

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
(ORIGINAL JURISDICTION)**

**WRIT PETITION NO.**

**OF 2019(GM-RES)PIL**

Between

1. Suresh Heblkar, Aged 69, son of Sri Balakrishna ,403, 18th Cross, 3rd Block, Jayanagar, Bengaluru 560011
2. Joseph Hoover, Aged 58 years, son of James Hoover  
S/o #116, God's Gift, 2nd Cross, 4th Main, Giridhama Layout, Rajarajeswari Nagar, Bengaluru 560098
3. J Manjunath , Aged 60 years ,son of. B.V.JanakiramNaidu, 566, 21st Main, 36th Cross, 4 T Block, Jayanagar, Bengaluru 560041

} Petitioners

And

1. Union of India by its Deputy Inspector General  
Of Forest(WL) Ministry of Environment, Forests and Climate Change,6<sup>th</sup> Floor, VayuWing,IndiraParyavaranBhavan, Jor Bag Road,Aliganj  
NEW DELHI-110 003
2. Principal Chief Conservator of Forests , AranyaBhavan, Bengaluru-560 003,
- 3 National Highways Authority of India  
By its Assistant Commissioner,  
Belagavi And CALA,NH4-A,  
BELAGAVI-

} Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA**

The Petitioners in the above matter seeks leave of this Hon'ble Court to file the Petition as Public Interest Litigation. The Petitioners have no personal or vested interest in the matter.

1. **Petitioner No.1**, Mr. Suresh Heblikar, aged 69 Years, belongs to Dharwad, a place known for arts, culture, poets and writers. He has nearly twenty years of experience in Films and Environment. He is also a powerful environmental voice in regional T.V channels representing environmental issues. He is a recipient of several awards like the Rajiv Gandhi Environment Award, Citizen Extraordinaire Award, United Nations – OSIRIS F.A.O Award to name a few from Govt of Karnataka, Rotary International and 19th Agro film festival 2002, Nitra, Slovakia.

**Petitioner No. 2**, Mr. Joseph Hoover, aged 58 years is an independent who had formerly worked in Indian Express, Deccan Herald and Times of India for 24 Years and have been involved in wildlife conservation for over three decades. He is a former member of the Karnataka Wildlife Advisory Board. He has been successful in engaging international cricketers in wildlife conservation, including Sachin Tendulkar, Anil Kumble, Rahul Dravid amongst many other icons. Instrumental in organising the Wildlife Service Award under the Cricketers for Wildlife Conservation banner.

**Petitioner No. 3**, Mr. Manjunath J , aged 60 years belong to an agricultural family of Kollegal town in Chamarajanagar District. He is the secretary of an NGO Wilderness Club, a registered society under the registrar of societies, Bengaluru. He had been officially monitoring Wildlife Offences in Chamarajanagar and Mysore District and attending court cases on behalf of the Chief Wildlife Warden as per letter dated 12-1-2004 for 8 years under the Chairmanship of two Chief Wildlife Wardens, Karnataka. He has over 30 years of

experience in Elephant corridor restoration and conducting several legal workshops for department of Forest all over and Tamil Nadu.

2. It is submitted that there was a report on 22,000 trees being felled for the widening of NH4A in Deccan Herald as of 30<sup>th</sup> Oct 2018. The report highlighted that trees were felled in Khanapura-Londa as DilipBuildconLtd, a Madhya Pradesh-based company has decided to start the work on road widening. This news report alerted concerned citizens of Belgaum and they conducted field visit to ascertain the facts on field. It was seen that modern machinery were used to bring down huge girth sized trees in these sections at a very fast rate.
3. There were multiple field visits by concerned citizens to the entire stretch of NH4-A in Nov 2018 and Dec 2018 after local citizens alerted us. The local groups at Belgaum were in the meantime collating more information related to the tree felling.
4. The newspaper reports claimed that an overall 22,000 trees were planned to be felled in this stretch. However, when we visited the area, we saw many low girth sized trees being felled without any marking on it. It is also brought to your notice that as many as 1 Lakh trees of varying girth size will eventually be felled considering the very dense forests that belongs to Eco Class I. During our field visit we have seen many trees that were cleared and felled without any accountability. Many of the tree species felled are species that do not perform well in disturbed areas and is impossible to raise with human intervention. When compensatory afforestation is being planned, the rich species diversity that was lost due to this felling is never considered. Compensatory afforestation is implemented by monoculture of timber species in place of the diverse naturally regenerated rich tropical wet evergreen forests!
5. As on 14<sup>th</sup> Jan 2019/16<sup>th</sup> Jan 2019, several petitions were submitted to Sri. SANDEEP DAVE, IAS ,Additional Chief Secretary to Government ,Forest, Ecology and Environment Department, Karnataka Govt Secretariat, Bengaluru, Karnataka ,

ShriVijayakumarGogi, IFS, Principal Secretary to Govt (Forest), Forest, Ecology and Environment Department, Karnataka Govt Secretariat, Bengaluru, Karnataka and Regional Director, Ministry of Environment, Forests and Climate Change, KendriyaSadan, IVth floor, E&F Wings, 17th Main Road, IIInd Block, Koramangala, Bengaluru by various individuals and civil society groups to stop any large scale felling of trees on an immediate basis. The copies of the same are produced herewith as Annexure A, A1 to A5. This representation was given in view of the recent Public Notification issued by the 3<sup>rd</sup> Respondent for Land Acquisition from private land owners in and around various villages of Belgavai and surrounding places vide Notification No. LAQ/NH4-A/CR-1675 dated 13-11-2018 the copy of which is produced herewith as Annexure 'B'.

6. It is submitted that conserving the natural heritage of the country can be only achieved by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country” and “Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the “interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.” An ecosystem that is highly stable over a period of several centuries may be highly fragile in a short-term perspective. Even if there are several proposed meanings of stability and fragility in an ecosystem, they basically relate to the relative changes in species abundances and in species composition. Ecosystem fragility relates to the degree of change in species. In view of the environmental sensitivity and ecological significance of the Western Ghats region and the complex interstate nature of its geography, as well as possible impacts of climate change on this region, it has become inevitable to conserve effectively the ecological fragile lands, minimizing the reduction or degradation of these ecosystems and biological diversity therein, which evolved through years.

7. Western Ghats stretch in Karnataka is home to one of the last remaining tropical wet evergreen forests. Western Ghats is a

biodiversity hotspot and is a declared world heritage site by UNESCO. The flora in Very dense forest of Eco Class I belong to the rare, endangered and threatened species that are difficult to be raised and planted. Also, CAMPA does not consider any diversity conservation of tree species that are lost due to felling. It is done with timber species as a goal and is eventually executed as a monoculture of timber species elsewhere. Thus, the ecological services lost due to such large-scale felling of diverse very dense forest is never compensated for by the user agency nor by the Forest department. Most of these species of trees support the food security of large biodiversity including elephants; which the monocultured species fail to address thus increasing human elephant conflicts in the nearby farmlands. Elephants and other ungulates are forced to come out in search of food and water when the forests are depleted of its' original tree cover and diversity. Four Kali Hydrel projects there have been similar forest diversions that have resulted in loss of more than 50,000 HA of forests. This has already impacted the ecology of Uttara Kannada and Belagavi in Western Ghats, affecting the rain cycle and subsistence of local communities. A study done by IISc has been reported in Deccan Herald newspaper on 31<sup>st</sup> Dec 2018 as per Annexure 'C' which has revealed that there has been a decline in evergreen forest cover from 61.8% in 1973 to 37.5% in 2016. During the same time, the dry deciduous forest reduced from 7.82% to 2.24% in the catchment areas.

8. It is humbly submitted that as per the letter dated 21-11-2012 by Chief Conservator of Forests, the diversion is for 93.568 Ha of forest land from 0.00 Km to 84.12 Km in Belgaum and Haliyal forest divisions. Out of the 93.568 Ha , 53.744 Ha is proposed to be diverted in Belgaum Division and 39.824 Ha is diverted in Haliyal division. It is submitted that this report mentions about an important elephant corridor where the proposed road passes between Wildlife Sanctuary and forests of Khanapur and Jamboti. This report in point number 7 mentions that “ *keeping in view the sensitivity of the proposed forest area, consent of the Chief Wildlife Warden and Principle Chief Conservator of Forests (Wildlife) and National Board*

*of Wildlife to be obtained for implementing the road widening for NH4A*". The Karnataka Forest Department has not been able to produce the consent letter of Chief Wildlife Warden and National Board of Wildlife. It is thus submitted that the entire tree felling done in the stretch of NH4A is hence illegal without the consent of Chief Wildlife Warden, PCCF and NBWL. The letter No A5(3) GFL-CR-104/2011-12 dated 21-11-2012 is hereby submitted as Annexure 'D'.

9. It is submitted that while NH4A is from Belgaum to Goa, there is no approval for road widening that passes through Mollem Wildlife Sanctuary and Mahaveer National Park in Goa State. As per the decision taken by the Standing Committee of the NBWL in its 28th Meeting held on 20th March 2013, the approval of the National Tiger Conservation Authority (in case of Tiger Reserves) and concerned State Boards for Wildlife in case of non-Tiger Reserve for other PAs., must be obtained. The recommendations of the sub-committee is herewith produced as Annexure 'E'. Tree cutting in Karnataka prior to procuring approval for widening in Goa inside two Protected Areas is a hurried effort to conceal the illegality behind the act in Karnataka.
10. It is pertinent to note that after the tree felling inside some of the critically eco fragile zones, NHAI has called for private land acquisition notification in Deccan Herald as on 3<sup>rd</sup> Jan 2019. This also proves that there is a hurried effort to clear every single tree inside the forest land without even ensuring that the land acquisition process for the entire length of NH4A is completely by involving all stakeholders.
11. The total number of trees cleared is also estimated at a much lower number than the felling executed on the field for the distance mentioned. With the highly efficient machinery available for cutting trees, several thousands are felled without much monitoring on site by department of forests. The WRI satellite image maps clearly states that "Most of the landslides in the Kodagu region happened due to slope failure along the roads as observed in the following WRI India generated maps of the landslide-affected areas.". In the above

scenario of unpredictable heavy rains in the region and loss of green cover causing deleterious impacts on the slope stability, it is brought to your notice that the unscientific tree felling of such large scale would mean risking the lives of the local villages to the wrath and impact of large-scale landslide and devastation in the name of connecting urban cities across two states. Road widening in such hilly and steep terrain has proven to cause landslides during heavy monsoon similar to the landslides in Kodagu and Wayanad in Aug 2018. Taking from example of steep slopes on the Western Ghats where slope stability is primarily taken care by the deep root structures of the large trees with buttress roots. It is a proven scientific fact that these older than 100 years grandmother trees in the Western Ghats eco system not just prevent large scale landslides but also provide ecosystem services of water harvesting, diversion and management with leaf litter falling on the soil surface every year. This leaf litter acts as a primary sponge to regulate the flow of excess water that falls during monsoons. Every inch of leaf litter lost would reduce the water holding capacity of the landscape thus reducing the capacity of the first order streams in these landscapes to flow during periods of no rain. Large-scale tree felling in such eco fragile landscape will mean we are putting the entire population of humans and other species at severe risk during the next heavy rain.

12. It is submitted that the area around this region where the trees are being cut down is very important and vital as it brings very heavy rains for Belgaum, Uttar Kannada and Dharwad. Rivers such as Kali, Mahadayi, and Malaprabha originate in this region and is primary to the existence of millions of farmers who are farming for subsistence in this region. It is submitted that many of these regions are already undergoing severe farming crisis with the burden of farm debts. Any change in the water availability from these rivers due to human interference could mean such large-scale developmental projects are depriving the very existence of thousands of farmers dependent on these rivers and landscape for their daily subsistence.

13. It is submitted that the recent floods and landslides of Aug 2018 in Kodagu has brought out the critical question of hill slope management while implementing developmental projects. There were two scientific reports supported with detailed satellite images that proved how roads are the primary cause of triggering landslides. The World Research Institute's satellite images of the recent Kodagu landslide and how roads have triggered these landslides as there were overall 765 landslides in Kodagu and Kerala during Aug 2018 as per Annexure 'F'.
  
14. It is hereby submitted that the "Inspection Note of Sri P Sridhar, IFS, Additional Principal Chief Conservator of Forests as of 10<sup>th</sup> Jul 2012 clearly states the critical nature of this landscape from the floral and faunal perspective. The report dated 10<sup>th</sup> July 2012 mentions about the stretch beyond Anmod is of thick evergreen forest where ideal no road expansion should be permitted in such pristine ecosystem. It also highlights how any additional area diversion in the steeper gradient could have serious ecological ramifications. The Inspection report dated 10<sup>th</sup> Jul 2012 is produced herewith as Annexure 'G'.
  
15. The stretch from 15.75 kms to 29.01 kms is proposed as a 45m wide 4 lane road and from 36.933 kms to 60.710 kms as a 26m wide 2 lane road. Nearly 14 kms of this road passes through thick forest, which is home to elephants, tigers, leopards, black panthers and king cobras. Many sections of this road are critical wildlife corridors and are declared as Dandeli elephant reserve in the Govt. of Karnataka notification vide letter no. F.No.7-2/2012-PE dated 27-03-2015. The proposed road passes through a critical elephant corridor between Dandeli Wildlife Sanctuary and forests of Khanapur and Jamboti. This Elephant Reserve has been declared with its' buffer zones clearly mentioned. Kanhapur, Belgaum, Haliyal are divisions that are part of the buffer zone of elephant reserve as per this notification. As per F. No. 6-10/2011 WL dated December 2012, obtaining recommendations of the Standing Committee of NBWL under the Wild Life (protection) Act 1972 with respect to the areas, for



which this process is mandatory under the law, and also in compliance to relevant Hon'ble Supreme Court orders. The copy of the notification is produced herewith as Annexure 'H'.

16. It is also submitted that there are critical elephant corridors in this section that are the primary gateway of gene pool exchange for elephants in the Dandeli Wildlife Sanctuary. Disrupting elephant corridors have proven fatal in the past where it primarily triggers increased human-elephant conflicts in the region due to severe stress the pachyderms have to undergo for traversing through the disintegrated ancient routes. Any highspeed highway or railway lines have proven detrimental to the elephant population. It is impossible for large elephant herds to cross the wide roads with calves. Often, the calves get stuck in the divider and is exposed to speeding vehicles. Any 4 lane highway is built for vehicles speeding at 100 Km/ Hour. Elephants and other species like ungulates, reptiles will not be able to gauge the speed of the vehicle approaching to cross the wide road. These species will have to wait for hours before crossing the road and reaching out to areas with water availability. It is also in the interest of nearby farmers that projects with such deleterious impacts are avoided.

17. It is pertinent to note that wildlife all over the country where there has been large scale linear intrusion are facing severe threat due to speeding vehicles. Bandipur is an example where the night traffic through a National Highway has been banned by the Supreme Court considering the impact on wildlife. It is submitted that the Ministry of Environment and Forests have also issued Notification dated 4<sup>th</sup> October 2012 as per Annexure 'J' as a Protected area. *In WP No 17498/2009 before this Hon'ble Court has espoused several important aspects pertaining to wildlife in the area in question and the need to preserve and protect the same from being indiscriminately exposed to risks of road traffic accidents from the heavy flow of traffic flowing through the national highways cutting across the Bandipur National Park and Tiger reserve. This area is also part of the Mysore Elephant Reserve as declared by the Ministry of Environment and*

*Forests , Government of India, giving utmost importance to elephant conservation.*

18. Night traffic restraints are there on all roads within Nagarhole National Park vide order dated 11-07-2008. It is submitted that a decision was taken by the monitoring committee that a 14 Kilometer diversion shall be taken up to completely avoid the usage of 10 Km of the existing Mysore-Manantavadi road passing through the Nagarhole National Park to ensure greater protection of wildlife of the region. The Hyderabad-Srisailam road passing through the NagarjunaSagar- Srisailam Tiger Reserve is also closed from 9 PM to 6 AM.
19. It is pertinent to note that critical wildlife corridors are the primary reason for imposing restrictions on traffic through National Highways.

*In WP No 17498/2009, the judgment order quotes “Apart from the fact that some of the animals are getting killed, there has been a change in their behaviour particularly in the case of elephants which venture to go into the neighbouring farmers’ lands and villages leading to man animal conflict such as damage to the crop and other properties and human lives. The need for maintaining a peaceful atmosphere during night hours so as to enable the nocturnal animals to have peaceful passage through forest area has made authorities to take steps to restrict the night traffic from 9PM to 6AM.”*

20. It is submitted that roads have also known to trigger severe man animal conflicts in the landscape when elephant herds have to wait for long hours to cross certain sections of the highway with their young calves. While Karnataka forest department is spending crores of money to mitigate human-elephant conflicts from the state exchequer, it is shocking to note that the department is considering to further fragment the landscape by approving large scale linear intrusion initiatives that create further conflicts. All these in spite of clear directions by the High Court of Karnataka for protection and

conservation of elephant reserves through the “Elephant Suo Motto Case”.

21. Referring to the Elephant Suo Motto Case in the High Court of Karnataka W. P. No. 14O29 / 2008 , upon the death of 25 elephants around Bandipur-Nagahole National Park, The Karnataka task force states that

*a) “The elephant's penchant for feeding on cultivated crops brings it into direct conflict with people. The most obvious patterns and reasons of crop raiding, supported by the scientific studies, are the following:*

*a) The rapid loss of natural habitat through conversion to agriculture would result in escalated conflict as elephants continue to treat the converted land as part of their traditional home range. Habitat loss directly impacts only those clans or males within whose home ranges the changes have taken place.*

*b) The fragmentation of habitat increase the chances of this long-ranging species to make contact with cultivated land and indulge in crop raiding.*

*c) The elephants having tasted crops would continue to prefer this source of food, irrespective of the availability of natural forage in their habitat.*

*d) Sub-adult and adult male elephants typically have a higher propensity as*

*e) compared to female-led groups to raid crops by moving out from their native range.*

*f) Elephants may disperse from their native range due to local habitat pressures, significant reduction in forage through proliferation of unpalatable weeds or large-scale fire, overabundance in relation to carrying capacity, or adverse climatic events.*

*g) Due to strong inter-clan hierarchies, the elephants tend to disperse into unoccupied areas which are general human use areas.*

*b) Man-animal conflict is bound to be an inevitable issue to be dealt with by not only the experts in the field, but also by involving citizens. Large animals, such as elephants need extensive space to move, breed and feed. When their habitat is fast shrinking, they come in conflict with human beings. Human development interfering with the elephants' migratory paths, breeding grounds and core habitats, would result in an obvious conflict with the elephants. Elephants being migratory wild animals, they require large habitats connected by well-established movement paths called "corridors".*

*c) It is found that man-elephant conflict could be addressed and mitigated in four ways: (1) Introducing barriers such as trenches, fences or repellents such as crackers, watcher squads etc., between the elephant and man; (2) Change in cropping patterns around elephant populated areas to include non-palatable crops, which do not attract elephants; (3) securing corridors for elephant movement; (4) Capture of rogue and problem herds. The first method is only a temporary solution and ought not to impede migration. The second and third measures are critical long-term measures that need to be pursued for finding a permanent solution to man-elephant conflict. The last measure should be resorted to only after identifying rogue animals which could be captured and translocated. The issue of translocation of herds of elephants from one habitat to another is a matter which would require careful and comprehensive consideration. Source: Law of Forests in India - by R.N.Choudhary - 3'dEdition.*

22. It is submitted that in the write up called "Roadkill animals on national highways of Karnataka", as per Annexure 'K' published in Journal of Ecology and the Natural Environment by Wildlife Institute of India, Dehradun on 4 April, 2011 "Highways passing through national reserves/wildlife sanctuaries have adverse impact upon wild animals. The present survey was conducted to estimate the roadkills on the National Highways NH212 and NH67 passing through Bandipur Tiger Reserve, Karnataka, India during summer and pre-

*monsoon season at various vegetational levels. The roadkills were monitored thrice a month in each habitat between January, 2007 and June, 2007 and a total of 423 roadkills belonging to 29 species were recorded. Reptiles were the most affected taxa (37.59%) followed by amphibians (29.55%), mammals (19.39%) and birds (13.48%). The variability in season indicated higher roadkills in pre-monsoon (55.6%) compared to those in summer season (44.6%). According to vegetation, the overall roadkill was 50% in mixed deciduous forest and 22.40% in the teak forest and bamboo. Conservation and management implications are essential to prevent the local extinct of faunal and floral.”*

23. It is submitted that the Basic Principle of MoEF’s recommendation of the sub-committee on guideline for roads in protected areas, F.No.6-62/2013 WL, Dated 22nd December 2014 as per Annexure ‘L’- states- “we wish to reiterate and articulate clearly in the National Wildlife Action Plan 2002-2016, which states that the Ministry of Surface Transport to plan roads, highways, express ways in such manner that all National Parks and Sanctuaries are bypassed and integrity of the PA is maintained wildlife corridors also need to be avoided on mitigative measures need to be employed.

*In planning roads, within and in the vicinity (defined here as roads that are situated inside and within 1 Km radial distance) of protected areas, we recommend that following fundamental principles must be followed in order of priority: Avoidance, Realignment, Restoration,*

*1, Principle of Avoidance: The foremost option would be to altogether avoid areas that are within or in the vicinity of any Protected Area and to find alternatives that are socially and ecologically more appropriate.*

*2, Principle of Realignment: This follows as a corollary of the first principle, Road projects must investigate and demonstrate that they have considered other alternative routes that avoid natural areas of high ecological value. This must be an integral feature of a project proposal and implementation documents, Realignments must also be*

*developed in a transparent manner through consultation with local communities affected by the routing and subject to ecological and wildlife considerations, User agencies seeking clearances for roads must demonstrate as to how they have taken these factors into account, before their proposals can be considered for approval by the SC-NBWL.*

*3, Principle of Restoration: In natural areas, existing roads that are in disuse (e.g., old logging roads), or evaluated to be inefficient or detrimental to their objects, shall be targeted for decommissioning and subsequent ecological restoration, as the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed,*

It is further submitted that the Government of Karnataka has also issued Notification bearing No. FEE 362 FWL 2014 dated 26-03-2015 as per Annexure 'M' setting up of Dandeli Elephant Reserve spread over the districts of Uttara Kannada, Belgaum, Haveri and Dharwad.

23 A. That the unique location of Western Ghats forests along the Arabian Sea on the west coast of India from Gujarat to Kanyakumari, embracing Indian ocean has been a great ecological gift to the peninsular India. About 65 major rivers are originating from the Western Ghats irrigating millions of acres of land and produce a diverse quantity of food grains to the South Indian population for thousands of years. Western Ghats forests are bio diversity rich forests, hub of the world comprising of great variety and range of animals and rare plants that have been called as the biodiversity hotspot of India. The forests that are situated between Goa and North Karnataka are very rich and diverse and brings great amount of rains to this area.

23 B. That from Belagavi to Ranebennur, to the length of 200 kms and 45 kms width, the area has been of great value for the entire Karnataka as it consists of four ecosystems like the Western Ghats, the thorny tree bushes, the pond ecosystem and to the east the grasslands. These landscapes are very rare and are called the

**Ecotone** belt that are capable of producing large variety of food crops, millets, fruits and excellent variety of vegetables. These are so because of the forests of this region and the spread of other ecosystems which are interconnected to each other. Saving of the forests of this region of the Western Ghats and Deccan Plateau is very important as it provides food security to the entire of Karnataka.

23 C. It is submitted that there are four rivers namely Kali, Malaprabha, Ghataprabha and Mahadayi originates in this region of the Western Ghats and irrigates millions of hectares of agricultural land, produces about 1500 MW of electricity by hydropower and provides jobs for thousands of families both in agriculture and industry. There are 33 sugar factories which crush sugar canes and produce about 400 million tonnes of sugar every year. Hundreds of thousands of farmers depend on these rivers which are alive only because of the existence of the Western Ghats.

23 D. That by notification dated 13.11.2013 (directions issued under section 5 of the Environment (Protection) Act, 1986), the Government of India, Ministry of Environment and Forests prohibited developmental activities in the notified Ecologically Sensitive Areas of the Western Ghats region with effect from 17-04-2013. Accordingly mining, quarrying and sand mining, thermal power plants, building and construction projects of 20,000 sq m area and above, township and area development projects with an area of 50 ha and above and/or with built up area of 1,50,000 sq m and above and Red category of Industries. The impugned road widening project of NH 4A is being carried out within the specified Ecologically Sensitive Area and the total construction envisaged in the forest area alone crosses more than 8,00,000 square meters which is 40 times excess than the threshold limit. Therefore the impugned project is illegal and is being implemented in violation of the notification dated 13-11-2013. A copy of the notification dated 13-11-2013 is herewith produced as **Annexure A-1.**

23 E. That the Government of India notification No. S.O 1533 (E) dated 14<sup>th</sup> September 2006, mandates that no project shall be carried out without obtaining the Environmental Clearance. The projects specified in the schedule to the said notification can be carried out only after conducting detailed Environmental Impact Assessment of the project. The clearance obtained has fixed validity period and cannot be used beyond the period of its validity. A copy of the notification No. S.O 1533 (E) dated 14<sup>th</sup> September 2006 is produced herewith as **Annexure A-2**.

23 F. That Schedule 7 (f) of the above notification states that it is mandatory to obtain prior environmental clearance for expansion of national highways greater than 30 km involving additional right of way greater than 20 m involving land acquisition and passing through more than one State. It is submitted that the draft DPR for the impugned project was presented only on 20-06-2017 and no Environmental Clearance was obtained by the respondents for the project. The entire construction of the project is illegal as the same being carried out in violation to the EIA notification 2006.

23 G. That the project location is situated within the territorial area of Anshi National Park, Kali Tiger Reserve and Dandeli Elephant Reserves. No activities other than conservation programmes are permitted in these areas. The project is being carried out without obtaining necessary permissions from the National Board of Wild Life (NBWL) and National Tiger Conservation Authority (NTCA). Therefore the project is illegal and is in violation of Sections 27, 29, 35 (5), 35 (6) and 38 (O) of the Wild Life (Protection) Act 1972.

23 H. The project area is a critical habitat of endangered species like King Cobra, Great Indian Hornbill, Wroughton Bat, Malabar Giant Squirrel, Malabar Civet, Mouse Deer, Pythons, Pied Hornbill, Malabar Hornbill etc. Hornbills are the creator of natural forests and felling of large scale trees for the widening of the road and intrusion in to the habitats of endangered species would cause disastrous effect on the regeneration system and ecological balance of the Western Ghats.



Destruction to the habitats of Wroughten Bats would cause imbalance in the regeneration of the forests and negatively impact on the food security of the region.

23 I. It is submitted that honey bees in the Western Ghats are one of the most important living species. Honey bees are super important pollinators for flowers, fruits and vegetables. The destruction of forest by felling large number of trees would result in “Colony Collapse Disorder” and the bee population would be reduced or migrated and eventually the Western Ghats forest would be perished. It will also have negative impact on the agricultural production in the neighbouring village.

23 J. That white topping of the road is unscientific in the forest area and detrimental to the wild animals. No scientific studies have been conducted by the project proponents before taking a decision to apply white topping on the highway. During the monsoon season, the road will become more slippery and becomes difficult for animal crossing. On the other hand more heat emanates from the concrete road during the dry season. There will be more stress on the animals due to more vehicular traffic once the highway opened for commuting. Human- animal conflicts are likely to increase due to invasion of habitat. It is submitted that opening of the canopy cover will attract more sunlight and changes the native conditions of the floral and micro organism and will give space for invasive species like lantana, camara, senna, spectabilis etc. which are detrimental to the wildlife.

23 K. It is submitted that more than 1 lakh naturally grown trees were felled from the project area in the guise of Stage-I clearance granted by the Regional Empowered Committee of the MoEF. This part of the Western Ghats region is classified as Eco Sensitive Area and more specifically are Eco Class-I. The Western Ghats Ecology Expert Panel(WGEEP) constituted by the Government of India in its report has stated that the tree density in Western Ghats is around 800 trees per hectares and most of these trees are not listed in the schedule of

the Tree Act. A copy of the relevant portion of WGEEP report is herewith produced as **Annexure- A-3**.

23L. It is submitted that a study conducted and published in the Journal of Forestry Research captioned as structure and floristic composition of old growth wet evergreen forests of Nelliampathy Hills, Southern Western Ghats shows that the stand density of trees varied from 1714 to 2244 stems per hectare. The Western Ghats region of the project area has either similar or has more density of trees than of Nelliampathy Hills. A copy of the Journal is produced herewith as **Annexure A-4**.

23M. That since the project is being carried out in the Eco Class-I region of the thick evergreen forest of the Western Ghats, the density of the trees could be deemed to be a minimum of 1000 trees per hectare. These trees are all naturally grown species and are endemic to the region. Therefore an approximate number of more than 1 lakh trees have been felled by the project proponent without obtaining necessary statutory permissions from the concerned Government Departments.

23N. It is submitted that Stage-I Clearance obtained for the project under the Forest Conservation Rules is only a preliminary administrative approval and the same cannot be treated as a complete statutory clearance under the Forest (Conservation) Act either for the purpose of felling trees or construction/widening of the road. Any supplementary guidelines issued by the authorities by diluting the provisions of Section 2 of the Forest Conservation Act and Forest Conservation Rules have no sanctity in the eyes of law. Moreover such activities are against the National Forest Policy 1988.

23 P. It is submitted that there are about 17 Tribal Villages existing between Jallakatti to Anmod of the project area. Projects involving forest clearances are mandatorily to be placed before the Grama Sabhas and consent is required to be obtained under the scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act,

2006. In the instant case no such consent from the Grama Sabha has been obtained and therefore granting Stage-I Clearance and the implementation of the project are bad in law.

23 Q. It is submitted that the project NH 4A is passing through the fragile Eco Sensitive Western Ghats region of Belgaum District. These areas are Bio diversity rich region with different endangered species which are endemic to the region. If the natural bio diversity of the region is perished, there will be no re generation of the same species. Section 36(4) of the Biological Diversity Act, 2002 mandates a Biological Impact Assessment of the project whenever the project causes adverse impact on the biological entities of the region. The project proponents have not applied their mind into this critical provision of the law. Hence the implementation of the project is illegal.

23 R. The impugned project is not absolutely necessary for the sustainable development of the region. It is submitted that there are two alternative motorable highways existing between Belgaum and Goa. State Highway No. 54 which joins State Highway No.31 connects Belgaum-Jamboti- Mapusa through Chorle Ghat. Another road exists between Belgaum and Goa is Belgaum-Karwar-Margoan highway which is converted to a four lane highway in the recent past. Hence the widening of NH 4A is a mechanical exercise envisaged for the purpose of benefitting the contractors of the project. On the other hand the project is being implemented in violation of National Forest Policy, Forest (Conservation) Act, 1980, Wild Life Protection Act, 1972, Environmental (Protection) Act, 1986, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Biological Diversity Act, 2002. In addition to the above it is submitted that implementation of the project violates the order and directions issued by this Hon'ble Court in W.P.No. 14029/2008.

24. The Petitioners respectfully submit that in the absence of alternate and efficacious remedy is filing the Public Interest Litigation Writ Petition under Articles 226 and 227 of the Constitution of India.

25.The Petitioners have not filed any other petition or petitions before this Hon'ble Court on the same cause of action and no other suits or proceedings are pending in any other court at the instance of the Petitioners.

26.The Petitioners produce herewith Court Fee of Rs.100/- as per Karnataka Court Fees and Suits Valuation Act.

### GROUNDS

27.It is respectfully submitted that the Respondent 3 is without getting clearance from the Wild Life Board and not acquiring the required land from the private parties as on today cannot destroy the Elephant Reserve and Dense forest in the District of Belgaum and surrounding districts for the purpose of widening the NH4-A.

28.It is respectfully submitted that the major evergreen trees are, *Aglaiamalabarica* Sasidh., *Bischofia javanica* Blume, *Chionanthus mala-elengi* (Dennst.) P. S. Green, (*Mala ilanji*) *Garcinia gummi-gutta* (L.) Robs., (*Knema attenuata* (Hook. f. & Thoms.) Warb (*Chorapali*) *Litsea floribunda* (Blume) Gamble, *Antidesma montanum* Blume, *Cullenia exarillata* Robyns, Bull. (*Mulanpali*) *Melicope lunu-ankenda* (Gaertn.) Hartley, *Mallotus tetra-coccus* (Roxb.) Kurz (*Sindoori*), *Meliosma pinnata* (Roxb.) Maxim. *Syzygium gardneri* Thw., etc. Many of them coming under the category of Rare Endemic and Threatened plants (RET) (Nayar, 1996 & IUCN, 2000).

Quoting from Hidden life of trees by Peter Wohlleben“ For reaching sexual maturity, some trees have to reach 150 years of age. 8ft trees can be 80 years old and these 80 year old trees under a 200 years old mother tree might have to wait for another 200 years to gain growth in a very dense forest. They grow fine hairs in tree roots to suck up moisture pairing with fungi – mycelium. Older the tree, the more quickly it grows.” Many trees that are marked for cutting in these pristine tropical wet evergreen forests of Belgaum and Haliyal Divisions belongs to rare / endangered and threatened species. Many are lower girth size, which doesn't mean the trees are not old trees.

No compensatory afforestation can conserve these floral species and the damaged eco system.

29.It is respectfully submitted that in the case of KM ChinnappaVs UOI -AIR 2003 SC 724 in paragraph 17 and 29, the Apex court dealing with Art 48A and Art51(A)(g) impose obligations on the State and the citizens of India to protect and improve the natural environment including forests, lakes , rivers and wildlife and to have compassion for living creatures. In paragraph 29, it is stated as under :

“ The tide of judicial considerations in environmental litigations in India symbolises the anxiety of Court in finding out appropriate remedies for environmental maladies. At global level, the to live is now recognised as a fundamental right to an environment adequate for health and well being of human beings .... “

30.It is respectfully submitted that in the letter dated 21-11-2012 by Chief Conservator of Forests, it is stated that the approval shall be given subject to the approval of Chief Wildlife Warden and National Board of Wildlife. In the absence of consent letters from Chief Wildlife Warden and NBWL, it is a clear violation of Section 2 Forest Conservation Act where a 3<sup>rd</sup> party user agency is allowed to fell trees inside forest land.

31. It is respectfully submitted that the Government. ofIndia vide letterNo. F.No.7-2/2012-PE dated 27-02-2015 Elephant Reserve has approvedand accordingly Government of Karnataka declared with its' buffer zones clearly mentioned. Kanhapur, Belgaum, Haliyal are divisions that are part of the buffer zone of elephant reserve. As per F. No. 6-10/2011 WL dated December 2012, obtaining recommendations of the Standing Committee of NBWL under the Wild Life (protection) Act 1972 with respect to the areas, for which

this process is mandatory under the law, and also in compliance to relevant Hon'ble Supreme Court orders.

32. It is respectfully submitted that as per the press information bureau published by Ministry of Road Transport and Highways as of 23<sup>rd</sup> Mar 2017, the four laning of National Highway is based on threshold traffic for 4-laning of NHs from 15,000; 11,000; and 8,000 Passenger Car Units (PCUs) per day to 10,000; 8,500 and 6,000 PCUs/day for Plain, Rolling, and Mountainous/Steep Terrains respectively. It is submitted that the Chief Conservator of Forests vide letter No:A7/LND/NHAI/FC/PRP/BGM/2012-13 dated 03-10-2012 states the current width of the road at 7m in forest area. The proposal to four lane the stretch inside forest area would mean widening a 7m existing road to as wide as 45 m. It is humbly submitted that in the backdrop of the geological fragility of the landscape of Western Ghats and the effect of recent floods in mountainous Kodagu, Wayanad and Idukki which are again on the Western Ghats clearly gives human induced green cover loss as a primary cause of landslides. It is important to highlight that though NHAI has a standard width procedure for road widening, it has to consider the fragility of the ecology of certain sections, wildlife movement, wildlife corridors and population density for widening. India is a thickly populated land with 4 big cats and many large mammalian species that needs a large terrain co existing in this landscape, unlike the Western World. A one size fits all model for development in India is a faulty approach considering we need to accommodate development by conserving the rich natural heritage of this country. It is highly unscientific to use the same width uniformly across all kinds of terrains, eco fragile lands, landslide prone areas and forest zones. Blasting and use of heavy machinery to remove large rock structures to widen roads in steep terrains has proven to have long lasting consequences on the stability of the land. NHAI by deforesting the landscape of its' century old mother trees with root structures that can run upto many kilometres are triggering a series of land instability issues in the terrain, thus putting both humans and animal species at severe risk during heavy rains.

32A. That the project is being implemented in violation to the Environmental (Protection) Act, 1986 as no environmental clearance is obtained for the project. The project DPR was prepared on 20/06/2017 and no EIA has been conducted as mandated in the EIA notification 2006.

32B. That the project is being carried out in violation to the notification dated 13/11/2013 which expressly prohibits construction of 20000 meters and above in the Eco Sensitive areas of Western Ghats region. The projects are being carried out in the notified protected Eco Sensitive areas and hence the implementation of the project is illegal.

32C. That Stage-I Clearance to the project is only an administrative approval and not a complete approval for construction of concrete road in the forest area. Any guidelines issued with relaxation of conditions for felling the trees, if issued are not in complicity with Forest (Conservation) Act, 1980. Therefore felling of large number of trees from the forest area is a gross violation of the Forest (Conservation) Act.

32 D. That before granting Stage-I Clearance to the project no prior approval from the Grama Sabhas has been obtained. Hence granting Stage-I Clearance to the project is illegal and against the principles of law.

32 E. That no permissions from the NBWL and NTCA have been obtained by the project proponent before implementation of the project. Hence the project is bad in law.

32 F. That the project was not subjected for a Biological Impact Assessment as the same is mandatory under section 36(4) of the Bio-Diversity Act, 2002.

32 G. That there is alternative Highways existing between Belgaum and Goa which are in motorable condition. Hence widening of NH 4A

is not an unavoidable development project and not being carried out in public interest.

32H. That good quality environment is a fundamental right and is a part of personal liberty guaranteed under Article 21 of the Constitution of India. The Government has no right to curtail such fundamental rights guaranteed under the Constitution by causing irreparable damage upon the natural environment in the name of development/widening of Highways. Implementation of such projects in violation to the human fundamental rights and other statutory provisions of laws of the land cannot be permitted.

### **GROUND FOR INTERIM RELIEF**

33.It is respectfully submitted that the Respondent 3 is without getting clearance from the Wild Life Board and not acquiring the required land from the private parties as on today cannot destroy the Elephant Reserve and Dense forest in the District of Belagavi and surrounding districts for the purpose of widening the NH4-A.

34.It is respectfully submitted that the Government of India vide letter No. F.No.7-2/2012-PE dated 27-02-2015 Elephant Reserve has approved and accordingly Government of Karnataka declared with its' buffer zones clearly mentioned. Kanhapur, Belgaum, Haliyal are divisions that are part of the buffer zone of elephant reserve. As per F. No. 6-10/2011 WL dated December 2012, obtaining recommendations of the Standing Committee of NBWL under the Wild Life (protection) Act 1972 with respect to the areas, for which this process is mandatory under the law, and also in compliance to relevant Hon'ble Supreme Court orders.

35.It is therefore prayed that this Hon'ble Court by way interim order restrain the 3<sup>rd</sup> Respondent from widening the roads under NH4-A which are passing through the Core, Reserve Forest and Elephant Reserve also Tiger Reserve falling under 4/6 lane (A) Belagavi



Bypass(Western), BelagaviByepass (Eastern) and Notified Core Areas of Dandeli Wildlife Sanctuary, Buffer Area falling under Yallapur,Kriwatrtietc as notified by the Government of Karnataka vide Notification Bearing No.FEE 362 FWL 2014 dated 26-03-2015 as per Annexure 'M' pending disposal of the Writ Petition in the interest of justice and equity.

### **PRAYER**

36. The Petitioners therefore pray that this Hon'ble Court be pleased:

A. To issue an appropriate writ, order or direction, to stop illegal road widening under the Forest Conservation Act 1980 and Wildlife Protection Act 1972 undertaken by the 3<sup>rd</sup> Respondent in the Districts of Belagavi and surrounding districts.

AA. to issue a Writ in the nature of Prohibition and prohibit the respondents from further carrying out the road widening of the Highway NH 4 A in the notified ecologically sensitive areas of the Western Ghats which is being carried out in violation of the Environmental (Protection) Act, 1986, the EIA notification No. S.O 1533 (E) dated 14<sup>th</sup> September 2006 and the notification dated 13-11-2013, Biological Diversity Act, 2002 and the Forest Rights Act 2006.

B. To direct the respondents to adhere to the MoEF's recommendation of the sub committee on guideline for roads in protected areas, F.No.6-62/2013 WL, Dated 22nd December 2014 as per Annexure 'L', and also that as principle of Avoidance through forest areas and critical elephant corridors be followed and retain existing road width in forest areas and allow only two lane roads.

C. To direct NHA 3<sup>rd</sup> Respondent to maintain 50 Kmph speed limit with intermittent speed breakers inside all wildlife corridors and forest areas (PAs and Territorial divisions) to avoid death due to road kills.

D. To direct Karnataka Forest Department to ban night traffic through all Elephant reserves as per directions of NBWL Standing Committee.

E. To grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case in the interest of justice and equity.

**INTERIM PRAYER**

37.The Petitioners therefore pray that this Hon'ble Court by way interim order restrain the 3<sup>rd</sup> Respondent from widening the roads under NH4-A which are passing through the Core, Reserve Forest and Elephant Reserve also Tiger Reserve falling under 4/6 lane (A) Belagavi Bypass(Western), BelagaviByepass (Eastern) and Notified Core Areas of Dandeli Wildlife Sanctuary, Buffer Area falling under Yallapur, Kriwatrtietc as notified by the Government of Karnataka vide Notification Bearing No.FEE 362 FWL 2014 dated 26-03-2015 as per Annexure 'M' pending disposal of the Writ Petition in the interest of justice and equity.

Bengaluru

Date:21-01-2019

Advocate for Petitioner