

GAHC010010922023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/6/2023

KAUSTUVMANI KAKATI,
A R/O- LIG BLOCK A-202, FIRST FLOOR,
CHANDMARI HOUSING COLONY, CHANDMARI,
KAMRUP (M), GHY-03, ASSAM.

.....Petitioner

-VERSUS-

1. THE STATE OF ASSAM,
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY, PIN- 781006.
- 2: THE CHIEF WILD LIFE WARDEN AND PRINCIPAL CHIEF CONSERVATOR
OF FORESTS (WILD LIFE),
ASSAM ARANYA BHAWAN, PANJABARI, GHY-37.
- 3: THE DIRECTOR GENERAL OF POLICE,
STATE OF ASSAM,
ASSAM POLICE HEADQUARTERS,
ULUBARI, GHY-37.
- 4: GREENS ZOOLOGICAL RESCUE AND REHABILITATION CENTER,
JAMNAGAR, GUJARAT.
- 5 :RADHE KRISHNA TEMPLE ELEPHANT WELFARE TRUST,
JAMNAGAR, GUJARAT.

.....Respondents

For the Petitioner : Mr. J. Roy, Sr. Adv.
: Ms. P. Vijay T., Adv.
: Ms. A. Neog, Adv.

Advocates

For the Respondent Nos.1-3 : Mr. P.N. Goswami,
Addl. Adv. Gen, Assam
Ms. S. Konwar, GA, Assam.
Mr. D. Gogoi, SC, Forest.

For the Respondent Nos.4 & 5 : Dr. Sujay Kantawala, Adv.
Mr. A. Khound, Adv.

Advocates

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Date of Hearing and Judgment : 25.01.2023

JUDGMENT AND ORDER

[N. Kotiswar Singh, CJ(Acting)]

Heard Ms. P. Vijay T., learned counsel assisted by Ms. A. Neog, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Additional Advocate General, Assam assisted by Ms. S. Konwar, learned Govt. Advocate, Assam and Mr. D. Gogoi, learned Standing Counsel, Forest Department appearing for respondent Nos.1, 2 & 3 as well as Dr. Sujay Kantawala, learned counsel assisted by Mr. A. Khound, learned

counsel for respondent Nos.4 and 5.

2. The present PIL has been filed by the petitioner who is an Advocate by profession seeking relief(s) *inter-alia*, for restraining the State of Assam, the Forest Department, Wildlife Division, All National Parks, all Zoos in the State of Assam and all rescue Centres in Assam from transferring any animal, whether wild or in captivity outside the State of Assam and also to rescue these animals and to cancel all agreements, if any, made by the State of Assam.

To be more specific, the relief(s) thus claimed by the petitioner in this PIL are reproduced as follows,

- “a. Why a writ of Mandamus and/or other writ and/or order for permanent restraint should not be passed against the State of Assam, the Forest Department, the Wildlife Division, all National Parks, all Zoos in Assam and all rescue centres in Assam to not to transfer any animal whether in wild or in captivity outside the State of Assam in any circumstances, and/or,
- b. Why a writ of Certiorari and/or writ of Mandamus and/or Orders should not be issued for cancelling all agreements if any made by the State of Assam, the Forest Department, the Wildlife Division, all National Parks, all Zoos in Assam and all rescue centres in Assam with respondent No.3.
- c. Why a writ of Mandamus and/or Orders should not be issued to the respondent No.3 to get back all the animals that are transferred by the State of Assam, the Forest Department, the Wildlife Division, all National Parks, all Zoos in Assam or all rescue centres in Assam, and/or
- d. Why a writ of mandamus and/or Orders should not be issued directing that the transport of the elephants out of State of Assam and State of Arunachal Pradesh should be banned, and/or.
- e. Why a writ of Mandamus and/or orders should not be issued to constitute a Special Investigation Team be constituted to carry out investigation and inquiry into the transfer permission given to the elephants as mentioned above in this petition, and/or,

- f. Why any other appropriate writ, direction or order should not be issued to the respondent authorities so as to provide adequate relief(s) to the petitioner for the ends of justice.”

3. The aforesaid relief(s) claimed by the petitioner have been sought by way of taking up, according to the petitioner, a public cause, more particularly for preserving and protecting the wildlife, premised on the ground that the State of Assam itself has several zoos and rescue centres which are capable of sheltering and taking care of the wild animals and captive wild animals in the State.

4. It has been alleged by the petitioner that certain agreement had been entered into by the authorities in the State of Assam with others, more particularly, with respondent No.4 for transfer of two panthers which were captive bred by the State Zoo in Guwahati, maintained by the respondent No.4, which has caused wide public discontentment.

5. It has been also alleged that certain MOUs have been signed between the State authorities and the respondent No.5 for keeping transferred wild animals and captive wild animals from the State of Assam under the guise of sheltering them in rescue centres.

6. The petitioner also has referred to certain incidents of transportation of elephants from Chowkham area of Namsai District of Arunachal Pradesh to Gujarat which was protested by the students of Arunachal Pradesh.

7. The petitioner also has questioned the credentials of the respondent Trusts, respondent Nos.4 and 5, and their capacity for sheltering and keeping the wild animals

and captive wild animals contending that respondent Nos.4 and 5 are private entities and cannot be allowed to keep the wild and captive wild animals.

8. The petition, however, has been strongly resisted by the State respondents, and with equal vehemence by the private respondents before this Court. The respondent No.2 has filed the affidavit-in-opposition.

9. Mr. Goswami, learned Additional Advocate General, Assam, pointing to the averments made in the PIL by the petitioner that he had not filed any written representation to the authorities concerned and the PIL has been filed due to urgency involved in respect of the issues raised and the nature of the relief claimed, has submitted that the PIL cannot be filed in a cavalier fashion without having exhausted other more efficacious forum available and without doing proper verification.

In this connection, learned Additional Advocate General has relied on the decision of the Hon'ble Supreme Court in ***State of Jharkhand Vs. Shiv Shankar Sharma and Ors. 2022 SCC OnLine SC 1541*** wherein it has been held by the Hon'ble Supreme Court that the statutory remedies available must first be exhausted and thereafter, the petitioner can approach the Court. The Hon'ble Supreme Court deprecated the act of the petitioner therein in approaching the Court by filing the PIL without having approached the competent authority.

Para 13 of the said decision in ***Shiv Shankar Sharma*** (supra) referred to by the learned Additional Advocate General, Assam reads as follows,

“13. This Court, thus declined to interfere in the matter holding that the petitioner must approach the investigating agencies directly with the incriminating material and then it is for the investigating agencies to decide on the further course of action. Although an apprehension was raised by this Court that it is possible that the efforts of the petitioner to uncover alleged corruption may be obstructed by entrenched interests, yet statutory remedies available to the petitioner must be first exhausted and only thereafter can he approach the High Court. In the present case no such effort has been made by the respondent (i.e., the petitioner in the PIL) to approach the statutory authorities in any manner whatsoever. The fundamental requirement for the issuance of a writ of mandamus is that the petitioner must have sought such a relief before the appropriate authority and only when it is denied the Court can be approached for a writ a mandamus. This principle cannot be ignored merely because this Court is dealing with a Public Interest Litigation. With regard to the present Public Interest Litigations before us, it is an admitted fact that the respondent has not taken any steps in approaching the statutory authorities or made any effort in the registration of an FIR.”

10. It has been further submitted on behalf of the State respondents that the documents which have been relied on by the petitioner for filing this PIL are essentially newspaper/press reports which cannot be the basis for filing a PIL without having verified the authenticity of the reports.

11. It has been submitted on behalf of the State that as regards the allegation that two black panthers which were captive bred by the Assam State Zoo, Guwahati have been transferred to the Private Zoo in Jamnagar owned by the respondent No.4, the same was done after obtaining necessary permission from the competent authority and as such, there is no illegality involved in the said transfer.

12. As regards the transfer of elephants, it has been submitted by Mr. Goswami that

the said issue had been already considered by the High Court of Tripura in **WP(C) (PIL) No.17/2022 [Sudip Nath Vs. Union of India and Others]** and a copy of judgment dated 07.11.2022 rendered by the High Court of Tripura in aforesaid WP(C) (PIL) No.17/2022 has been annexed by the petitioner himself in the PIL and therefore, there is nothing in this petition (PIL) which calls for intervention by this Court and as such, the present PIL is liable to be dismissed.

13. It has been submitted that apart from the aforesaid two incidents, the petitioner has not cited any other instance of transfer of wild or captive animals from Assam to the respondent Nos.4 and 5.

14. The private respondent Nos.4 and 5 also with equal vehemence resisted this PIL by taking similar pleas as the State Government/respondents.

15. It has been further emphasized by Dr. Sujay Kantawala, learned counsel appearing for the respondent Nos.4 and 5 that the credentials of the respondent Nos.4 and 5 cannot be questioned by the petitioner at all as the same has been considered by Hon'ble Supreme Court as well as by various other High Courts, as is clearly evident from the orders passed by the Hon'ble Supreme Court in **Kanhaiya Kumar Vs. Central Zoo Authority & Anr.**, reported in **2022 SCC OnLine SC 1228, Muruly M.S. Vs. State of Karnata & Ors. [Writ Petition No.10688 of 2022 (GM-FOR-PIL)]** and **Sudip Nath** (supra).

16. It has been submitted that the respondent Nos.4 and 5 have been primarily established to take care of neglected and aging and ailing wild animals with world

class equipments manned by highly qualified and technical staff and are authorised by the competent authority to set up the centres.

17. Thus, from the above rival contentions, we will, firstly, be required to examine as to whether the present PIL is maintainable or not, and if so, whether any of the acts of the respondents were in violation of law which would invite intervention of this Court.

18. As regards maintainability of this PIL, we would like to observe that though the petitioner ought to have approached the competent authority for redressal of his grievances before approaching this Court and further ought to have verified the correctness of the press reports, however, considering the fact that the matter is of great importance pertaining to the State of Assam which is very rich in flora and fauna and is a bio-diversity hot spot being host to a number of endangered and threatened species of wild animals including elephants, black panthers and others and since the State respondents have filed their affidavit, we have considered it appropriate to examine the matter also on merit, rather than confining only on the issue of maintainability.

19. Regarding the first allegation that two black panthers which were captive bred by the State of Assam were transferred to respondent No.4 in Jamnagar, it is noticed that the said transfer was permitted as per the approval granted by the Government of India, Ministry of Environment, Forest and Climate Change, Central Zoo authority as conveyed to the Additional Principal Chief Conservator of Forest (Wildlife) & Chief

Wildlife Warden, Government of Assam vide letter dated 23.11.2020 under Section 381 of the Wild Life (Protection) Act, 1972 to Greens Zoological Rescue & Rehabilitation Centre, Jamnagar, Gujarat (respondent No.4) for the purpose of exhibition/display with several conditions stipulated to ensure the well-being of two black panthers.

The conditions stipulated in the approval letter dated 23.11.2020 are as follows.

- “1. Leopard (Black Panther) (1:1) shall be presently housed on transit in the Leopard Rescue Center of the Greens Zoological Rescue & Rehabilitation Centre, Jamnagar, Gujarat and should be shifted to the Green Zoological Rescue & Rehabilitation Centre, Jamnagar, Gujarat main facility, once the zoo is recognized by the CZA.
2. Due screening of animals involved in the animal exchange, against zoonotic diseases and ecto and endo parasites shall be carried out prior to their transportation from the Assam State Zoo-cum-Botanical Garden, Guwahati, Assam to Greens Zoological Rescue & Rehabilitation Centre, Jamnagar, Gujarat.
3. The newly acquired animals shall not be directly put in the animal enclosure with the existing species of the Zoo. They shall be first kept under quarantine for a minimum period of three weeks and quarantine protocols shall be followed. After completion of quarantine as per protocol, the veterinarian looking after quarantine of the animals shall issue a quarantine completion and only then the animal may be moved to its enclosure in the Zoo.
4. The guidelines laid down by the Central Zoo Authority for the transport of captive wild animals should be strictly followed.
5. The Animal History Cards, Treatment Records (including vaccination and deworming) prophylactic measures taken etc. should also be handed over to the recipient Zoo of the animal at the time of acquisition of animals.
6. The Zoo sending the animal should also intimate to the recipient zoo any specific requirements of the animal related to feed, upkeep and health care.

7. In cases the animals under exchange are not marked with appropriate identification mark used for the species, it should be marked at the time of acquisition without fail."

20. Thus, it appears that the competent authority had approved the transfer of the said two black panthers from the Assam State Zoo-cum-Botanical Garden, Guwahati to the respondent No.4 by stipulating appropriate conditions for the welfare of these animals.

Nothing has been brought to our notice that the aforesaid approval granted by the competent authority is tainted with any irregularity or *malafide* which would warrant any intervention by this Court.

21. In this regard, it may be also noticed that as regards the credentials of respondent No.4, the same has been considered by the Hon'ble Supreme Court in ***Kanhaiya Kumar*** (supra). The Hon'ble Supreme Court after considering the rival submissions in the light of pleadings and the records therein held that the respondent No.4 is a recognized Zoo as well as recognized Rescue Centre, and the Hon'ble Supreme Court did not find any legal infirmity in granting recognition to the Zoo and Rescue Centre managed by the respondent No.4 by the Central Zoo authority which was assailed in the said petition filed by one Kanhaiya Kumar. The Hon'ble Supreme Court accordingly, repelled the contentions raised that the respondent No.4 is a private zoo and is not permitted to receive animals whether from abroad or in India.

22. It was noted by the Hon'ble Supreme Court that the Central Zoo Authority had granted approval for establishment of Zoo and Rescue Centres to the respondent No.4

under Section 38-H(1A) of the Wild Life (Protection) Act, 1972 subject to certain conditions.

23. The Hon'ble Supreme Court also noted that the functions and activities of the respondent No.4 including running the Leopard Rescue Centre and the Crocodile Rescue Centre where a number of Vats, Curators, Biologists, Zoologists and other experts are being engaged, were strictly in terms of the stipulations for recognition and the provisions of law applicable including the Wild Life (Protection) Act, 1972 and Recognition of Zoo Rules, 2009.

24. The Hon'ble Supreme Court also noted that except the Zoological Park of the respondent No.4 which would be open to public, no other area would be open to the public and would be maintained only as Rescue Centre. The Hon'ble Supreme Court also noted the stand of the respondent No.4 that Zoological Park itself would be operated essentially for educational purposes and creating awareness for promoting welfare of animals. The Hon'ble Supreme Court also noted the plea of the respondent No.4 that if any revenue is generated from the Zoological Park, the same shall be, after payment of taxes, used only for rescue, relief and rehabilitation operations.

25. The Hon'ble Supreme Court thereafter, proceeded to hold that there was no illegality in the permission granted to the respondent No.4 by the Central Zoo authority and of the activities carried on by the respondent No.4, and dismissed the said petition.

26. Thus, in view of the above decision of the Hon'ble Supreme Court in ***Kanhaiya***

Kumar (supra) rejecting the challenge to the approval granted to the respondent Nos.4 to establish Zoo and Rescue Centre, it may not be necessary for us to re-examine the credentials of the respondent No.4 *qua* the aforesaid activities.

27. If the respondent No.4 indeed is permitted to keep/receive wild life as per approval granted by the concerned authority, in present case, as the transfer of two black panthers to the respondent No.4 was done as per approval granted by the Central Zoo authority on 23.11.2020, we do not find any ground to interfere with the said transfer of two black panthers from the Assam State Zoo to respondent No.4.

28. We now proceed to deal with the issue of transfer of elephants and about the activities of the respondent No.5.

29. The State has specifically pleaded that no elephant from the State of Assam, either captive or wild, has been transferred to respondent Nos.4 and/or 5 and the petitioner has also not alleged transfer of any elephant from Assam. What has been mentioned in the PIL is about the transfer of elephants from Arunachal Pradesh to respondent No.5 and for this, the State Government has produced the relevant documents regarding transportation of elephants from Arunachal Pradesh to respondent No.5 after having obtained necessary permission/approval from the competent authority, details of which are given in the documents annexed as Annexure B (collectively) to the affidavit-in-opposition filed by the respondent No.2.

30. Be that as it may, it may be not be necessary for us to make any further observation relating to transfer of elephants, considering that the said issue was

specifically dealt with by the High Court of Tripura in ***WP(PIL) No.17/2022 [Sudip Nath Vs. Union of India and Others]*** and the High Court of Tripura after examining in detail various issues raised about the transfer of elephants to the Elephant Camp established by the respondent No.5, and keeping in mind the welfare of wild life and elephants, constituted a High Power Committee to be headed by a retired Judge of the Hon'ble Supreme Court, Justice Deepak Verma to look into the numerous issues regarding keeping and sheltering elephants by the respondent No.5 and to undertake examination of several aspects and submit the report to the Chief Wild Life Warden of the concerned State either recommending or not recommending the completion of transfer etc. The said High Power Committee consisted of other members, namely,

- i. Director General of Forests (Union of India)
- ii. Head of Project Elephant Division (MoEF),
- iii. Member Secretary (Central Zoo Authority of India),
- iv. Chief Wild Life Warden (State of Tripura) for Elephant from State of Tripura; and
- v. Chief Wild Life Warden (State of Gujarat).

31. The respondent No.5 was specifically directed to comply with the recommendations made by the HPC as regards sheltering or keeping of the elephants. That apart, the High Court of Tripura also issued a slew of directions to undertake a

thorough and detail physical inspection of the respondent No.5 Trust, and authorised the HPC to access and inspect all areas and facilities of the Trust including documents of the Trust and also examine and question the staff and officers of the Trust.

The relevant portions of the directions issued by the Tripura High Court in the aforesaid **WP(PIL) No.17/2022** on 07.11.2022 may be noticed as below.

“27. To our minds, the following disputed questions arise from the petitioner’s allegations, albeit, without material, but pertinent enough to us and allegations that must be ascertained by the authorities, if nothing then out of caution, before transfer of these 23 Elephants;

- a. Whether there exists any transaction of a commercial nature in the transfer of any of the 23 Elephants in question?
- b. Whether Elephants at the Elephant Camp of respondent No.3 are subjected to any form of cruelty?
- c. Whether permissions granted to the Elephant Camp of the respondent No.3 are in force and valid as on date?
- d. Whether the infrastructure and facilities of the Elephant Camp of the respondent No.3 are conducive to housing captive Elephants for lifelong care?
- e. What is the current status of housing, food and veterinary care being provided to the 23 Elephants by their respective owners?
- f. Whether there is sufficient veterinary care adhering to a standard of reasonable care available at the Elephant Camp of the respondent No.3?
- g. Whether the Elephant Camp of the respondent No.3 has sufficient infrastructure and space to accommodate the proposed 23 Elephants?
- h. Whether the respondent No.3 has sufficient cash flow or financial capacity to manage existing and 23 additional proposed Elephants?
- i. Whether there exist sufficient, competent and qualified staff to manage the care of the existing and 23 additional proposed Elephants?

- j. Whether the Camp of the respondent No.3 is of a commercial nature and is operated for any commercial purpose?
- k. Whether there is any mechanism to ensure no cruelty is meted out or mismanagement occurs in relation to the Elephants at the camp of the respondent No.3?
- l. Whether climatic conditions at the Elephant Camp of the respondent No.3 are conducive to Elephants?
- m. Whether the Elephants at the camp of respondent No.3 are handled using humane and proper techniques?
- n. What are the causes of casualties, if any, at the Elephant Camp of the respondent No.3 and whether such causes are on account of any action, omission or breach of standard duty of care by the respondent No.3?
- o. Whether the transfer of the 23 Elephants to the Elephant Camp of the respondent No.3 will be in the interest of some or all of the said Elephants after conducting a comparative analysis of the existing status and quality of housing, food and veterinary care being provided by their respective owners and to be provided by the respondent No.3?
- p. As transfer of the proposed 23 Elephants would require their relocation to another place, whether on overall assessment of all factors, the transfer would be in the paramount interest of the Elephant?

28. As stated earlier, a writ court would be unequipped to determine disputed questions of facts. However, we propose to form a High Powered Committee (HPC) to be headed by retired Judge of the Hon'ble Supreme Court of India, Hon'ble Mr. Justice Deepak Verma who himself is an avid animal lover and has dealt with several matters relating to animals. We further propose to appoint expert members to the said HPC to assist the Chairperson. We propose to appoint, the Director General of Forests (Union of India), Head of Project Elephant Division (MoEF) and Member Secretary (Central Zoo Authority of India), the Chief Wild Life Warden (State of Gujarat), the Chief Wild Life Warden (State of Tripura) and the Chief Wild Life Warden (State of Arunachal Pradesh). We further propose that the Chairman of the said HPC shall co-opt an expert having experience about Elephants as a member of such HPC. The Chairman may also consider taking assistance from the Chairman of the Animal Welfare Board of India (AWBI).

29. The said HPC to be chaired by Hon'ble Mr. Justice Deepak Verma shall treat the questions framed by us in paragraph 27 above as 'Terms of Reference' and carry out the necessary fact finding exercise. Thereafter the Chairperson of the HPC shall make his report and provide a copy to all concerned. The Chairperson of the HPC shall then send his recommendation Elephant wise to the concerned Chief Wild Life Warden of the concerned State either recommending or not recommending the completion of the transfers, as the case may be.

30. In case the Chairperson of the HPC recommends that an Elephant or Elephants should not be transferred, then the concerned Chief Wild Life Warden shall take steps to either confiscate the Elephant or take an undertaking from the concerned owner that the Elephant shall be taken care of without any cruelty. In case where such undertaking is taken, the concerned Chief Wild Life Warden shall be bound to monitor the Elephant concerned in regular intervals and take further steps, if necessary, accordingly.

31. In cases where the Chairperson of the HPC recommends that an Elephant or Elephants be transferred to the camp of the respondent No.3, the concerned Chief Wild Life Warden shall ensure that the transfer of the Elephant is undertaken in the most appropriate manner conducive to the Elephants and further the concerned Chief Wild Life Warden shall request the jurisdictional police to ensure smooth passage of the Elephant concerned. Such jurisdictional police shall be bound to render all assistance to ensure smooth passage of the Elephant concerned.

32.

33.

34. In view of the aforesaid, we pass the following order:-

a. We direct the Project Elephant Division of the Ministry of Environment, Forests and Climate Change to issue necessary directions to all Chief Wild Life Wardens to take all steps necessary to curb and put to an end, the capturing of wild Elephants, if any, from the wild including:-

i. Directing a census of all Elephants in captivity of private persons or Government departments and creation of an inventory of the same with their name, details of ownership certificate, microchip number and photograph.

ii. Directing inspection and verification of Certificate of Ownerships of all

Elephants in captivity and in case there is no Certificate of Ownership, to either issue a provisional Certificate of Ownership or confiscate the Elephant after carrying out necessary inspection and verification of the history and source of the Elephant.

iii. Directing a proper DNA sequencing for new offspring to be conducted so as to identify and prevent capture of young Elephants from the wild.

b. We do hereby appoint a High-Powered Committee (HPC) under the Chairmanship of Hon'ble Shri Justice Deepak Verma (Former Judge, Supreme Court of India). We hereby appoint the following persons (by designation) as members of the said HPC:

- i. Director General of Forests (Union of India);
- ii. Head of Project Elephant Division (MoEF);
- iii. Member Secretary (Central Zoo Authority of India);
- iv. Chief Wild Life Warden (State of Tripura) for Elephants from State of Tripura;
and
- v. Chief Wild Life Warden (State of Gujarat).

c. The Chairman of the HPC shall co-opt an expert having experience of Elephants as a member of such HPC. The Chairman may also consider taking assistance of the Chairman, Animal Welfare Board of India for the purposes of the HPC.

d. All other members of the HPC shall render all assistance and for that purpose shall use all powers vested in them including taking assistance of other officers of their respective departments as directed by the Chairman and also to take assistance of the local police as and when necessary, to enable the HPC to carry out the functions requisitioned by this order.

e. The members of the HPC shall carry out a thorough and detailed physical inspection of the Trust. They shall be entitled to access and inspect all areas and facilities of the Trust. They shall be entitled to access and inspect all documents of the Trust. They shall also be entitled to interview and question the staff and officers of the Trust. The HPC is requested to carry out the inspection at the earliest and in any case within 10 days from the date of this order.

f. The respondent No.3 is directed not to interfere with or restrict the members of the HPC from carrying out their inspection in any manner that they deem fit. The Chairman shall be entitled to take assistance of as many professionals, including photographers, videographers,

vets, architects as he deems fit, for the purpose of the inspection.

g. The respondent No.3 shall render all assistance and provide all necessary arrangements as requisitioned by the Chairman of the HPC for the purpose of the inspection.

h. The Chairman of the HPC may direct formation of one or more groups consisting of at least 3 members (of which at least one should be from the HPC and other experts) to carry out a physical inspection at the current location of the 23 Elephants and submit factual findings on such questions as the Chairman may deem fit and proper including on the allegation that they are purported to be captured from the wild. Due regard would be had to the said factual findings in the report.

i. The HPC shall in the first instance make a report on the questions in paragraph 27 of this order and it shall endeavour to do the same within a period of two weeks from the date of communication of this order.

j. The Chairman of the HPC shall make a report and provide a copy of the same to all concerned preferably within a period of two weeks from the date of communication of this order.

k. The Chairman of the HPC shall then forward his recommendation Elephant-wise to the concerned Chief Wild Life Warden either recommending or not recommending the completion of the transfers, as the case may be.

l. In case the Chairperson of the Committee recommends that an Elephant or Elephants should not be transferred, then the concerned Chief Wild Life Warden shall take steps to either confiscate the Elephant or take an undertaking from the concerned owner that the Elephant shall be taken care of without any cruelty. In case where such undertaking is taken, the concerned Chief Wild Life Warden shall be bound to monitor the Elephant concerned in regular intervals and take further steps if necessary accordingly.

m. In cases where the Chairperson of the Committee recommends that an Elephant or Elephants be transferred to the camp of the respondent No.3, the concerned Chief Wild Life Warden shall ensure that the transfer of the Elephant is undertaken in the most appropriate manner conducive to the Elephants and further the concerned Chief Wild Life Warden shall request the jurisdictional police to ensure smooth passage of the Elephant concerned. Such jurisdictional police shall be bound to render all assistance to ensure smooth passage of the

Elephant concerned.

n. In case the Chairman of the HPC finds any other fault or discrepancy, he shall forward its report with necessary recommendation for taking necessary corrective steps or action to the Secretary, Ministry of Environment, Forest & Climate Change, Secretary, Forest Department of States of Gujarat, Tripura and Arunachal Pradesh as necessary or deemed fit by the Chairman of the HPC.

o. We direct that all police authorities, officers of forest and wild life departments, officers of the Central Zoo Authority, Project Elephant and officers of the Ministry of Environment, Forest and Climate Change, to whom a request for assistance is made by the Chairman of the HPC, shall be bound and liable to render all necessary assistance to the HPC and its members to carry out the functions of the HPC.

p. We direct that in order to bring about checks and balances in transfer of Elephants, the HPC shall continue to exist beyond these 23 Elephants and shall be consulted by the concerned Chief Wild Life Warden as the case may be before granting any travel permit. No travel permit shall be granted without the recommendation of the HPC. For such purpose, the HPC shall carry out the exercise it deems fit bearing in mind the observations made and the purport of the present order.

q. The costs of the HPC shall, insofar as the costs of the members are concerned, since their appointment is by designation, the costs shall be borne by their respective departments or employing authority.

r. The Chairman shall be entitled an honorarium of Rs.5,00,000/- (Rupees Five Lakh Only) and costs of the Chairman shall be reimbursed to him by the respondent No.3 without demur against a Bill of Costs. Such honorarium and costs shall be paid in advance and in any case before the Chairman sends his recommendations to the concerned Chief Wild Life Warden.

s. In case the Chairman of the HPC is required to carry out functions under this order beyond the afore-referred 23 Elephants, the Chairman shall convene the HPC with the same composition of respective designations and the HPC shall have the same functions as above and the HPC shall be provided with the same assistance as above.

t. In case the Chairman of the HPC is required to carry out functions under this order beyond the afore-referred 23 Elephants, entitled to an honorarium of Rs.100,000/- (Rupees One

Hundred Thousand Only) and reimbursement of costs in the same manner as above.

Needless to mention that final report will be shared with petitioner and respondent No.3. It would be open for the petitioner as well as authorities to take proper action as per law if any discrepancy is discovered by the High Power Committee in its report.”

32. We have extensively quoted from the judgment of the Tripura High Court to highlight the activities of the respondent No.5 and obligations of the respondent No.5 in maintaining and taking care of the elephants in their custody. However, we do not wish to pass any such similar direction in the case of Assam for constituting a High Power Committee inasmuch as in our view, the Central Zoo Authority as constituted under Section 38A of the Wild Life (Protection) Act, 1972 has been empowered to perform the functions assigned to it under the Act. However, if any serious violations of the provisions of the Act are noticed, which have not been properly and adequately dealt with by the Central Zoo Authority in respect of any elephant or any wild animal from the State of Assam in the custody of the respondent No.5, such instances may be brought to the notice of the Court.

Further, if the State of Assam wishes to be part of the aforesaid High Power Committee, it would be at liberty to do so for which the State of Assam may intimate the Chairman of the HPC with a copy of the order passed by this Court, so that the Chief Wild Life Warden (State of Assam) can properly monitor in respect of any elephant being taken from the State of Assam to the respondent No.5.

33. The activities of the respondent No.5 have been also come under the scrutiny of the High Court of Karnataka in ***Muruly M.S. Vs. State of Karnataka and Ors.*** [Writ

Petition No.10688 of 2022 (GM-FOR-PIL)]. After considering the issues in the light of the activities undertaken by respondent No.5, the Karnataka High Court held that the Wild Life (Protection) Act, 1972 allows/permits private individuals to have ownership of live elephants. Further, keeping in mind the provisions of Section 43 of the Act that no person having in his possession any captive animal shall transfer the animal by way of sale or transaction of a commercial nature, the Karnataka High Court held that the transfer of 4(four) elephants in issue in the said petition did not involve any transaction of a commercial nature and held that the respondent No.5 is a *bona fide* Trust which is carrying out a laudable object.

In the said case of ***Muruly M.S.*** (supra), the allegation made against the respondent No.5, and questioning its credentials were repelled by the Karnataka High Court. The Karnataka High Court took into consideration the submission made that the respondent No.5 Trust was formally registered as a Public Charitable Trust under the Gujarat Public Trust Act, 1950 on 30th September, 2019 with the object to promote welfare of animals and to establish buildings, maintain shelters and provide state of the art facilities for animals who are rescued, hurt, ill, of advanced age, victims of human-animal conflict, victims of human abuse or compulsions or are abandoned.

The Karnataka High Court also noted that the respondent No.5 had established a very large facility in the green belts alongside Jamnagar Refinery by using 50 acres of land for large shelters, ponds, grazing areas, playing areas, eating areas, hospital and care Camps for elephants and the respondent No.5 received a formal permission from

the Principal Chief Conservator of Forest (Wildlife) and Chief Wildlife Warden, Gujarat on 9th July 2020 for Elephant Care Camp at Jamnagar.

The Karnataka High Court also noted the various welfare activities undertaken by the respondent No.5 in managing and running the said rehabilitation centre.

The Karnataka High Court also noted that the respondent No.5 is not involved in any commercial activity with these animals and they have been kept only for rehabilitation and proper care and the respondent No.5 do not have any breeding centres nor engaged in any activity of breeding of the animals in the centre.

The Karnataka High Court having satisfied with the activities of the respondent No.5 further directed that the respondent No.5 in cases where the elephants at their facility by natural procreative process produce any calves, the respondent No.5 shall report the same to the local authorities within 48 hours and the respondent No.5 shall give an undertaking to the local authorities that they shall provide for and take care of the said calves.

The Karnataka High Court also issued further directions as follows,

“26.....

- (i) The Elephants that are in the custody and care of the Respondent No.3 Trust, shall till the end of their respective lives, be continued to be given the same care and facilities as specified in the Counter filed in these proceedings.
- (ii) In case any more Elephants are relocated to the Respondent No.3's facility by private individuals, organizations, Central or any State Governments or their departments and agencies, the same care and facilities as specified in the Counter filed in these

proceedings, shall be provided to them for the rest of their respective lives.

- (iii) The Respondent No.3 shall not enter into any commercial transaction referred to in Section 43 of the Wild Life (Protection) Act, 1972.
- (iv) The Respondent No.3 shall before receiving any further Elephants, ensure that the same infrastructure as present is available and sufficient for the new adoptee Elephants.
- (v) The Respondent No.3 shall not use its facilities for any commercial purpose.
- (vi) The Respondent No.3 shall not promote breeding by use of any scientific methods. However, only if as a result of natural procreative process any calves are born, the Respondent No.3 shall report the same, to the local forest authorities in whose jurisdiction they are situate, within 48 hours and the Respondent No.3 shall give an undertaking to the local forest authorities that the Respondent No.3 shall provide for and take care of the said calves.
- (vii) The Respondent No.3 shall submit an annual report of its activities and facilities for Elephants under its care to the local forest authorities in whose jurisdiction they are situated.”

34. The aforesaid decision of the Karnataka High Court was not interfered by the Hon’ble Supreme Court and challenge to the said order of the Karnataka High Court in ***SLP (C) No. 12246/2022, [Muruly M.S. Vs. The State of Karnataka & Ors.]*** was dismissed by the Hon’ble Supreme Court vide order dated 01.08.2022.

35. Thus, in view of the repeated certifications by different High Courts as well as the Hon’ble Supreme Court about the activities of the respondent No.5, we do not wish to carry out any further examination of the credentials of respondent Nos. 4 and 5, nor we wish to issue any additional directions, as those directions already issued by various High Courts and the Hon’ble Supreme Court sufficiently take care of the welfare of the animals in the custody/care of the respondent Nos.4 and 5.

36. As regards the transfer of elephants from Arunachal Pradesh to respondent No.5, since the same has been already duly and extensively considered by the High Court of Tripura, we may not make any further observation in that regard.

37. As regards the activities of the respondent No.5 in dealing with elephants, in view of the directions issued by the Karnataka High Court in **Muruly M.S.** (supra) and by the Tripura High Court in **Sudip Nath** (supra), we will not be required to issue any direction in absence of any irregularity on the part of the respondents being brought to our notice, except for the observations made by us as above.

38. For the reasons discussed above, we decline to entertain this PIL.

39. However, in spite of our disinclination to entertain this PIL, we direct that the respondent No.4 shall take all necessary measures for strictly adhering to the terms and conditions as mentioned in the approval granted for transfer of two black panthers as contained in the approval letter dated 23.11.2020 issued by the Government of India, Ministry of Environment, Forest and Climate Change, Central Zoo Authority, as quoted above.

The State authorities, more particularly, the respondent No.2 shall remain in regular touch with the respondent No.4 and other authorities, and also take such necessary steps as it may deem fit to ensure that terms and conditions mentioned in the approval letter dated 23.11.2020 are strictly complied with by the respondent No.4.

40. We also make it clear that our observations and directions made above are confined to the issue of black panthers and elephants which are matters of consideration in this PIL.

41. With the above observations and directions, the present PIL stands disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant