear the entire cost of the project; double the forest area can be used for afforestation; foundation stone was laid by former Prime Minister, Shri Atal Bihari Vajpayee

39. It is submitted that all members of the Karnataka-SBWL present in the 14th meeting held on 20th March, 2020 reiterated their earlier objection raised against HARP in the 13th meeting held on 9th March. Even two members namely, Shri Dinesh Singhvi (Wildlife expert) and Shri Ajay A Desai who marked their absence to the 14th meeting had emailed their objections to the Member Secretary.

40. The reasoned opinion of the experts for rejecting HARP as forwarded during the 14th meeting vis-à-vis the arguments forwarded by "special invitees" in the 14th meeting is as following:

1. **No economic viability:** The majority board members rejected HARP for being economically unviable. The observation is based on the report submitted by the Site Inspection Committee of NBWL in August, 2018. The committee in their report has stated that the development of the region from the railway line is not backed by any quantitative data or analysis. The Hubali-Dharwad region has been witnessing rapid urbanisation and economic development even in the absence of the proposed railway line. Per capita income for north Karnataka has been increased from Rs 9,250 in 1990-91 to Rs 21,236 in 2007-08. The same facts were brought on record by the expert members of the Karnataka-SBWL. Therefore, the justification for implementing the project forwarded by the "special invitees" of the Chairman is ill perceived.

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2. **There appears to be no justification for the project:** It is not the case that Hubli-Ankola railway line will serve as the only connectivity link in the area, there are exiting alternatives available. An alternate route (Tinnaighata-Castle rock-Caranzole) to Ankola is already available which increases the travel time to Ankola merely by an hour and half. Also, the Castle Rock line has been approved for doubling by the Karnataka-SBWL in their 13th meeting held on 9th March, 2020. The Belikere port near Karwar was closed after the Hon'ble Supreme Court imposed ban on mining in the region, there has been drastic reduction in the production of iron ore and there is hardly any ore transported in the last few years. The proposed line may not even get iron ore cargo in an amount as initially envisaged. Asian Development Bank funded road (NH-63) is constructed parallel to the railway line and is grossly under-utilised. The same road is also expanded hence, there arises no infrastructure crisis for transportation of ore.
3. **Development of liner infrastructure project in the region will further fragment the forest:** It was highlighted by one of the members that HARP would take 10 to 15 years to get implemented and that by itself will cause serious impact on the surrounding forests and will lead to more degradation than the project itself. The present members pointed out that HARP would be highly detrimental to forest and Western Ghats. Fragmentation of Western Ghats ecologically sensitive forests will wreak havoc in the region by accelerating flooding and landslides. Karnataka has witnesses similar incidents in the recent past in Kodagu and Charmadi Ghat in Chikmangalur due to destruction of Western Ghats forests.

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4. **IISc study has no relevance:** The study conducted by IISc, Bangalore hold no relevance as the institute does not have the expertise in providing wildlife mitigation measures for a mega project like HARP. Also, the PCCF (WL) & Chief Wildlife Warden and Member Secretary of Board stated that the IISc study is impractical and no forest officers were involved while preparing the report and the report has been prepared without consulting the Forest Department and the Chief Wildlife Warden and not even a copy of the report is submitted to the Forest Department. Moreover, an expert member pointed out that the IISc, Bangalore prepared the mitigation measure report in October, 2013 and NGT order dated 10th February, 2016 directed the User Agency to submit fresh application, hence the report of IISc, Bangalore becomes null and void.
5. **Legally incorrect to re-consider HARP:** An expert member stated that as the guideline of the MoEF & CC dated 5th December, 2017, railway projects passing through the areas linking one Protected Area or Tiger Reserve, the approval of NBWL on the advice of NTCA as provided under Section 38 (O) (i) (g) of the Wildlife (Protection) Act, 1972 is essential. The project is also rejected by NTCA in 2018. Thus, it is legally correct to drop HARP.
41. But the Chairman deemed fit to turn an blind eye towards the reasoned objections raised by the experts and majority Board members present in the 14th meeting held on 20th March, 2020 and align with the pro-project arguments forwarded by his "special invitees" and recommend HARP for Wildlife Clearance without recording any reason to substantiate such decision.

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D. The Environment Impact Study conducted by IISc, Bangalore holds no relevance to the present wildlife clearance proposal:

42. The Infrastructure Development Department (herein after 'IDD'), Karnataka. IDD engaged IISc, Bangalore as consultant to undertake the investigation related to Bio-diversity, Environmental Impact Assessment (herein after "EIA") and suggest mitigation measures for HARP on 19th February, 2011. The IISc conducted the study and submitted their Technical Report captioned "*Biological Diversity and Environmental Impact Assessment with Mitigation Measures: Hubli-Ankola New Broad-Gauge Railway Line*" in February, 2012. The Technical Report deals with the salient feature of the HARP, methodology followed for carrying out the studies, EIA, Environment Management Plan (herein after EMP) and alternatives suggested at Micro Level to reduce the impact on forests.
43. It is submitted, that although Indian Institute of Science (IISc), Bangalore is an institute of great repute but neither it is not an expert in the domain of Wildlife nor is it an NABET Accredited EIA consultant recognised by MoEF to carry out EIA study for projects to be implemented in critical wildlife areas. Moreover, the Hon'ble Supreme Court in **T.N Godavarman Thirumulpad vs Union of India (I.A 2750-2752 in WP (C) 202/1995** has condemned consideration of EIA study commissioned by project proponent by non-sanctioned agencies and at para 79 held:

".... we would also like to point out that environmental impact studies in this case were not conducted either by the MoEF or any organisation under it even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has taken into consideration, were

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made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or least by agencies appointed and recommended by it. "

44. The Environment Management Plan prepared by IISc, Bangalore proposes a number of mitigation measures. These include: Compensatory Afforestation; setting up of nurseries; fencing of forest land; afforestation of degraded areas; joint patrolling, imposed speed limits in vulnerable stretches; involvement of affected person in the eco-system restoration works; undertaking mitigation measures during construction phase; constitution of an Independent Waste Management Cell and construction of post project Monitoring Task Force. The estimated expenditure in this regard as stated by IISc is Rs 450 crores. The Central Empowered Committee (CEC) of the Hon'ble Supreme Court perused the report submitted by the IISc and CEC in their report submitted to the Hon'ble Supreme Court at page 52 & 53 at Para 52 held:

"It is relevant to mention that the proposed mitigation measures are otherwise also generally prescribed while approving diversion of forest land under the Forest (Conservation) Act, 1980."

45. It is submitted that CEC in their detailed report submitted to the Hon'ble Supreme Court in page 49 to page 55 paras 49 to 55 has considered the mitigation measure suggested by the IISc, Bangalore study report in detail and thereafter in their observations and recommendations recorded in the report submitted by CEC at para 55, page 55 held:

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"no amount of mitigation measures would be adequate to contain the severe adverse impact of the project on the biodiversity rich dense forests of the Western Ghats and ecology within reasonable limits"

46. Thus, the Central Empowered Committee has considered the merits of the mitigation measures suggested in the Technical Report submitted by IISc, Bangalore and found such mitigation measures insufficient and general in terms of mitigating the adverse impact of HARP on the critical wildlife habitat of schedule wildlife like Tigers and Asiatic Elephants amongst many other species. Therefore, a decision to recommend wildlife clearance for HARP through ecologically sensitive region of the Western Ghats cannot be justified by citing a Technical Report whose primary focus was to facilitate the implementation of project rather than analysis and studying the impact of HARP on wildlife and its habitat.

The CEC's report is already annexed above as Annexure-4 and a copy of the EIA Chapter from the IISc, Bangalore study report as submitted by the User Agency while seeking Forest and Wildlife Clearance is herewith marked and annexed as Annexure- 17.

47. Additionally, REC, MoEF & CC in their 20th meeting held on 29th August, 2017 had directed the State Government of Karnataka to conduct an EIA study to understand the impact of HARP as it entails felling of 2.2 lakh trees and specially recommended conducting a critical appraisal of the HARP from the wildlife conservation perspective as HARP is proposed in the ecologically sensitive region of the Western Ghats

48. It is submitted that no such wildlife appraisal or EIA study was conducted by the State. It is only the NTCA and the Site Inspection Committee of the NBWL has conducted wildlife appraisal of the HARP and both such committee/ bodies rejected HARP underlining the irreversible damage the

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project is going to have on Western Ghats Tiger landscape and other large herbivores such as the Indian Elephant.

E. The decision of the Chairperson in the 14th meeting of Karnataka-SBWL was taken in complete disregard to the Wildlife Appraisal study report submitted by the NTCA and the report of the Site Inspection Committee of the NBWL

49. It is pertinent to highlight that in 2017, the Wild Clearance Proposal for HARP was forwarded to the Standing Committee of NBWL by the Government of Karnataka without obtaining the prior recommendation of the Karnataka-SBWL. Also, to note that the Wild Clearance Proposal for HARP was simply forwarded to the Standing Committee of NBWL by the Government of Karnataka by only obtaining the signature of the Chief Minister, Government of Karnataka & Chairman of the Karnataka-SBWL.

50. That Part V of the Wildlife Clearance Proposal states that recommendation of the Karnataka-SBWL to be obtained in a subsequent meeting of the Board. On this ground alone, the Standing Committee of NBWL sent the Wildlife Clearance Proposal back to the State Government along with copies of the Wildlife Appraisal reports submitted by the NTCA and the Site Inspection Committee of the NBWL with clear direction to get the issue examined by the Karnataka-SBWL in light of the reports and obtain their recommendations. The same are recorded in the minutes of the 50th meeting of the Standing Committee of NBWL held on 9th September, 2018. A copy of Part V of the Wildlife Clearance Proposal as forwarded by the Government of Karnataka to the Standing Committee of NBWL for their recommendation with only the signature of the Chief Minister without the

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recommendation of the Board is herewith marked and annexed as Annexure- 18.

51. The IGF, NTCA, Regional office, Bengaluru was directed by the National Tiger Conservation Authority to cause site appraisal and evaluate the proposed diversion area vis-a-vis tiger distribution, its dispersal and suggest mitigation measures and their feasibility, if any [Reference-NTCA letter F.No. 7-58/2017-NTCA Dated 5th December, 2017]. Accordingly, a field visit was made on 23rd February, 2018 by the undersigned to Kali Tiger Reserve, Yellapur and Karwar forest divisions for site appraisal. The IGF (NTCA) Regional office prepared a report and submitted to NTCA in March, 2017 and recommended rejection of HARP. The NTCA report concludes:

"the proposed Hubballi-Ankola Board gauge line through Uttara Kannada district which has very high forest cover and cuts across the Western Ghats, a biodiversity hotspot and a world heritage site. It also fragments the old migration path of Indian elephants. Out of the 6-tiger occupied landscape of India, currently the Western Ghats landscape possess best habitat connectivity and contiguity. The tiger occupancy in the Western Ghats landscape is highly dynamic and shows spatial and temporal variation. Further, recent research highlights that future of tigers in India depends on conserving the habitat connectivity between isolated tiger populations of tiger reserves. In view of the aforementioned observation, the proposed railway line will be having significant negative impact on long-term conservation of tigers and other mega herbivores in the Western Ghats landscape by fragmenting existing habitat connectivity and contiguity."

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52. The Site Inspection Committee of the NBWL also submitted a report to the MoEF & CC in August, 2018 and the same was deliberated in the 50th meeting held on 7th September, 2018. The report submitted by the Site Inspection Committee of the NBWL also rejected HARP. The main reasons for rejecting the project recorded in the report are as under:

- i. The extremely fragile eco system of the Western Ghats will not be able to sustain or buffer impacts caused by a development project of the scale of Hubballi-Ankola Railway track construction;
- ii. The area of the proposed project site supports a spatial and temporally dynamic tiger population since the number and distribution of tiger occupying grid were found to be varying among 2006, 2010 and 2014. Tiger population in the project area in 2010 was estimated to be about 36-42 individuals occupying about 4,756 sq. km;
- iii. An area of 23, 881 sq. km from Dandeli-Bandipur complex has been identified as a unit which needs to be prioritised for tiger conservation in India;
- iv. The landscape has already been intersected by existing railway line network between Bhadra Tiger Reserve and Nagarhole-Bandipur-Mudumalai tiger reserve complexes;
- v. Overlaying of corridor delineated with the proposed railway line alignment indicates that the proposed railway line cuts across the optimal tiger corridor and its total length inside the corridor is approximately is 17.6 km. The location where the proposed railway line cuts across the tiger corridor has also been identified

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as potential bottleneck area having weak links within the least cost pathway corridor;

- vi. The original rationale beyond laying the proposed Hubballi-Ankola Railway track does not appear to be quite valid as of today since the mining and export of iron ore from the region is almost nil. There is a huge scope of utilizing the existing vast network of railways and road transportation of goods and services from the coastal region to the hinterland. Existing railway and road infrastructure are grossly underutilised and are sufficient to support the limited demand of ore transportation;
- vii. Direct benefit to the local communities is also minimal from implementation of this project. The railway track is likely to cause irrefutable impacts on a declining tiger population, a small elephant population as well as on several endangered and endemic fauna in the region
- viii. Implementation of HARP to cause adverse impact on forest contiguity, hydrology and drainage network, distribution and behaviour of other endangered flora and fauna in the area, conservation of sacred groves, impact on microclimate are some of the irreversible impact envisaged from implementing the project;
- ix. Mitigation is not panacea that will overcome all ill effect of developmental project by having overpasses, underpasses, ramps and tunnels. In fact, avoidance is considered as the very first mitigation step/measure. Despite all technological and scientific development, our understanding of complex natural process in the Western Ghats which has taken millions of years to evolve, is

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still primitive and far from complete and therefore many other impacts of the project on the natural system may remain unforeseen as of today;

- x. It is important to note that HARP has been rejected in the past from all starting from Karnataka Forest Department, MoEF CC Regional Office, Bengaluru, the CEC of Hon'ble Supreme Court and finally the Forest Advisory Committee of MoEF CC;
- xi. Economic development is important for the State but is need not happen at a greater cost to forest, wildlife of the Western Ghats landscape. With our conservation of biological diversity of the Western Ghats landscape, the economic growth and prosperity of the region will not be sustainable in the long -run;

53. Thus, it was mandatory of the part of the Chairman of the Karnataka-SBWL to have taken into consideration the findings of the reports submitted by the NTCA and the Site Inspection Committee of the NBWL and the Standing Committee of the NBWL had specifically directed the Board to examine the Wildlife Clearance Proposal in light of the above mentioned reports.

F. The Impugned Decision is against the Wildlife Conservation Spirit envisaged In the Wildlife (Protection) Act, 1972 and also against the spirit of State Board For Wild Life

54. The Preamble of the Wildlife (Protection) Act, 1972 reads as "*An Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.*" Thus, the legislative intent of the legislature in formulating this Act was to

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advance the cause of protection and conservation of Wildlife and their environment in this country. The Act is prohibitory in nature as it prohibits activities detrimental to the protection and conservation of Wildlife. Activities such as hunting, removal of plants, trade and commerce of animal articles are prohibited under the Act. The Act prohibits anything and everything which is not in consonance with wildlife protection with certain exceptions.

55. Additionally, the Wildlife (Protection) Act, 1972 constitutes, Statutory Authorities/ Bodies under the Act who are entrusted with the protection and conservation of Wildlife and its habitat in the Country. Section 5A of the Act constitutes the National Board of Wildlife whose primary function under Section 5C of the Act is to promote the conservation and development of wild life and forests

56. Similarly, Section 6 of the Act constitutes State Board for Wild Life (SBWL), whereby the State Government has to constitute a committee under the chairmanship of the Hon'ble Chief Minister and vice-chairmanship of the Minister in charge of Forest and Wild Life of the respective state. Such committee to consist of three representative of non-organisation dealing with wild life, ten representative amongst eminent conservationists, ecologist and environmentalist including two representative of the Schedule Tribe, Secretary of the State in charge of Forests and Wildlife, officer in charge of the State Forest Department, representative of Wild Life Institute of India, representative of the Botanical Survey of India, representative of the Zoological Survey of India and the Chief Wild Life Warden to be the Member Secretary.

57. Section 8 of the Act provides for the duties of the State Board for Wild Life which includes selection and management of areas to be declared as

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protected areas; formulating policy for the protection and conservation of the Wild life and specified plants; measures for harmonising the needs of Tribe and other forest dwellers with the protection and conservation of Wild life and in any other matter concerned with the protection of Wild life which may be referred to it by the State Government.

58. Thus, a conjoint reading of section 5 A, 5C , 6 and 8 of the Act makes it abundantly clear that the intent of the legislature behind constitution of such statutory Boards under the Wildlife (Protection) Act, 1972 was solely for the purpose of protection and conservation of the Wildlife and in no way gives such Boards the power of discretion to compromise the interest of the Wildlife by favouring anthropogenic interests over wildlife conservation.

59. Thus, the decision of the Chairman of the SBWL to recommend HARP for wildlife clearance which entails diversion of 595.64 ha of forest, felling of over 2.2 lakh trees inside a tiger reserve which will lead to destruction of critical wildlife habitat of many Schedule -I animals and will also lead to destruction of elephant corridors under three forest division is beyond the letter and spirit of the Wildlife (Protection) Act, 1972. Moreover, the SBWL is a creation of a statute and is bound by the Statute, it has no power to exercise discretion because the provisions of the Wildlife (Protection) Act, 1972 does not allow it.

G. The decision of the Chairman taken in the 14th meeting of Karnataka-SBWL is against the National Wildlife Action Plan (2017-2031)

60. The proposed alignment passes through the Western Ghats forests and the region is part of Bedthi conservation reserve (at Yellapur), closer to Dandeli Hornbill Conservation reserve and located in the buffer region of Anshi Dandeli Tiger Reserve (is about 6.5 km from Anshi Dandeli Tiger reserve).

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61. The National Wildlife Action Plan (2017-2031) explicitly mentions that Ministry of Surface Transport and Ministry of Railways to plan roads (and railway tracks) in such a manner that National Parks and Sanctuaries are bypassed and integrity of the Protected Area is maintained. Further, the plan also suggests avoiding of wildlife corridors as much as possible.

H. GROUNDS

- A. Because the 14th meeting held on 20th March, 2020 of the Karnataka-SBWL was convened in violation of Rule 4 (2) of the Karnataka State Board for Wildlife Rules, 2006;
- B. Because the presence of Chairman's "special invitees" in the 14th meeting of the Karnataka-SBWL violate Rule 9 of the Karnataka State Board for Wildlife Rules, 2006;
- C. Because the Karnataka-SBWL is a recommendatory body, the same being a Statutory Committee, is bound by the laudable principles of justice and fair play while taking a decision particularly in respect of the region which is admittedly an ecologically sensitive area;
- D. Because the validity of the impugned recommendation of the Chairman deserve to be quashed on the ground of non-consideration of relevant facts as was held by the Hon'ble Supreme Court in the case of **SACHIDANAND PANDEY VS STATE OF W.B reported in (1987) 2 SCC 295, wherein it has been held:**

““if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art. 48A of the Constitution, the Directive Principle which

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enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," and Art. 51A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

E. Because in overruling the majority opinion of the Board members of the Karnataka-SBWL, constituted under the Wildlife (Protection) Act, 1972 Chief Minister/ Chairman has acted beyond his jurisdiction as there is no such power conferred to the Chairman of the Board under the Act. Also, it is settled principle of law that a creature of the statute is bound of the statute.

F. Because the Hon'ble Supreme Court in the case of **Mahendra Baburao Mahadik & Ors vs. Subhash Krishna Kanitkar & Ors (2005) 4 SCC 99**, at Para Nos. 38 has held:

"The Municipal Council being a creature of statute was bound to carry out its functions within the four corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularise unauthorised constructions."

G. Because the Hon'ble National Green Tribunal has in the case of **Bimal Gogoi & Anr vs. State of Arunachal Pradesh & Ors (Appeal 30/2015/SZ)** vide order dated 24th October, 2017 set aside decision of Chairman of Standing Committee of NBWL and kept the forest clearance granted to a hydro power project in abeyance and observed that decision taken by the Chairperson by ignoring majority expert opinion of the members of the Board is un-sustainable in law. The Hon'ble NGT at para no 78 held:

"78.it is incumbent on our part to examine the decision taken by the Standing Committee of NBWL. Even if the Standing Committee of NBWL which is a delegated authority of NBWL itself is taken as an Advisory Body for NBWL to take a decision, the question is as to

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whether having constituted as per the Section 5B(2) of the Wildlife Protection Act, 1972, it will be open to the Chairperson to just like that brush aside the views of the majority of the members of the Standing Committee of NBWL. The communication of the Deputy Inspector General of Forest dated 11.2.2012 which refers about the Standing Committee of NBWL met on 13.12.2011 does not in any manner give the reason for brushing aside the views of the non-official members of the Standing Committee. Having constituted a Statutory Standing Committee as per the provisions of the Central enactment and in the absence of the method of decision to be taken by such Standing Committee, we are of the view that either the Chairperson who happens to be the Hon'ble Minister of State should have given proper reason for rejecting the objection of majority of the non-official members or the decision ought to have been arrived at based on the opinion of the majority of the members of the Standing Committee of National Board. Neither of these acceptable principles are followed in making a decision under the Wildlife (Protection) Act, 1972 by the Standing Committee. Even though the Standing Committee of NBWL is a recommendatory body, the same being a Statutory Committee, is bound by the laudable principles of justice and fair play while taking a decision particularly in respect of the region which is admittedly an ecologically sensitive area. If any convincing reason is given by the Standing Committee of NBWL, it stands differently for this Tribunal while considering the validity or otherwise of the same. In the absence of any reason but only to reject the majority of the non-official members who happened to be experts in the field and whose objections have been elicited in the communication of the Deputy Inspector General of Forest dated 11.2.2012, in our considered view and in all fairness either the Hon'ble Minister in charge of the Forest or the Standing Committee of NBWL should have taken the decision with proper reason. In the absence of any acceptable reasons, we have no hesitation to hold that the decision of the Minister as if it is the decision of the Standing Committee of NBWL which forms the basis of the granting of FC in this case under the Forest (Conservation) Act, 1980, is not sustainable in law.”

(emphasis supplied)

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H. Because the decision of the Chairman in the 14th meeting of the Karnataka-SBWL is against the wildlife conservation spirit of the State Board for Wildlife as observed by the Supreme Court in **Centre for Environment Law, WWF-I vs. Union of India (UOI) and Ors. [LA 100 in W.P (C) No. 337 of 1995] decided on 15.04.2015**

"28. The Parliament later vide Act 16 of 2003 inserted Section 5A w.e.f. 22.09.2003 authorizing the Central Government to constitute the National Board for Wild Life (in short 'NBWL'). By the same Amendment Act, Section 5C was also introduced eliciting functions of the National Board. Section 5B was also introduced by the aforesaid amendment authorizing the National Board to constitute a Standing Committee for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board. NBWL is, therefore, the top most scientific body established to frame policies and advise the Central and State Governments on the ways and means of promoting wild life conservation and to review the progress in the field of wild life conservation in the country and suggesting measures for improvement thereto. The Central and the State Governments cannot brush aside its opinion without any cogent or acceptable reasons. Legislation in its wisdom has conferred a duty on NBWL to provide conservation and development of wild life and forests."

I. Because the decision of the Chairman in the 14th meeting of the Karnataka-SBWL is in violation of the wildlife conservation spirit envisaged under the Wildlife (Protection) Act, 1972 and India's Wildlife Action Plan (2017-2031);

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- J. Because the Hon'ble Supreme Court in the case of **Sansar Chand v. State of Rajasthan (2010) 10 SCC 604** held that all efforts must be made to implement the spirit and provisions of the Wild Life (Protection) Act, 1972, the provisions of which are salutary and are necessary to be implemented to maintain ecological chain and balance. The Stockholm Declaration, the Declaration of United Nations, Conventions on Human Environment signed in the year 1972, to which India is the signatory, have laid down the foundation of sustainable development and urged the nations to work together for the protection of the environment. Conventions on Biological Diversity, signed in the year 1962 at Rio Summit, recognized for the first time in International Law that the conservation of biological diversity is "*a common concern of human kind*" and is an integral part of the development process.
- K. Because the HARP is proposed through the Kali Tiger Reserve and thus, amount to destruction of habitat within the meaning of Section 29, Section 35 (6) and Section 38 (o) (1) (g) of the Wildlife (Protection) Act, 1972;
- L. Because under Section 38 (O) (1) (g) of the Wildlife (Protection) Act, 1972, the National Tiger Conservation Authority (NTCA) has been granted such powers in the nature/ manner of exercising a veto in rejecting an ecologically unsustainable project in areas linking tiger reserves. In the present case the NTCA has caused site appraisal twice, once independently and once being part of the Site Inspection Committee of the NBWL;
- M. Because the Supreme Court's observation in **N.D Jayal and Anr. vs. Union of India (UOI) and Ors (supra)**

"108. The Government can utilize the natural resources for common good but cannot be allowed to exploit or virtually plunder it in a manner to deprive those presently sustaining their lives on those natural

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resources and deprive the coming generations who have also a right of living on those resources. On these fundamental issues, there is a cleavage between technological experts, environmentalists and human rights activists. The Court is faced with an issue not easy to decide as to which Section of experts and environmentalists is right in their approach.

109. Ours is a constitutional democracy and we are called a "welfare State", "Welfare" does not mean that we have only to strive for fulfilment of political theory "Greatest good of greatest number". Our motto from Vedic times has been sarva Jan Hitay, sarva Jan sukhay (benefit of all and happiness of all)."

N. Because the decision of the Chairman in the 14th meeting of Karnataka-SBWL is clearly flawed from wildlife and environment angle. It is also not tenable in the settled principles of Administrative law as elaborated down under:

The meaning of judicial review in administrative decision making is elegantly observed by Lord BRIGHTMAN in the case of, *Chief Constable of North Wales Police v. Evans (1982) 3 All ER 141* and it was held:

"Judicial review, as the words imply is not an appeal from a decision, but a review of the matter in which the decision was made."

Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service 1984 (3) All ER 935*, (commonly known as CCSU Case) classified three ground under which administrative action is subject to control by judicial review. The first ground is 'illegality' the second 'irrationality', and the third 'procedural impropriety'.

Similarly, the Hon'ble Supreme Court of India in the case of **Commissioner of Income-tax v. Mahindra and Mahindra Ltd [AIR 1984 SC 1182]** held:

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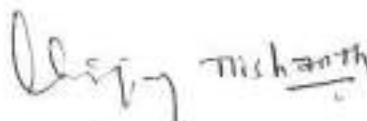
"By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from Barium Chemicals Ltd. v. Company Law Board case on the point. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same."

O. The Hon'ble Supreme Court in the case of **Smt. Shalini Soni etc. v. Union of India and Ors [1981 AIR 431]** has observed:

"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

P. Because the Hon'ble Supreme Court has also observed that administrative decision can be set aside if their arbitrariness in exercise of power in **State of U.P. and Ors vs. Renusagar Power Co. And Others [1988 AIR 1737]**

"The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised

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on the basis of acts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. "

Q. Because Article 48A of the Indian Constitution entrusts the State with the responsibility of protecting and improving the environment and to safeguard the forests and wild life of the country.

H. Source of information

The information gathered by the Petitioner is based on the documents secured from the Website "PARIVESH" of MoEF & CC, from the website "AARNYA" of Karnataka Forest Department and the website of NTCA. The petitioner has gathered the minutes of the Karnataka-SBWL's meeting from Journalist and wildlife conservationist working on the issue as the same is not uploaded in the website of the Karnataka Forest Department.

I. Nature of The Injury Caused / Apprehended.

The Petitioner submit that the impugned decision of the 14th meeting held on 20th March, 2020 of the Chairman of the Karnataka-SBWL if not quashed will be forwarded as the 'final' decision/ recommendation of the Board to the Standing Committee of NBWL. The impugned proceeding and decision of the 14th meeting held on 20th March, 2020 of the Chairman of Karnataka-SBWL nullifies the unanimous decision of all the members of the Board taken in the 13th meeting held on 9th March, 2020 to reject recommendation to HARP.

There are a number of projects planned in the Western Ghats forests in the State of Karnataka, if such discretion of the Chairman is not quashed then the petitioner apprehends that it will set a wrong precedent and such misuse of discretion will be repeated in recommending other projects for wildlife clearance, ignoring sound scientific objections by the majority Board members.

Adv.
Sujal -

Prishanth

The HARP if implemented will have a catastrophic effect on the corridors of Schedule-I wildlife such as the Tiger and Asiatic Elephants amongst other species located in the ecologically sensitive region of the Western Ghats in Kali Tiger Reserve (Aanshi-Dandeli Tiger Reserve).

Therefore, this petition is filed to challenge the vires of the proceeding and decision of the 14th meeting held on 20th March, 2020 of the Karnataka-SBWL.

J. Any Representations etc. made: -

The Petitioner has sent 2 parts representation letters to the Chairman & Minister in Charge of Environment and Forest and members of the Standing Committee of National Board for Wildlife (MoEF) via post and email on 23rd May, 2020.

A copy of the representation letters sent via post and email to the members of the Standing Committee of NBWL and a screenshot of the delivery confirmation of such letters on 26th May, 2020 are herewith marked and annexed as Annexure- 19 (colly)

K. Delay, if any, in filing this Petition and explanation thereof: -

The Petitioner submit that there has been no delay in filing this Petition. The minutes of the 13th and 14th meeting of the Karnataka-SBWL was circulated to the members of the Karnataka-SBWL by the Member Secretary after obtaining signature of the Chairman on 14th May, 2020.

L. Documents relied upon: -

The Petitioner have relied upon the document at Exhibit 1 to Exhibit 19 herein abovementioned.

1. The Petitioner crave leave to add, amend and alter grounds to the present application.

ADV.
SJS

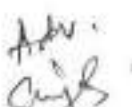
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2. The Karnataka State Board for Wildlife is located in Bengaluru. Therefore, the cause of action has arisen within the jurisdiction of this Hon'ble Court, which therefore has jurisdiction to entertain and try this Petition.
3. The Petitioner rely on documents, a list whereof is annexed to this Petition.
4. The Petitioner have not filed any other petition either in this Hon'ble Court or in the Hon'ble Supreme Court.
5. The Petitioner do not have any other adequate or equally efficacious alternate remedy for challenging the inaction of the Respondents.
6. That Petitioner are based in Bengaluru and the Respondents also have their offices in Bengaluru and the proposed project is located within the State of Karnataka. Therefore, the cause of action has arisen within the jurisdiction of this Hon'ble Court, to try this Petition.
7. There is no delay or laches in filing this Petition.
8. The Petitioner have paid the required court fee to this Petition

N. **Reliefs Prayed for:**

In light of the facts and circumstances mentioned above, it is most humbly prayed:

1. That this Hon'ble court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing the proceeding and the decision of the 14th meeting held on 20th March of the Karnataka State Board for Wildlife, where the Chairman of the Karnataka-SBWL

Adv.  17 Tishanth

recommended Wildlife Clearance to HARP ignoring the majority opinion of the Board members;

2. That this Hon'ble court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus upholding the proceeding and decision of the 13th meeting held on 9th March, 2020 of the Karnataka State Board for Wildlife as final decision taken by the Board;

N. Interim Prayers

That pending hearing and final disposal of this Petition, this Hon'ble Court may please to direct Respondent No.4 (Standing Committee of NBWL) not to consider the decision of the 14th meeting held on 20th March, 2020 as the final recommendation of the Karnataka-SBWL in their subsequent next meetings.

O. CAVEAT:

No notice of caveat has been received by the Petitioner till the filing of this PIL Writ Petition.

I say that if the ad-interim relief are not granted loss, harm injury and prejudice will be caused to the Petitioner and if granted, no grave loss, harm, injury, or prejudice will be caused to the Respondent

Bengaluru, Karnataka

June, 2020

Petitioner

(Vijay Nishant)

President, Project Vruksha Foundation

Adv.
Sujit

Ujjay Nishant